

## Skadden Appellate Head Shay Dvoretzky On Making Business Arguments to a Textualist Supreme Court

By Ross Todd  
May 16, 2022

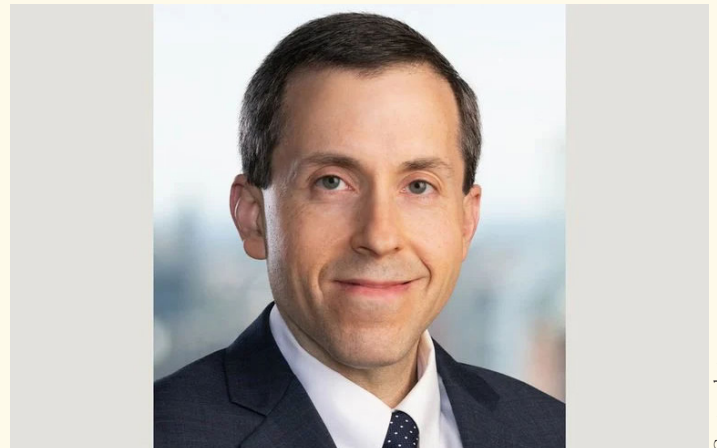
You want to know what it's like to launch a Supreme Court practice at a global law firm?

Then you might check in with **Shay Dvoretzky**, who is coming up on the 18-month mark of his tenure as the head of the Supreme Court and appellate practice group at **Skadden, Arps, Slate, Meagher & Flom** in Washington, D.C. Dvoretzky, who clerked for the late Justice Antonin Scalia and has handled 14 oral arguments at the High Court, [moved in November 2020](#) to Skadden from **Jones Day**, his law firm home of 18 years. Late last week the Litigation Daily caught up with him about the move, making arguments to a court with a handful of new (and new-ish) justices, and to get his thoughts on the recent leak in the *Dobbs* case. What follows has been edited for length and clarity.

**Lit Daily: What has the past year-and-a-half looked like for you since joining Skadden?**

Shay Dvoretzky: It's been a terrific first year-and-a-half. Skadden partners and the firm's clients have responded very enthusiastically to having a dedicated Supreme Court and appellate practice. Skadden has phenomenal litigators across the firm. The appellate group has worked closely with them while leading a number of appeals on important business issues. We've handled multiple appeals with the firm's tax, securities and energy practices for example. We've also attracted new appeals to the firm on some really interesting questions involving preemption, Article III standing, administrative law and other things. And we're now handling our third Supreme Court merits case since launching the practice.

Skadden has had a deep commitment to pro bono work. In 2021 we represented Edward Caniglia [in the Supreme Court](#). Police confiscated his guns during a



Courtesy photo

**Shay Dvoretzky, the head of the Supreme Court and appellate litigation group at Skadden, Arps, Slate, Meagher & Flom.**

warrantless search of his home and they justified that search based on an amorphous community caretaking rationale. The Supreme Court ruled in our client's favor [nine-to-nothing](#) and held the community caretaking doctrine didn't apply to searches of the home. And then last month, the Supreme Court granted [another pro bono cert petition](#). This one was filed by Skadden along with the Innocence Project representing Rodney Reed, who's a Texas death row inmate who's seeking DNA testing to prove his innocence. More generally, our caseload has grown a lot over the last year-and-a-half. Earlier this year, we had four arguments in a little over a month, including arguments before the Supreme Court and the en banc 11th Circuit. So it's been great and we're looking forward to what lies ahead as we continue to grow.

**What would you say the breakdown is now between (1) clients you've worked with prior to the move to Skadden, (2) clients who've been referred to the practice internally, and (3) purely new clients for both you and the firm?**

Over the last 18 months, it's been roughly an even split among clients I had worked with before Skadden, [Skadden] clients on existing or new matters, and new clients that came to the firm for appellate work.

**So what's your proudest achievement or moment in this past year-and-a-half?**

If I could give two, I'd say that the two pro bono Supreme Court cases that I mentioned are both sources of pride in different ways. *Caniglia* was a real highlight because it was the first merits case the practice handled after launching at Skadden. The unanimous win there vindicated important Fourth Amendment rights, protecting the sanctity of the home.

The Rodney Reed case is a highlight for our practice in a different way because it showcases the appellate bench that we're building in our group, as well as our integration in the firm. A Skadden team led by lawyers in Wilmington, [Delaware], has fought for years for DNA testing to prove Rodney Reed's innocence. Working closely with them one of my colleagues in the Supreme Court and appellate practice group **Parker Rider-Longmaid** convinced the Supreme Court to grant cert to decide the accrual rule for the limitations period for a [Section] 1983 claim seeking DNA testing. Parker is leading the briefing in the Supreme Court and will argue that case in the fall. I'm really excited and proud that the firm is able to provide that opportunity to develop the next generation of talent. That's a real milestone for our practice.

**So what's been the biggest challenge about the move?**

I joined Skadden about eight months into the pandemic and remote work. And that made it impossible to do what I think lateral partners typically do, which is to travel to all the firm's offices to get to know other partners and meet clients. But Skadden's ability to pivot to remote work made that all much more manageable. The remote work environment also made it possible to connect virtually with partners and clients in different cities in the same day. And that allowed our group maybe to get to know colleagues even more quickly than we might have before the pandemic. Remote work has also let us

collaborate even more easily with associates outside the DC office interested in doing Supreme Court and appellate work. And I expect that to continue.

**Well, I imagine it also has allowed others in the firm to see you in action in ways that they might not have in person.**

That's true. There have been so many remote arguments over the last year-and-a-half that it's made arguments more accessible to everybody.

**The makeup of the Supreme Court has changed more in the five years, arguably more than any other stretch during your career. I'm wondering how those changes in the court have shaped the sorts of arguments you're making when you're seeking cert grants and when you ultimately get a case taken up by the court?**

Textualism has been a hallmark of the court for many years. But I think that's even more true now than it used to be. The court seems more willing to follow the statutory text wherever it leads, even if that has adverse policy consequences for businesses. So there's even more of a premium than before on very close textual parsing. In addition, it's been widely observed that the court has been questioning some of the foundational principles of administrative law. So I think that creates opportunities to make different kinds of arguments to the court when you're litigating regulatory challenges. Relatedly, the court has been reinvigorating certain Constitutional doctrines like takings jurisprudence and maybe the non-delegation doctrine, which I guess we'll see later this term. That also creates new and different kinds of opportunities for businesses challenging government action.

**You clerked on the court for Justice Scalia. What do you think the short- and long-term impacts of the leak of the draft opinion in the *Dobbs* case will be?**

The environment at the court has long depended on a high degree of trust, not just among the justices, but also among clerks across chambers. The decision-making process where ideas are exchanged and debated and refined requires absolute confidentiality. So it's hard to see how that environment isn't seriously damaged by the recent leaks, at least in the near term.