

## Rising Star: Jones Day's Shay Dvoretzky

By **Allison Grande**

Law360, New York (March 14, 2011) -- Just two months after being named partner, Jones Day's Shay Dvoretzky argued a case involving the scope of the Foreign Sovereign Immunities Act before the U.S. Supreme Court, evincing a calm under pressure that impressed even his adversaries and earned him a place among Law360's five appellate lawyers under 40 to watch.

Dvoretzky, 36, has used his skill for identifying and succinctly articulating the strongest aspects of a case to author briefs and present oral argument on a variety of substantive issues — including employment law, constitutional law and energy law — as part of the firm's issues and appeals practice.

“Shay is incredibly thoughtful, analytical and extremely thorough, which are all good qualities for an appellate lawyer to have,” practice chair Glen Nager said. “He's also a beautiful and graceful writer who has a very intuitive sense of which points are appealing to judges and has the ability to convince even skeptical judges of his argument.”

Dvoretzky, who is based in the firm's Washington office, summoned all of those skills during the course of his first oral argument before the nation's high court in *Samantar v. Yosuf* in March 2010.

Having just been named partner in January 2010, Dvoretzky not only faced the daunting challenge of becoming versed in an unfamiliar issue — specifically, whether the district court was correct in finding that his client, Somali politician Mohamed Ali Samantar, was immune under the FSIA to a suit accusing him of torture and other human rights violations — but also found himself up against Akin Gump Strauss Hauer & Feld LLP appellate pro Patricia Millett, who has argued 28 cases before the Supreme Court.

While the high court ruled against Dvoretzky in holding that the FSIA did not govern Samantar's claim of immunity, Jones Day partner Michael Carvin, who worked on the case with Dvoretzky, called his argument “on par with, if not better than, a very skilled Supreme Court practitioner.”

“He was very calm and responsive while very economically and crisply articulating his best points,” Carvin said.

His opponent agreed, calling Dvoretzky a “consummate professional to deal with in the case.”

“Shay did a tremendous job handling the case,” Millett said. “His briefs were first-rate: both analytically as strong as his side could be and smoothly written. His oral argument was also top-notch in the face of tough and probing questions from an active court. No one could tell that it was his first rather than 21st argument.”

Dvoretzky said his goal in approaching the argument, for which he said he received extensive support from his firm and colleagues, was to be able to engage the justices and address their concerns while making sure to get his points across to the court.

“You go into the argument knowing that you are going to face a very active bench that is prepared and interested in the case, so part of the fun and challenge during the course of the argument is to walk the fine line between being responsive to the justices and then pivoting back to the points that you want to make,” Dvoretzky said.

Dvoretzky was first exposed to this strategy during a pair of clerkships — the first with U.S. Court of Appeals for the Fourth Circuit Judge Michael Luttig, and the second with Supreme Court Justice Antonin Scalia — that he undertook immediately following his graduation from Yale Law School in 2000.

“Effective appellate lawyers need to be able to pick out what a case turns on,” Dvoretzky said. “When clerking, one of the most important things I learned was how to take a case in any subject area and cut through the jargon and different issues to figure out which arguments would appeal to the judges and which of these issues the case really turns on.”

Just over a year after joining Jones Day as associate in October 2002, Dvoretzky was given a chance to put those lessons to use in his first-ever oral argument, in which he convinced the Sixth Circuit in a pro bono case to not only reverse the district court's dismissal of his client's habeas petition on procedural grounds, but also to take the unusual step of granting habeas relief.

During his time at Jones Day, Dvoretzky has argued cases in front of six federal appeals courts, prevailing for clients Crown Cork & Seal Co. in a case involving the vesting of retiree health benefits, CBS Corp. in a suit over the Employee Retirement Income Security Act's anti-cutback and merger rules, and the U.S. Chamber of Commerce in a class certification challenge.

Dvoretzky also authored the winning brief in the 2007 case *Ledbetter v. Goodyear Tire & Rubber Co. Inc.*, in which the Supreme Court held that Title VII bars a private plaintiff from bringing an intentional pay discrimination claim challenging pay decisions that occurred outside of the statutory limitations period.

He is currently demonstrating his ability to juggle a range of cases at various levels with his present caseload, which includes representing Bloomberg LP in a pay discrimination suit brought by the Equal Employment Opportunity Commission in the Southern District of New York, representing Sholom Rubashkin in his appeal of a bank fraud conviction before the Eighth Circuit, and representing CBS in a

statutory interpretation case before the South Carolina Supreme Court.

“The sky's the limit for Shay,” Nager said. “He will become one of a small number of lawyers in the country who are on the short list for handling the most significant appellate matters as he continues to grow and develop during his career.”

--Editing by Greg Ryan.

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