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## WilmerHale Secures String of Supreme Court Wins

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“Litigating a Supreme Court case is all-consuming,” said WilmerHale Partner Christopher Meade, a partner in the New York office, to *The American Lawyer*. “You think about it before you go to bed, you think about it when you first wake up in the morning, you think about it on the way to work, you think about it going home from work.”

It’s that intense focus and commitment that propelled Meade—along with WilmerHale’s appellate and Supreme Court litigation practice—to rarefied heights this year. In a span of less than three weeks in June, the firm’s top-notch Appellate and Supreme Court Litigation Group secured a string of eye-catching wins that have left an indelible mark on the Supreme Court’s most recent Term.

Causing the biggest stir was the long-fought, landmark case *Boumediene v. Bush*, in which the Court ruled that foreign suspects held at Guantanamo Bay have rights under the Constitution to challenge their detention in US civilian courts.

“We understood back in 2004 that this was about as important as anything we could take on,” said Stephen Oleskey, a Boston-based partner who has helped lead a team to challenge the US government for holding the detainees indefinitely without trial, to the *Boston Globe*. “This was clearly a legitimate effort to solicit lawyers to help out with a significant constitutional issue.”

The administration opened the detention facility at Guantanamo Bay in the months following the September 11 terrorist attacks, to hold people they deemed “enemy combatants,” who were suspected of ties to al-Qaida or the Taliban. Roughly 270 men remain at the island prison. The man who gave the *Boumediene* case its name, Lakhdar Boumediene, is one of six Algerians who immigrated to Bosnia in the 1990s and lived there as legal residents before being arrested by Bosnian police weeks after the September 11 attacks, at the request of US authorities, on suspicion of plotting to bomb the US embassy in Sarajevo. The group was released three months later for lack of evidence. They were then turned over to the US military, which sent them to Guantanamo.

Over a four-year span, a large team of WilmerHale lawyers—including, in addition to Oleskey, Partners [Seth Waxman](#), [Robert Kirsch](#), [Paul Wolfson](#) and [Mark Fleming](#)—dedicated more than 35,000 hours to challenging the group’s indefinite detention without trial, making it the largest pro bono effort in the firm’s 90-year history. Waxman, a former Solicitor General in the Clinton

administration, made an oral argument to the Court on December 5, 2007.

A week after the *Boumediene* win, Meade learned he won a 5-4 victory in *Dada v. Mukasey*, in which a Nigerian immigrant married to an American woman was granted a request to leave the US voluntarily after overstaying his visa. Before leaving the country, Dada decided to try to reopen his case, though doing so meant incurring more penalties. On June 19, the Court decided Dada could introduce motions to reopen the case without being penalized. WilmerHale attorneys spent more than 5,000 hours on the case.

“It was a tough case,” Meade says. “We ran into a number of dead ends along the way, and we had to think our way around the wall.”

And the day the Court’s decision came down was a hectic one for Meade on another front. Within hours of the big win, Meade learned that he would argue another case before the Supreme Court in December, meaning that he will have argued before the Court in three consecutive terms. In the new case, the Supreme Court granted the Solicitor General’s petition for certiorari in *Peake v. Simmons*. *Peake* is a veteran’s rights dispute asking whether the Department of Veterans Affairs (or the veteran) should carry the burden of proving prejudice when the Department fails to give a veteran statutorily required notice.

Then came the third Supreme Court success in June, *Rothgery v. Gillespie County, Texas*, a case raising a significant issue regarding the scope of the Sixth Amendment right to counsel in criminal proceedings. The firm’s client, Walter Allen Rothgery, was erroneously arrested for being a felon in possession of a firearm; he was brought before a magistrate, who informed him of the charges against him and set bail. Rothgery’s repeated requests for a lawyer were ignored. Six months later, he was indicted, rearrested, and had his bond increased to an amount he could not afford. In the end, he served nearly three weeks in jail on the false charges before his belatedly appointed lawyer secured his release. The Fifth Circuit held that, because no prosecutor was involved in his arrest or appearance before the magistrate, no “criminal prosecution” within the meaning of the Sixth Amendment had begun, and Rothgery had no right to counsel, until his indictment.

After the Fifth Circuit’s ruling, the Texas Fair Defense Project—which had been representing Rothgery—contacted [Danielle Spinelli](#), a Washington-based lawyer in the firm’s Appellate and Supreme Court Litigation Group, for help in seeking Supreme Court review of the decision. Spinelli assembled a team and prepared a petition for certiorari, which was granted in December 2007. In January 2008, Spinelli became a partner at the firm. On March 17, 2008, in only her third month as a partner, she argued before the Supreme Court on Rothgery’s behalf, contending that the Fifth Circuit had erred and that a criminal prosecution had begun, and his Sixth Amendment right to counsel attached, at his appearance before the magistrate.

On June 23, the Court agreed, issuing an 8-1 decision holding that a criminal suspect’s right to counsel attaches at the first appearance before a judicial officer who informs him of the charges against him. “It’s a wonderful experience, particularly for a first-year partner,” Spinelli says. “The case presented a very interesting and important set of issues. And the team supporting me was great.” In all, WilmerHale lawyers spent more than 2,600 hours on the case.

