

# Skadden Snags Shay Dvoretzky From Jones Day to Lead New SCOTUS Practice

“Every time a new justice is appointed, you have to study that justice’s questions and opinions to understand what will appeal to them. The results can be surprising,” says Dvoretzky, who clerked for the late Justice Antonin Scalia and who had been at Jones Day for 18 years.

BY MARCIA COYLE

Veteran appellate advocate Shay Dvoretzky is leaving Jones Day to join Skadden, Arps, Slate, Meagher & Flom, where he will begin and lead a U.S. Supreme Court and appellate litigation group.

Dvoretzky has argued 12 cases in the Supreme Court and many more in federal and state courts. He will be a partner in Skadden’s Washington office. David Zornow, global head of Skadden’s litigation practice, said Dvoretzky is “recognized as among an elite group of Supreme Court advocates.”

Skadden’s litigation practice is “preeminent,” Dvoretzky said, and he added he was “thrilled to join such an innovative firm.”

Dvoretzky, who had spent 18 years at Jones Day, said his departure from the Cleveland, Ohio-based firm was in the works before it faced criticism in recent weeks over advocating for the Donald Trump presidential campaign and the Republican Party.

Dvoretzky became the latest veteran Supreme Court advocate to seize an opportunity to start or bolster a Supreme Court and appellate practice at a major U.S. law firm. Last year, Kannon Shanmugam left Williams & Connolly to lead the appellate team at Paul, Weiss, Rifkind, Wharton



Shay Dvoretzky

Photo: Diego M. Radzinski/ALM

& Garrison. Filling the vacancy, Williams & Connolly drew Lisa Blatt from Arnold & Porter Kaye Scholer, where she had led the appellate team. Arnold & Porter then hired longtime advocate John Elwood from Vinson & Elkins.

The arrival of Dvoretzky comes just weeks after Skadden announced another major new hire: Jessie Liu, the Senate-confirmed U.S. attorney for the District of Columbia. Liu had formerly been a partner at Jenner & Block and Morrison & Foerster.

A Yale Law School graduate, Dvoretzky clerked for the late U.S. Supreme Court Justice Antonin Scalia and former Judge J. Michael Luttig of the

U.S. Court of Appeals for the Fourth Circuit.

The American Lawyer last year named Dvoretzky among the publication's litigators of the year. He won his two most recent Supreme Court arguments: decisions in 2019 in *GE Energy v. Outokumpu*, involving international arbitration agreements, and *Rotkiske v. Klemm*, concerning the statute of limitations in the federal Fair Debt Collection Practices Act.

"While appeals involve detailed research and analysis, the key to most cases can be reduced to a single concept expressed in two or three words, sometimes even one. Figuring out how to unlock a case is both challenging and rewarding," Dvoretzky told The National Law Journal earlier this year in a report recognizing Jones Day for its appellate work.

In an interview with The National Law Journal, Dvoretzky shared thoughts about joining Skadden, about the Supreme Court term, and what he does to relax.

**>> NLJ: After graduating from Yale, you did not go immediately to law school. What were you doing in the interim?**

After graduating from Yale, I spent two years at a management consulting firm, where my work involved business strategy and organizational psychology. I really enjoyed my experience and have found it helpful as an appellate lawyer. To achieve a client's goals and tell its story



Skadden, Arps, Slate, Meagher & Flom's Washington, D.C., offices on June 19, 2015.

Photo by Diego M. Radzinski/ALM

effectively, you have to understand its business. And knowing a bit about organizational psychology helps you be a good mentor and attract and retain a successful team.

**>> Given the tough competition among law firms today with Supreme Court and appellate practices, how will you, in addition to your own reputation, distinguish Skadden in this field?**

Skadden is known for its pre-eminent corporate and litigation practices, exceptional client base, global footprint, and commitment to pro bono work. This is a firm firing on all cylinders—including in its D.C. office, where there have been a number of exciting new additions. With market-leading attorneys across practices and offices, Skadden offers an exceptional platform for building a dedicated Supreme Court and appellate practice to better serve our clients.

**>> For many years, Skadden has been known and admired for its pro bono work. You also have had a pro bono commitment. Will you be able to continue doing that work and is there an area in which you have a particular interest?**

Absolutely. For starters, on Friday the Supreme Court granted certiorari in a Fourth Amendment case that I'll be arguing this term (*Caniglia v. Strom*). More generally, Skadden has a long history of tremendous dedication to pro bono work. It's an important obligation, and lawyers in my practice group will have the opportunity to shape significant areas of law in the Supreme Court and the courts of appeals. The firm fully supports my plan to continue doing high-impact pro bono work in criminal, immigration, constitutional, and other matters.

**>> The Supreme Court now has a 6-3 conservative majority. Does that present any different**

***challenges for the advocate in briefing and arguing a case? We remember the days of pitching arguments to Justice Anthony Kennedy.***

Every time a new justice is appointed, you have to study that justice's questions and opinions to understand what will appeal to them. The results can be surprising. For example, during his first term on the court, Justice Kavanaugh agreed with Justices Breyer and Kagan as often as he agreed with Justice Gorsuch. There's no one type of argument that necessarily appeals to the justices on one side or the other of a so-called 6-3 divide. Also, about two-thirds of the cases last term were decided with seven or more votes in the majority, and that's typical of Justice Kennedy's last years on the court, too. So yes, there are cases where trying to count votes in advance may lead you to think that one vote is critical. But for the core cases that the court hears—business issues, cases involving individual criminal defendants' rights, and the like—there's no substitute for studying the views of all the Justices, and trying to get to at least five votes without assuming which ones they will be.

***>> What are you watching closely in the current term—either in the significance of cases or the roles of the justices?***

One case I'm particularly interested in is *Facebook v. Duguid*. The issue is whether the Telephone Consumer Protection Act prohibits unsolicited calls and texts from any device that can automatically store and then dial numbers—at a penalty of up to \$1,500 per call. Virtually every major company that communicates with consumers faces staggering class-action liability under the plaintiffs' reading of the statute, which would include every smartphone as a prohibited calling device, too. The case has huge practical consequences and is also fascinating as a textual and grammatical matter. (Full disclosure: I have a long-standing interest in this statutory puzzle. I filed an amicus brief in this case for the Chamber of Commerce and other business groups. I also won a D.C. Circuit case that was a precursor to this one, in which the court invalidated the Federal Communication Commission's reading of the statute, and then an Eleventh Circuit case that created the circuit split on the issue the Supreme Court will now decide.)

***>> Do you have a favorite argument or case from your Supreme Court experiences?***

My favorite case was representing SW General in *NLRB v. SW General* in 2016. The court

agreed (6-2) with my client's argument and invalidated the interpretation of the Federal Vacancies Reform Act followed by every president of both parties since the statute was passed in 1998—an interpretation that had never before been challenged. The case is a good illustration of how innovative advocacy can pay off. For my client, the decision set aside an unfair labor practice charge authorized by an unlawfully appointed general counsel of the NLRB. An unintended consequence is that, while few people outside of the DOJ's Office of Legal Counsel had even heard of the FVRA before this case, it has since become a prominent factor in presidential appointments. I just regret that Justice Scalia, for whom I clerked, was not on the bench for the argument, which took place a few months after he passed away.

***>> What does Shay Dvoretzky do to relax?***

I love spending family time with my wife, daughter, and dog. I also enjoy photography and playing the piano. And I'm a longtime car enthusiast and a more recent Peloton rider.

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