

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Beth Ann Williams
Beth Ann Schonmuller (maiden name)

2. **Position:** State the position for which you have been nominated.

Assistant Attorney General, Office of Legal Policy

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Kirkland & Ellis LLP
655 15th Street, NW
Washington, D.C. 20005

Residence: McLean, Virginia

4. **Birthplace:** State date and place of birth.

July 14, 1979
Glen Ridge, New Jersey

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School, J.D. June 2004 (attended September 2001 to June 2004)
Oxford University, no degree received (attended January 2000 to June 2000)
Harvard College, A.B. June 2001 (attended September 1997 to June 2001)

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Affiliations (Compensated):

2006 - Present; Summer 2003

Kirkland & Ellis LLP

655 15th Street, N.W.

Washington, D.C. 20005

Partner, (2010 - Present)

Associate, (2006 - 2010)

Summer Associate, (May 2003 - August 2003) (split half-summer in New York office of Kirkland and half-summer in D.C. office of Kirkland)

2005 - 2006

United States Senate Committee on the Judiciary

224 Dirksen Senate Office Building

Washington, D.C. 20510

Special Counsel

2004 - 2005

United States Court of Appeals for the Second Circuit

6 Court Street

Geneseo, NY 14454

Law Clerk to the Honorable Richard C. Wesley

2002 - 2004

Harvard University

Freshman Dean's Office

6 Prescott Street

Cambridge, MA 02138

Harvard College Freshman Proctor

(compensated with room and board)

2002 - 2003 (est.)

Professor Daniel Meltzer

Harvard Law School

1585 Massachusetts Avenue

Cambridge, MA 02138

Research Assistant

Summer 2001

Spark Notes LLC

1166 6th Ave

New York, NY 10036

Author

Affiliations (Uncompensated):

Summer 2002

United States Attorney's Office, Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201
Legal Intern

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

None. I am not subject to selective service registration requirements.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Kirkland & Ellis Pro Bono Service Award (2009 - 2015)
Recognized by *The Legal 500 U.S.* (2014 - 2017)
Selected as a "Rising Star" in Business Litigation by *Super Lawyers* magazine (2014)
Harvard Law School Dean's Award for Community Service (2004)
Executive Editor, Harvard Journal of Law and Public Policy (2003-2004)
Humane Studies Fellowship (2001-2002)
Harvard College *magna cum laude* (2001)
Edward S. Harkness Bowl (2001)
John Harvard Scholarship (approximately 1998-2001)
Elizabeth Cary Agassiz Scholarship (approximately 1998-2001)
Detur Prize for High Academic Distinction (1998)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

To my recollection:

The District of Columbia Bar
Member (approximately 2006 - present)

Duke Law Distinguished Lawyers Conference
Participant (approximately 2014)

United States Court of Appeals for the Second Circuit Pro Bono Panel
Member (approximately 2012 - 2014)

New York State Bar Association
Member (approximately 2004 - 2007)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia - Admitted, January 2007

New York - Admitted, June 2005

New Jersey - Admitted, December 2004

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States (June 2015)

United States Court of Appeals for the Second Circuit (June 2010)

United States Court of Appeals for the Third Circuit (June 2013)

United States Court of Appeals for the Sixth Circuit (January 2009)

United States Court of Appeals for the District of Columbia Circuit (October 2012)

United States District Court for the Southern District of New York (December 2009)

United States District Court for the District of Columbia (April 2011)

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

To my recollection:

John Carroll Society

Member (approximately 2007 - 2012)

Harvard Club of Washington, D.C.

Schools Committee Member (approximately 2005 - present)

Harvard Club of New York

Member (approximately 2004 - 2008)

The Federalist Society

Member (approximately 2001 - present)

Harvard College 15th Reunion Committee

Member (approximately 2015 - 2016)

Kirkland & Ellis Women's Leadership Initiative

Member (approximately 2006 - present)

D.C. Office Chair (approximately 2010 - 2015)

D.C. Office Co-Chair (approximately 2015 - present)

Kirkland & Ellis Diversity Committee

Gender Subcommittee member (approximately 2014 - present)

Kirkland & Ellis D.C. Office Recruiting Committee

Member (approximately 2006 - present)

Kirkland & Ellis D.C. Real Estate Committee

Member (approximately 2013 - present)

The Seneca, Inc.

Member (approximately 1999 - present)

Graduate Board Vice President (approximately 2001 - 2003)

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Seneca, Inc. is a non-profit organization that was founded in 1999 by a group of Harvard undergraduate women. The Seneca's mission is to create opportunities, resources, and sustainable networks for women in social, educational, and professional environments. The Seneca limited its membership to women when I was an undergraduate. The Seneca is now open to members of all genders.

To my knowledge, none of the other organizations discriminate or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implications of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

The following is a list of works that I authored or co-authored unless otherwise noted. I have done my best to identify all responsive published material, including through a thorough review of my personal files and searches of publicly available electronic databases. Despite these efforts, there might be other materials that I have been unable to identify, locate, or remember.

Hart & Wechsler's The Federal Courts and the Federal System, Fifth edition, 2003 (research contributor, student editor). Textbook; no copy supplied.

“Patient Confidentiality: Illinois Supreme Court Upholds Consent Forms for Release of Record,” *Journal of Law, Medicine & Ethics*, Vol. 30:2, Summer 2002. Copy supplied.

“The Supreme Court’s Judicial Passivity,” Daniel Meltzer, 2002 *Supreme Court Review* 343 (2002) (research contributor only). Copy supplied.

As an author of Sparknotes, I drafted summaries and analyses of several literary works: *The Good Soldier*, *Orlando*, *Persuasion*, *Regeneration*, *The English Patient*. SparkNotes LLC. 2001. Books; no copies supplied.

Letter to the Editor, *Boston Globe*, September 6, 2000. Copy supplied.

“Bringing Home a Solution,” *The Harvard Crimson*, December 9, 1999. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Guidelines and Practices for Implementing the 2015 Discovery Amendments to Achieve Proportionality, Duke Law Center for Judicial Studies, 99 *Judicature*, No. 3 Winter 2015, at 47-60 (conference participant). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your

behalf to public bodies or public officials.

Letter, "Confirmation Hearing on Elena Kagan, of Massachusetts, to be an Associate Justice of the Supreme Court of the United States," February 9, 2009, Senate Committee on the Judiciary. Copy supplied.

Letter, "Confirmation of Senator Jeff Sessions for Attorney General of the United States," January 6, 2017, Senate Committee on the Judiciary. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following is a list of remarks that I delivered. I have done my best to identify all speeches or talks I have delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite these efforts, there may be other materials I have been unable to identify, locate, or remember.

March 3, 2017: Speaker, Panel Discussion on "The Practice of Litigation," Kirkland & Ellis LLP, Washington, DC. I have no notes, transcript, or recording. The address for Kirkland & Ellis LLP is 655 15th Street, NW, Washington, DC 20005.

March 11, 2014: Moderator, Panel Discussion on Firm Management, Kirkland & Ellis LLP, Washington, DC. I have no notes, transcript, or recording. The address for Kirkland & Ellis LLP is 655 15th Street, NW, Washington, DC 20005.

June 25, 2013: Speaker, Panel Discussion on "Surveying the Landscape: Women in Law Firms," Arent Fox LLP, Washington, DC. I have no notes, transcript, or recording. The address for Arent Fox LLP is 1717 K Street, NW, Washington, DC 20036.

June 17, 2013: Speaker, Panel Discussion on Judicial Clerkships, Kirkland & Ellis LLP, Washington, DC. I have no notes, transcript, or recording. The address for Kirkland & Ellis LLP is 655 15th Street, NW, Washington, DC 20005.

July 20, 2010: Speaker, Panel Discussion on Judicial Clerkships, Kirkland & Ellis LLP, Washington, DC. I have no notes, transcript, or recording. The

address for Kirkland & Ellis LLP is 655 15th Street, NW, Washington, DC 20005.

November 7, 2009: Speaker, Panel Discussion on Judicial Clerkships, Harvard Law School's Second Annual Private Sector Career Forum, Cambridge, MA. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

June 12, 2008: Speaker, Panel Discussion on Judicial Clerkships, Kirkland & Ellis LLP, Washington, DC. I have no notes, transcript, or recording. The address for Kirkland & Ellis LLP is 655 15th Street, NW, Washington, DC 20005.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

The following is a list of articles and press releases in which I am quoted. I have done my best to identify all interviews I have given, including through a review of my personal files and searches of publicly available electronic databases. Despite my best efforts, there may be others that I have been unable to identify, locate, or remember.

“Kirkland & Ellis Wins Second Circuit Appeal for Pro Bono Client,” Kirkland & Ellis, April 25, 2013. Copy supplied.

“Law Review Book Note Attacked,” The Harvard Law Record, April 23, 2004. Copy supplied.

“Oxford University ‘Elitism’ Comes Under Government Fire,” The Harvard Crimson, June 7, 2000. Copy supplied.

“Council Dresses Up Routine Meeting,” The Harvard Crimson, November 1, 1999. Copy supplied.

“Schonmuller, Darling Win Council Positions,” The Harvard Crimson, February 8, 1999. Copy supplied.

13. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Volunteer, McCain for President (2008). I was a member of the volunteer legal team for Senator McCain's 2008 Presidential campaign.

Volunteer, National Lawyers for Romney Committee (2012). I was a member of the volunteer legal team for Governor Romney's 2012 Presidential campaign.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a clerk to the Honorable Richard C. Wesley, United States Court of Appeals for the Second Circuit from 2004 to 2005.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2005 - 2006

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
Special Counsel

2006 - Present

Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
Partner (2010 - Present)
Associate (2006 - 2010)

- iv. Whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After serving as a law clerk to Judge Richard C. Wesley on the United States Court of Appeals for the Second Circuit, I served as Special Counsel to the United States Senate Committee on the Judiciary from approximately July 2005 to February 2006. As Special Counsel, I supported the Committee on the confirmations of Chief Justice John G. Roberts, Jr., Associate Justice Samuel A. Alito, Jr., and Harriet Miers to the United States Supreme Court.

In 2006, I joined Kirkland & Ellis LLP in its Washington, D.C. office. As a litigation and appellate associate, I conducted legal research, drafted memoranda and pleadings, participated in trials and arbitrations, and engaged in discovery practice on a wide variety of legal matters. In 2010, I was named partner at Kirkland. I am a member of the firm's Litigation, Appellate Litigation, First Amendment, and Securities and Shareholder Litigation practices. My practice generally involves commercial and appellate litigation in the federal and state courts around the country. I have also handled bankruptcy, copyright, and contract disputes.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At the United States Senate Committee on the Judiciary, my sole client was the Committee.

At Kirkland & Ellis LLP, I have a wide variety of clients including individuals and corporations, such as a social media company, a financial services firm, a commercial real estate firm, a fast-casual restaurant chain, and the board of directors of a defense technology company. I am a member of the firm's Litigation, Appellate Litigation, First Amendment, and Securities and Shareholder Litigation practices. My practice generally involves commercial and appellate litigation in the federal and state courts around the country. I have also handled bankruptcy, copyright, and contract disputes.

- c. Describe the percentage of your practice that has been in litigation and whether

you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Since joining Kirkland & Ellis LLP in 2006, my practice has been 100% litigation. As an associate (2006-2010), I appeared in court occasionally, but as a partner (2010-present) my appearances are more frequent.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 65% |
| 2. state courts of record: | 30% |
| 3. other courts: | 5% |
| 4. administrative agencies: | 0 % |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried four cases to verdict or final decision as associate counsel. This does not include cases that reached judgment or final decision by way of summary judgment or other dispositive motions.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 25% |
| 2. non-jury: | 75% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have filed six briefs before the Supreme Court, both at the certiorari and merits stages (copies supplied):

Brief of the Electric Power Supply Association, Colorado Independent Energy Association, Independent Energy Producers Association, Independent Power Producers of New York, New England Power Generators Association, Inc., Northwest & Intermountain Power Producers Coalition, and Western Power Trading Forum As *Amici Curiae* In Support Of Petitions For Certiorari, *Sempra Generation et al., v. Public Utilities Commission of the State of California, et. al.*, Nos. 06-1454, 06-1457, 06-1462, 06-1468 (August 6, 2007).

Petition for Writ of Certiorari, *Merrill Lynch, Pierce, Fenner & Smith, Inc., et al. v. Greg Manning, et al.*, No. 14-1132 (March 17, 2015)

Reply Brief for Petitioners in Support of Writ of Certiorari, *Merrill Lynch, Pierce, Fenner & Smith, Inc., et al. v. Greg Manning, et al.*, No. 14-1132 (June 10, 2015)

Brief for Petitioners, *Merrill Lynch, Pierce, Fenner & Smith, Inc., et al. v. Greg Manning, et al.*, No. 14-1132 (September 3, 2015)

Reply Brief for Petitioners, *Merrill Lynch, Pierce, Fenner & Smith, Inc., et al. v. Greg Manning, et al.*, No. 14-1132 (November 23, 2015)

Brief for *Amicus Curiae* Cato Institute In Support of Petitioners, *Turner, et al., v. United States of America*, Nos. 15-1503, 15-1504 (February 3, 2017).

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In re Facebook, Inc., IPO Securities and Derivative Litigation*, MDL No. 12-2389 (S.D.N.Y.)

With my partners at Kirkland & Ellis LLP, I serve as lead counsel to Facebook, Inc. and certain of its officers in consolidated multi-district class action litigation stemming from Facebook's 2012 Initial Public Offering. Plaintiffs in the case allege that Facebook and its officers did not adequately disclose a past net negative effect on revenue from increasing access of the Facebook platform on mobile devices. Defendants point to extensive disclosure of mobile risks in Facebook's security filings, and further assert that any price decline immediately following the IPO was due to the extensive failures of NASDAQ in connection with the IPO.

I lead expert work in the case, and have participated in discovery, depositions, and the briefing of dispositive motions. The case is currently pending.

District Judge: Hon. Robert W. Sweet
 United States District Court

Southern District of New York

Co-Counsel: Richard D. Bernstein
Elizabeth J. Bower
Matthew Edwards
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, D.C. 20006
Telephone: (202) 303-1000

Charles S. Duggan
Andrew Ditchfield
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Telephone: (212) 450-4000

Todd G. Cosenza
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Telephone: (212) 728-8000

Opposing Counsel: Thomas A. Dubbs
James W. Johnson
Labaton Sucharow
140 Broadway
New York, NY 10005
Telephone: (212) 907-0700

Salvatore J. Graziano
John Rizio-Hamilton
Bernstein Litowitz Berger &
Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1000

2. *In re SAIC Inc. Derivative Litig.*, 948 F. Supp. 2d 366 (S.D.N.Y. 2013), *aff'd sub nom. Welch v. Havenstein*, 553 F. App'x 54 (2d Cir. 2014).

I represented the Board of Directors of SAIC, Inc. (now Leidos) in a securities derivative suit alleging misconduct in connection with SAIC's billing on a contract with the City of New York to develop and implement CityTime, an automated time, attendance, and workforce management system for certain City agencies. Plaintiffs alleged an intricate, multiyear kickback scheme perpetrated by two low-level SAIC employees, a third-party consulting firm and certain people

within the New York City government. In these consolidated derivative cases, plaintiffs alleged that a majority of the Board of Directors of SAIC, Inc. was on actual or constructive notice of wrongdoing in relation to the contract, but nonetheless consciously ignored or perpetuated that wrongdoing.

The District Court dismissed the case, finding that plaintiffs failed to make a demand on the Board before bringing suit, and failed to adequately allege the futility of making a pre-suit demand. The Court further held that plaintiffs failed to allege particularized facts showing that the directors consciously acted in bad faith by failing to take action despite actual or constructive knowledge of illegal activity at SAIC in relation to the CityTime project. The Second Circuit unanimously affirmed the dismissal.

District Judge: Hon. J. Paul Oetken
United States District Court
Southern District of New York

Court of Appeals: Kearse, Pooler, Raggi, Circuit Judges

Co-Counsel: Andrew S. Tulumello
Jason J. Mendro
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Telephone: (202) 955-8500

Opposing Counsel: Christopher L. Nelson
Brett D. Stecker
The Weiser Law Firm, PC
22 Cassatt Avenue
Berwyn, PA 19312
Telephone: (610) 249-0005

Elizabeth M. Gonsiorowski
Glancy Binkow & Goldberg LLP
30 Broad St., Suite 1401
New York, NY 10004
Telephone: (212) 682-5340

Lionel Z. Glancy
Michael M. Goldberg
Ex Kano S. Sams II
Robert V. Prongay
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Jeffrey C. Block
Jason M. Leviton
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Block & Leviton LLP
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Telephone: (617) 398-5600

Brian P. Murray
Bridget V. Hamill
Murray Frank LLP
275 Madison Avenue, Suite 801
New York, NY 10016
Telephone: (212) 681-1818

3. *In re SAIC, Inc. Sec. Litig.*, No. 12 CIV. 1353 DAB, 2013 WL 5462289 (S.D.N.Y. Sept. 30, 2013), on reconsideration, No. 12 CIV. 1353 DAB, 2014 WL 407050 (S.D.N.Y. Jan. 30, 2014), affirmed in part, vacated in part *Indiana Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85 (2d Cir. 2016), cert. granted sub nom. *Leidos, Inc. v. Indiana Pub. Ret. Sys.*, 137 S. Ct. 1395 (2017).

I represented the former CEO of SAIC, Inc. (now Leidos), Walter Havenstein, in a class action securities suit stemming from the same facts as case number 2, listed above. The District Court granted the motion to dismiss on behalf of Mr. Havenstein, holding that plaintiffs had failed to state a claim against him, and particularly that plaintiffs failed to allege scienter with the requisite particularity. The Second Circuit affirmed the dismissal of Mr. Havenstein with prejudice, holding that plaintiffs failed to amend their complaint within the time permitted and alternatively abandoned their claims.

District Judge: Hon. Deborah Batts
United States District Court
Southern District of New York

Court of Appeals: Lynch, Lohier, Carney, Circuit Judges

Co-Counsel: Andrew S. Tulumello
Jason J. Mendro
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5306
Telephone: (202) 955-8500
*Attorneys for Defendant Leidos
Holdings, Inc. (formerly SAIC, Inc.)*

Opposing Counsel: Samuel H. Rudman
Joseph Russello
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: (631) 367-7100

4. *Partner Servs., Inc. v. Avanade, Inc.*, No. 1:13-CV-0001-AT, 2013 WL 12180442 (N.D. Ga. Aug. 26, 2013).

In this case, I represented Avanade Inc., a joint venture of Accenture, LLP, in litigation alleging the problematic implementation of an Enterprise Resource Planning (ERP) system. The District Court granted dismissal with prejudice of all claims of fraud and misrepresentation against Avanade, and the case was successfully resolved soon after.

District Judge: Hon. Amy Totenberg
United States District Court
Northern District of Georgia

Co-Counsel: Jeffrey O. Bramlett
Alison B. Prout
Bondurant, Mixson & Elmore, LLP
3900 One Atlantic Center
1201 West Peachtree Street, NW
Atlanta, GA 30309
Telephone: (404) 881-4100

Opposing Counsel: Mark P. Ressler
R. Tali Epstein
Kasowitz, Benson, Torres &
Friedman LLP
1633 Broadway
New York, NY 10019
Telephone: (212) 506-1700

Andrew A. Davenport
Kasowitz, Benson, Torres &
Friedman LLP
1349 West Peachtree Street, NW
Suite 1500
Atlanta, GA 30309
Telephone: (404) 260-6180

5. *Proctor v. LeClaire*, 715 F.3d 402 (2d Cir. 2013)

In this appeal, I served as lead counsel, appointed by the Second Circuit to represent the appellant

on a *pro bono* basis. My client, Patrick Proctor, was a state inmate in a New York correctional facility, who had been held in disciplinary and administrative segregation (solitary confinement) for eighteen years. After serving more than nine years of confinement in the Special Housing Unit (SHU), Mr. Proctor was served with an Administrative Segregation Recommendation (the “Ad Seg Recommendation”) recommending that, at the end of his disciplinary sentence, he remain assigned to SHU rather than being released into the general prison population. Mr. Proctor challenged this recommendation unsuccessfully in 2005. Four years later, Mr. Proctor again challenged his confinement, alleging that the period reviews that had been conducted since 2005 were perfunctory, did not take into account his good behavior, and denied him due process. The District Court ruled that both claim and issue preclusion barred Mr. Proctor from bringing his 2009 challenge.

On appeal, I argued to the Second Circuit that the District Court erroneously applied the principles of issue and claim preclusion, and that—were the District Court’s decision allowed to stand—the state would be able to deprive Mr. Proctor of due process without any possibility of challenge. The Second Circuit agreed and unanimously vacated the District Court’s ruling, allowing Mr. Proctor’s challenge to proceed.

Court of Appeals: Kearsse, Katzmann, Lohier, Circuit Judges

Opposing Counsel: Martin Atwood Hotvet
Assistant Attorney General
New York State Office of the Attorney
General
The Capitol
Albany, NY 12224
Telephone: (518) 474-8352

Eric T. Schneiderman
Attorney General
New York State Office of the Attorney
General
120 Broadway
New York, NY 10271
Telephone: (212) 416-8882

6. *Franklin California Tax-Free Trust v. Puerto Rico*, 805 F.3d 322 (1st Cir.), cert. granted, 136 S. Ct. 582, 193 L. Ed. 2d 465 (2015), and cert. granted sub nom. *Acosta-Febo v. Franklin California Tax-Free Trust*, 136 S. Ct. 582, 193 L. Ed. 2d 465 (2015), and *aff'd*, 136 S. Ct. 1938, 195 L. Ed. 2d 298 (2016)

On behalf of the Commonwealth of Puerto Rico and its Governor, I assisted in defending the constitutionality of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (“Recovery Act”). Puerto Rico has been, and still is, facing a serious fiscal crisis, and its public utilities risked becoming insolvent. Puerto Rico, unlike states, may not authorize its

municipalities, including these utilities, to seek federal bankruptcy relief under Chapter 9 of the U.S. Bankruptcy Code. Accordingly, its utilities had no way to restructure their debt in an orderly way. In the face of this crisis and without access to the federal bankruptcy process, the Commonwealth passed the Recovery Act, a municipal bankruptcy law that would allow orderly restructuring.

The plaintiffs in this action, bondholders, argued that 11 U.S.C. § 903(1) preempted the Recovery Act and prohibited state municipal debt restructuring laws. The Commonwealth argued that this provision was inapplicable to Puerto Rico, as it only bound “States.” The First Circuit and Supreme Court ruled in favor of the bondholders, finding Puerto Rico’s Recovery Act preempted.

District Court: Hon. Francisco Augusto Besosa
United States District Court
District of Puerto Rico

Court of Appeals: Howard, Toruella, Lynch, Circuit Judges

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7. *Greenberg v. Nat'l Geographic Soc.*, 533 F.3d 1244 (11th Cir. 2008) (en banc)

In this Eleventh Circuit appeal, I represented the National Geographic Society in a copyright challenge brought by a photographer. The National Geographic Society was defending its right to produce “The Complete National Geographic” (“CNG”), a thirty-disc CD-ROM set containing each monthly issue of the Magazine, as it was originally published, for the 108 years from 1888 through 1996—roughly 1200 issues of the Magazine. The photographer sued National Geographic, alleging that it had infringed his copyrights by reproducing in the CNG the print magazine issues that included his photographs.

The *en banc* Eleventh Circuit agreed with our position that the CNG was a revision of the original collective works under the second prong of § 201(c) based on *New York Times Co. v. Tasini*, 533 U.S. 483, 121 S.Ct. 2381, 150 L.Ed.2d 500 (2001). In the CNG, no individual works were taken out of context, and in that way, the digital compilation of the magazines was no different than microfilm. Thus the Court found the CNG to be a privileged reproduction.

Court of Appeals: Barkett, Birch, Wilson, Edmondson, Anderson,
Tjoflat, Dubina, Black, Carnes, Marcus, Pryor,
Kravitch, Circuit Judges

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8. *In re TOUSA, Inc.*, 408 B.R. 913 (Bankr. S.D. Fla. 2009)

I represented TOUSA, Inc. in this long-running case involving the bankruptcy of one of the largest homebuilders in the United States. After the creditors committee brought an adversary proceeding against prepetition lenders of Chapter 11 debtors seeking to avoid and recover alleged fraudulent and preferential transfers, the prepetition lenders filed a third-party complaint against the debtors, asserting springing claims for breach of contract. I defended TOUSA, the debtor, against more than \$920 million in third-party claims, winning summary judgment. The court agreed that the third-party claims against TOUSA were improper because they were not dependent on the outcome of the main claim.

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9. *Manning, et al. v. Merrill Lynch, et al.*, No. MRS-L-1173-12, Superior Court of New Jersey, Morris County (pending); see also *Manning v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. CIV.A. 12-4466 JLL, 2012 WL 7783142 (D.N.J. Dec. 31, 2012), *report and recommendation rejected*, No. CIV.A. 12-4466 JLL, 2013 WL 1164838 (D.N.J. Mar. 20, 2013), *rev'd*, 772 F.3d 158 (3d Cir. 2014), *aff'd*, 136 S. Ct. 1562, 194 L. Ed. 2d 671 (2016)

In this case, which is currently pending in New Jersey state court, I represent UBS Securities LLC against claims of unlawful naked short selling brought by holders of Escala Group, Inc. stock. This case concerns stock trading in Escala Group, Inc., a company that consented to judgment against it on SEC charges that it operated “a ponzi or pyramid scheme” after police publicly raided its offices and normal business operations were suspended. The plaintiffs brought this suit against

several financial institutions, alleging it was stock trading by the defendant financial institutions and their clients that caused the decline in Escala's stock price during two periods in 2006, and not the police raid or the revelation of Escala's scheme. UBS Securities LLC has filed motions to dismiss on substantive and jurisdictional grounds, and those motions are currently pending.

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10. *BGC Partners, Inc. v. Avison Young (Canada) Inc.*, 2016 WL 3902277 (N.Y. Sup. 2016)

I currently serve as counsel to Avison Young, a commercial real estate firm, in a series of nationwide cases alleging tortious interference arising out of the hiring of real estate brokers. BGC Partners, Inc., the plaintiffs, purchased certain assets from the bankruptcy of Grubb & Ellis, another commercial real estate firm. The real estate brokers of Grubb & Ellis were at-will employees whose employment contracts were rejected in bankruptcy. Some of those brokers found new employment with Avison Young, while others went to different firms. Plaintiffs in this case argue that Avison Young committed various business torts by hiring these former Grubb & Ellis brokers.

The New York court dismissed almost all of the claims against Avison Young, and also dismissed most of the Avison Young affiliates for lack of personal jurisdiction. Plaintiffs refiled some of their cases in Nevada, Illinois, Washington, D.C., and South Carolina; those cases are proceeding in the respective jurisdictions. The parties are proceeding to discovery on the few remaining claims in New York.

Trial Court: Hon. Marcy Friedman

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16. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

See answer to Question 15 above. I have not performed lobbying activities on behalf of clients.

17. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Co-taught *Law & New Media* Seminar at Georgetown University Law Center, Fall Semester 2013. Class syllabus attached.

I have taught at the Kirkland Institute of Trial Advocacy litigation training program since becoming a partner in 2010.

18. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no arrangements in the future to be compensated for any financial or business interest. If I am still at Kirkland & Ellis in December 2017, I anticipate a yearly bonus payment, the amount of which is discretionary and unknown at this time.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

The current OGE-278 will be delivered directly to the Committee by the Office of Government Ethics.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

I have completed and attached the financial net worth statement.

22. **Potential Conflicts of Interest**:

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I consulted with the Department of Justice's ethics office. I will continue to consult with them if confirmed and will recuse myself from any matter in which it is required.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will consult with the Department of Justice's ethics office if confirmed and will recuse myself from any matter in which it is required.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional work load, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Throughout my career I have been committed to performing *pro bono* legal service. In recognition of that, I received the Kirkland & Ellis LLP Pro Bono Service Award from 2009–2015. For 2009, 2010, and 2015, I performed over 100 hours of pro bono service each year. From 2011-2014, I performed over 200 hours of pro bono service each year. The matters on which I have worked have varied. For example, I worked with the Children's Law Center representing a maternal aunt and licensed foster parent who sought guardianship of her 16 year old niece and 13 year old nephew. The children had been placed into foster care as a result of the birth mother's substance abuse. I also personally argued *pro bono* cases in the United States Courts of Appeals for the Second and Sixth Circuits on behalf of indigent prisoners, one of whom had been placed in solitary confinement for more than 20 years. Recently, I submitted an amicus brief in support of indigent prisoner petitioners in the Supreme Court case, *Turner v. United States*. And for several years, my representation in a defamation suit of a woman of limited means was handled on a *pro bono* basis. In addition, as Chair of the Women's Leadership Initiative in Kirkland's Washington, D.C. office, I have led and helped organize an annual career day for the students at the Washington School for Girls in Anacostia.