

‘Fight Like Your Life Depended on It’: Cooley’s Kathleen Hartnett Reflects on a Decades-Long Relationship With a Pro Bono Client

By Ross Todd

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The decades-long relationship between **Kathleen Hartnett**, the co-head of issues & appeals practice **Cooley**, and her pro bono client Nakia Roy has gone from attorney-client to friendship and back again as Hartnett has moved in-and-out of government service. Hartnett told me yesterday it goes back so far that she can no longer access some of her first correspondence with Roy: They’re in WordPerfect files.

Hartnett first represented Roy in 2003 when she was an associate at **Jenner & Block**, fresh off a six-week stint at **Public Defender Service for the District of Columbia**. Friends in the PDS called her when the office was conflicted out of the direct appeal of Roy’s second-degree murder conviction. Roy was already in prison serving 25 years plus 180 days to life—effectively a life sentence since he’d need approval from the U.S. Parole Commission for release.

Roy’s appeal isn’t your typical Big Law criminal fare. This isn’t a wrongful conviction case. That’s part of the reason I think it’s worth highlighting the dedication that Hartnett and her firms have shown to vindicate a legal argument where she was ultimately proven to be in the right.

But Hartnett also pointed out when I spoke with her yesterday that there’s also plenty lawyers like her can learn from her client. Roy, after all, continued to press his case *pro se* when it looked like it was at a legal dead end.

“I think there is some lesson here for the skeptical at times lawyers to just really keep it up and not give up,” she said. “Fight like your life depended on it.”

Roy was tried in 2001 alongside co-defendant Edward Settles in the death of Grace Edwards, a 76-year-old grandmother who was killed by a stray bullet. Although prosecutors originally tried to pin Roy as the shooter, a Washington, D.C. jury acquitted him of first degree murder charges. However, the jury convicted both he and Settles, who had been in an altercation earlier in the day, of the lesser second degree murder charge after finding they participated in a “gun-battle” on a public street.



Kathleen Hartnett of Cooley.

(Photo: Courtesy Photo)

Hartnett took up the case pro bono on the initial appeal while at Jenner & Block. She argued at the D.C. Court of Appeals that the jury instructions had allowed for a conviction even if someone else had shot Edwards before Roy fired a single shot, and even if Roy hadn't been the one who provoked the shooting. Although the court's decision was split, the majority voted to uphold his conviction. And although the U.S. Supreme Court asked for additional briefing on a separate issue in the case, Hartnett ultimately fared no better in pursuing Roy's additional appeals.

"I was very devastated ... maybe had given up a little bit of hope myself," Hartnett said.

That's what makes what happened next in the case even more remarkable. In 2020, the D.C. Court of Appeals issued an *en banc* decision in a separate case, *Fleming v. United States*, specifically noting that the "gun-battle" instruction in Roy's case was fatally flawed, especially in light of developments on criminal causation issues in U.S. Supreme Court cases decided since the conviction. "A defendant cannot be held to have personally caused a death unless an action by the defendant is a but-for cause of the death, i.e., unless it is true that in the absence of the defendant's action the death would not have occurred," D.C.'s top appellate court held.

With Hartnett freshly back in private practice at Cooley, Roy, who had been continuing to look for post-conviction appeals on his own, flagged the *Fleming* decision for her to read. "I couldn't have imagined it would be that on point," Hartnett said. She said that after nearly 15 years of trying to come to peace with losing on that argument at the same court, reading the opinion was "mind-blowing." She said she immediately fired off an email to see if she could take on the case pro bono at Cooley and heard back in the affirmative.

Since then, a winning streak has ensued. This spring D.C. Superior Court Judge Danya Dayson ultimately granted Roy's motion for compassionate release under the District's new COVID-related guidelines due to his kidney disease and hypertension. Roy got the ball rolling on himself on that issue *pro se* and the court ultimately appointed Hartnett to brief and argue the matter.

With Hartnett and partner **Daniel Grooms** leading the charge on the motion to vacate Roy's conviction, the judge last week ultimately sided with Roy, although the court stopped short of the full acquittal he was asking for. In a further nod to the value of Roy's doggedness, the judge cited an argument he made in his earlier *pro se* appeal about the improper jury instruction in turning back the government's argument that the issue hadn't been preserved for appeal.

Hartnett said for Roy there was no choice but to believe that things would turn out right for him. She said he had three kids, a mom and a family waiting for him on the outside, and that led him to take advantage of every opportunity he could while in prison and to stay clear of "drama."

"From my perspective, he really made the most of the situation he was in," Hartnett said.

Hartnett said the reason she took the case on wasn't for herself the "glory" that could come from winning. "It was really just this personal relationship and feeling like I could help give him a voice and have courts hear him in a way they might not have heard him if it was just him doing it himself," she said.

"I think sometimes things do seem impossible and you need to be realistic about that," Hartnett said. "But I also just really am inspired by his belief in himself and frankly in the system to eventually get it right."