

Conflict Rules Give Law Professor High Court Tech Cases



Law professor Eric Schnapper, who spent 25 years at the NAACP Legal Defense and Education Fund, has been chosen to argue for cases before the US Supreme Court involving tech giants Google, Twitter, and Facebook. Robert Tolchin, who represents the families of terror victims suing the tech companies, said that many high court specialists were conflicted out of the cases set for argument on February 21 and 22, leading him to reach out to Schnapper. The cases could limit the scope of tech company protections, as the families of terror victims claim that YouTube supported extremists who attacked by promoting Islamic State videos. At the same time, Facebook, Twitter, and Google aided a separate attack by allowing the terror group to use their sites as recruiting tools.

Schnapper has argued 22 times before the Supreme Court over the past half century and has little experience with tech clients. Still, his extensive experience with employment discrimination law and civil rights cases made him a good choice for Tolchin. The 80-year-old attorney has won cases that expanded workplace protections, often working pro bono on behalf of employees. In 2010's *Thompson v. North American Stainless*, the court unanimously sided with the fiancée of an employee who complained about workplace discrimination. Later that year, another unanimous opinion said that employees could be held liable for the discriminatory acts of their supervisors in *Staub v. Proctor Hospital*.

Schnapper, who teaches civil procedure, civil rights, and employment discrimination, said that approaching a Supreme Court argument is like preparing for a football game. He spends a lot of time thinking about questions that might come up, and each one gets a page in a notebook he uses for preparation. "I'll think of as many answers as I can. I'll look up citations and try to find old opinions people wrote," Schnapper said. "The time to figure out the answer to a question is not when it's being asked."

He has argued cases before the justices in back-to-back weeks, but never two in a single week. "I put it in the category of be careful what you wish for," Schnapper said. He is expected to face off against former Solicitor General Seth Waxman, now at WilmerHale, and Williams & Connolly's Lisa Blatt, who has argued more high court cases than any other woman in history.

The Biden administration will argue once on Schnapper's side and the other against him.

Regardless of the outcome, the Oxford and Yale Law graduate says he plans to enjoy pruning his roses after finishing the tech arguments. Schnapper's experience and expertise in employment discrimination and civil rights law may give him a unique perspective on the tech cases before the Supreme Court. His preparation and attention to detail will likely serve him well as he argues before the justices.

REFERENCES:

Law Professor Lands High Court Tech Cases Due to Conflict Rules