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## Young Attorney Victorious in First Supreme Court Case

BY JOHN MILLER

*Of the Legal Staff*

Jason Murtagh, 34, recently remarked that for him, in the matter of *Haywood v. Drown*, the most nerve-racking moment was when the U.S. Supreme Court granted writ of certiorari on June 16 of last year.

That's because he was the one set to argue the case.

Two days prior to arguing before the most powerful panel of judges in the country, Murtagh surveyed the battleground. He said he noticed while standing in the empty room that the podium could be readjusted for different heights. It gave him a moment of pause.

"There's something about standing where you're going to argue, to get familiar with where the justices are going to sit, to get comfortable with your environment," Murtagh said in a recent interview.

When it came time to argue his case, Murtagh said, he had found a place of solace.

"At that point you know your case better than anyone else," he said. "It felt like an intellectual roundtable."

### FAMILY TIES

Karen Murtagh-Monks, executive director of Prisoners' Legal Services

of New York, or PLSNY, was the one who originally petitioned her nephew in 2007 to take on the pro bono case of Keith Haywood, an inmate who had accused employees of the prison in which he resided with violating his civil rights.

As PLSNY's deputy director at the time, Monks became especially interested in Haywood's case. He had no means to represent himself from prison. As a result, she personally recruited Murtagh, appealing to his sense of duty. Murtagh, who at the time was an associate practicing employment law in the Philadelphia office of Dechert, agreed. In return, Monks made *Haywood v. Drown* a top priority at PLSNY.

Monks says she turned to her nephew without giving it a second thought because of his "brilliant mind" and unique ability to write and argue.

Monks was "ecstatic" when the Supreme Court's ruling came down May 26. She said she had hoped it would be a bit more decisive than 5-4, but believes it was the correct decision.

"He was absolutely incredible both in the New York courts and the Supreme Court," Monks said. "I knew he'd do a fantastic job, and he did."



MURTAGH

For his part, Murtagh said the matter before the court was not whether his client's rights were violated. His job was to convince the justices that the New York Court of Appeals was incorrect by striking down Haywood's case on 10th Amendment grounds.

The 10th Amendment to the U.S. Constitution grants special powers to the states that are not already reserved to the federal government. It contains a passage known as the Supremacy Clause that protects against intrusion by the federal government on the states and vice versa.

The appeals court ruled Haywood had no right to petition a federal court on a matter of state law.

Murtagh issued a statement after the decision was handed down, saying the court's 5-4 ruling signaled the majority believed a state government could not "pick and choose which federal claims its courts of general jurisdiction will enforce simply because of a disagreement with congressional policy."

"The court's decision today reaffirms one of the Constitution's most important provisions — the relative

power of the federal government and state governments,” Murtagh said in the statement.

Justice John Paul Stevens, joined by Justices Anthony Kennedy, Stephen Breyer, Ruth Bader Ginsburg and David Souter, delivered the court’s opinion, which stated, “New York made the judgment that correction officers should not be burdened with suits for damages arising out of conduct performed in the scope of their employment” because the court believed such suits to be baseless.

However, the majority decreed the New York ruling is “contrary to Congress’ judgment that all persons who violate federal rights while acting under color of state law shall be held liable for damages.”

## A NEW HOME BASE

Just prior to the December 2008 hearing in Washington, D.C., Murtagh was approached by a headhunter for Rubin Fortunato & Harbison of Paoli, Pa. The firm made Murtagh an offer he called “too good to pass up,” and he joined as a shareholder in January.

Murtagh said he chose to leave Dechert to pursue a greater amount of casework at 40-attorney Rubin Fortunato, something he felt was scarce at Dechert.

“I enjoy anything that gets me on my feet,” he said, referring to opportunities to argue in open court.

However, he praised his former firm for its undying devotion to him and his work on *Haywood*. Among other things, Murtagh said the firm supplied him with resources and personnel to assist in the adjudication of the case from start to finish, in particular Nory Miller, who helped write the amicus brief.

## WHERE IT ALL BEGAN

Before joining Dechert, Murtagh got his undergraduate degree from the University of Georgia and his J.D. from Cornell Law School. After graduating from Cornell Law, he clerked for Magistrate Judge Diane Vescovo of the U.S. District Court of the Western District of Tennessee from 1999 into 2000.

Vescovo was not surprised when informed of Murtagh’s recent triumph.

She said she was accustomed to seeing Murtagh achieve much at such a young age. He was the youngest clerk she ever hired.

“When he came down for the interview, he wasn’t old enough to rent a car,” she said. “He was a hard worker. He grasped concepts quickly.”

Vescovo hailed Murtagh as an “excellent” clerk whose responsibilities centered on researching, writing and editing her opinions. She estimated his total caseload over his one-year appointment to be in the neighborhood of 170.

Vescovo believes Murtagh’s “brilliance” and superior skills as an attorney afforded him the chance to appear before the Supreme Court at a young age.

Murtagh first became immersed in the law while attending his father’s political science lectures at Fort Valley State University in Georgia, where he grew up. He was a witness to many dinner table debates between his father, grandfather and aunt growing up, as well.

That familial thirst for debate is what he says drove him to law school.

To him, he says, litigating is the “ability to take what often times are

very complicated issues and try to teach them — putting it into terms people can understand.”

Murtagh likened his grandfather, whom he credits as the source of his devotion to pro bono work, to Atticus Finch, famed fictional pro bono attorney of Harper Lee’s “To Kill a Mockingbird.”

It was from his elder counterparts that Murtagh drew inspiration to conduct at least one pro bono case a year. The inspiration also partially came from growing up in a small town with a population of 9,000, he said.

“I’ve been very lucky,” Murtagh said. “I’d be greedy if I didn’t do something to help.”

Murtagh believes deeply in equal representation and a level playing field because he said it “stinks when one side is underrepresented.”

“You owe a debt to the system to make sure everyone is represented.” •