

How Young Jenner Partner ‘Boiled the Oceans’ to Find, Win 5 SCOTUS Cases

Q&A: Adam Unikowsky on finding, and winning, cases.

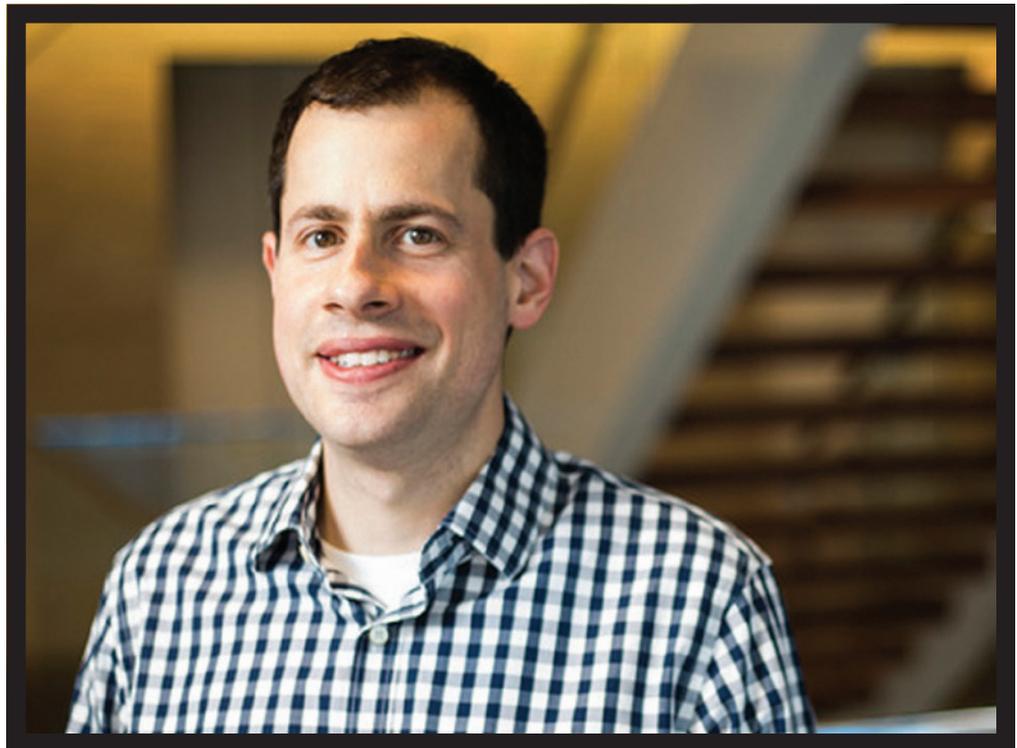
BY TONY MAURO

June 5 was no ordinary Monday for Jenner & Block partner Adam Unikowsky.

With one-half of his computer monitor focused on his work and the other on SCOTUSblog, Unikowsky was able to learn at his office that two of his cases were unanimous wins. Both were written by Justice Sonia Sotomayor.

“The arguments had gone pretty well, so I felt guardedly optimistic, and you can’t be any more optimistic than that in the Supreme Court,” said Unikowsky afterward. “But it’s pretty exciting to have the two cases come out one after the other.”

Supreme Court wins are getting fairly routine for the



Adam Unikowsky of Jenner & Block.

self-described “law nerd.” He won two cases last term: *V.L. v. E.L.* and *Commonwealth of Puerto Rico v. Luis M. Sanchez Valle*. This year, his two June 5 wins in *Honeycutt v. United States* and *Kokesh v. Securities and Exchange Commission* were preceded by an

earlier victory, *Howell v. Howell*, decided on May 15. All five were handled pro bono.

All in all, not bad for the 35-year-old former Justice Antonin Scalia law clerk, who came on board in 2011. He made partner in 2015.

“The fact that Adam was able to sift through hundreds of decisions to find three in which he thought the Supreme Court would be interested, to frame all three in a manner that would obtain grants from the court, and then to win all three on the merits is truly extraordinary,” said Deborah White, general counsel of the Retail Industry Leaders Association, who has worked with Unikowsky.

Warren Postman, deputy chief counsel of the U.S. Chamber Litigation Center, has known Unikowsky since they were both students at Harvard Law School. “As a law clerk and young associate, Adam would not only read every decision issued by the Supreme Court, he would read basically every appellate decision issued each day by every federal appellate court.”

The Supreme Court wins make Unikowsky a rising star at Jenner & Block, which lost its previous Supreme Court “dynamic duo” of Paul Smith and Donald Verrilli in recent years. After seven years in the Obama administration, Verrilli went to Munger, Tolles & Olson instead of returning

to Jenner & Block, and Smith jumped ship in January for academia and the Campaign Legal Center. Former acting Solicitor General Ian Gershengorn is returning to Jenner & Block Sept. 1.

Unikowsky recently sat down for an interview, edited for space and clarity:

At your age, sometimes law firms say, “Nice work snagging the case, you can step aside now.” Why did you get the opportunity to argue these cases yourself?

The firm was pretty supportive of that. Maybe it’s different at the associate stage, but when you are partner of the firm, I think that there is some sense that you’ve gone out and obtained a client who’s hired you for the case, then the firm will support you in that endeavor.

How did you find the cases?

When you work in the Supreme Court, you want to go back and it’s kind of a natural thing. And so I definitely wanted to bring some cases. It was more a matter of me trying to proactively look for some cases that I thought would have a fair

chance of reaching the court and kind of reaching out.

You mean the way that Tom Goldstein [of Goldstein & Russell] would cold-call potential clients?

There was a little of that, yes. It wasn’t all that. For one of the cases, *V.L. v. E.L.*, involving an adoption, Paul Smith knew the public interest organizations and so I reached out that way, through Paul, and we ended up partnering together.

So that was not exactly Tommy Goldstein. But the others, yes, when I became aware of the case I did contact them and talked about what we could do to help.

All of your wins have been pro bono representations. I imagine some firms might want you to get some paying cases too?

I still do. It’s not like I spend all my time on pro bono. I do a lot of paying work. No. 1, the firm is very supportive of pro bono.

No. 2, I do understand that it’s important for me to do paying work, and I do. And No. 3, it’s certainly my hope that, winning these cases is going to assist me in that way. We’ll have to see.

One thing I noticed with your oral arguments is that you don't use all 30 minutes allotted. In the *Howell* argument you, sat down after 17 minutes. In *Honeycutt*, you argued for 15 minutes.

It's easier to lose a case than it is to win a case with the arguments. So I felt good vibes from the bench and I don't really feel the need to just go on and on if I feel like they have accepted my argument.

So, if you feel like you're going to win the case, I think it's often best to just sit down and let the other side argue, and maybe save time for rebuttal.

In the *Kokesh* argument, you introduced a new phrase to the Supreme Court lexicon. You said you "boiled the oceans" without success to find cases that would support the SEC's position on disgorgement. Where did that come from?

Well, I thought it was a metaphor for the many hours spent

on Westlaw. I must have heard it somewhere, I don't even remember when, and it seemed rather evocative.

Forbes included that phrase in its tally of the most annoying business jargon.

Maybe I shouldn't use it.

No, it worked, and it certainly didn't hurt you. Do you feel nervous when you stand before the Supreme Court?

Anytime I get up in court, I'm nervous because you don't know what judges are going to do. You don't know if they're going to lambaste you for making an error or something. Like most advocates, I had my intro kind of memorized and then I was just ready to answer questions.

Once you're answering questions, you're just going on instinct. It was funny in *Honeycutt*, they didn't interrupt me for several minutes, and I'd kind of finished my pre-written intro. I was just kind of going onto whatever came to mind. But in *Kokesh*, the

chief justice interrupted me like six words into my intro.

Did you ever argue before Justice Scalia, for whom you clerked?

For the *Puerto Rico* case, he was still on the bench. He passed away between the argument and the decision.

Of course I argued before him in the chambers all the time. I was maybe a little bit to the left of some of the other clerks but towards the end, he was really hiring based on merit, and I don't think he would go out of his way to hire a liberal just for the sake of doing it. He was very encouraging of an open exchange of ideas.

Do you have a lucky tie or any rituals when you argue at the Supreme Court?

I set two alarm clocks. You don't want to sleep through it. I can't even imagine what would happen if you just didn't show up.

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