

Trial Pros: McManis Faulkner's Elizabeth Pipkin

Law360, New York (July 28, 2016, 10:45 AM ET) --

Elizabeth Pipkin is a trial lawyer and partner with McManis Faulkner in San Jose, California. She principally handles cases involving trade secrets, business disputes and civil rights. She is chairwoman of the firm's civil litigation group.

Pipkin has been quoted in publications such as The New York Times, Wired Magazine, The San Francisco Chronicle, The San Jose Mercury News, The Los Angeles Times and Techdirt, and has appeared on broadcast outlets such as KQED, NBC Bay Area, and Al Jazeera America. Her speaking engagements include Stanford Law School, the SMU Dedman School of Law, and the Practising Law Institute. She serves on the board of trustees for the Law Foundation of Silicon Valley.



Elizabeth Pipkin

Q: What's the most interesting trial you've worked on and why?

A: This is a difficult question, because each of my cases has been interesting in its own way. The most well-known case that I've worked on was the first successful challenge to the U.S. government's post-9/11 terrorist watch list system. Our client, Dr. Rahinah Ibrahim, a Malaysian scholar who lived in the U.S. for many years while studying for her Ph.D. at Stanford University, challenged the constitutionality of the government's terrorist watch lists after she was arrested at San Francisco International Airport and informed she was on the No-Fly List.

After years of procedural wrangling, including two dismissals by the district court and two reversals by the Ninth Circuit Court of Appeals, the case proceeded to a week-long bench trial in the U.S. District Court for the Northern District of California before the same judge who had twice dismissed the case.

Our four-person trial team went up against more than a dozen U.S. government lawyers. The government was forced to concede at trial that Ibrahim never posed a threat to national security and that she doesn't meet the reasonable suspicion standard for inclusion in the Terrorist Screening Database (TSDB).

The full, unredacted decision, released after a three-month hold, revealed for the first time that the government employs a secret standard to watch-list individuals who pose no threat to national security. The government invoked a classified exception to the "reasonable suspicion" standard to place Ibrahim and her eldest daughter, an American citizen, in the TSDB. The government previously assured the public that it would not place individuals in the TSDB unless it had "reasonable suspicion" — i.e., "articulable facts" that reasonably warrant a determination that an individual is engaged in terrorist activities.

Our team's victory laid the foundation for erroneously watch-listed individuals to clear their names by revealing the executive branch created at least one secret exception to the "reasonable suspicion" standard, the government asserts absolute and unreviewable discretion in its watch list decisions, and the government's redress system deprives individuals of due process of law.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: An unexpected event occurred on the night before the Ibrahim trial started that changed the entire case. On that night, we learned that the government barred Dr. Ibrahim's daughter from boarding a plane in Kuala Lumpur to attend the trial in San Francisco. This was a very unusual and unexpected turn of events. We asked the court to order an explanation from the government, which the court did. The government had already prevented Dr. Ibrahim from flying to attend the trial. The government's barring of another innocent person from flying to attend the trial, without explanation, provided further evidence of the lack of due process in the No-Fly List.

Q: What does your trial prep routine consist of?

A: I have dinner with the rest of the trial team most nights in the days or weeks leading up to the trial. It's important to take breaks amidst the preparation and talk about something other than the case for a few minutes. I really enjoy the camaraderie of trying a case with my colleagues.

Substantively, I seek feedback from others who haven't worked on the case so I can identify the questions the judge and jury may have. I also like to focus on the jury instructions and how each part of our presentation will address the questions before the finder of fact.

I use lots of white boards, drawing diagrams outlining the various scenarios that I may face during trial. And I make sure beforehand that I have enough suits to last the entire trial.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: My best advice to an attorney preparing for their first trial would be to take the time to be in the moment. Don't let your emotions or nerves overpower your experience. Enjoy the opportunity to help your client and the court.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Another difficult question because there are so many talented attorneys with whom I've had the opportunity to work. One person I have always been impressed with is Harry Mittleman, a litigation partner in the Los Angeles office of Irell & Manella LLP. He has a searing intellect, a gift with words and an unassuming manner.

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