

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Alison Julie Nathan

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

United States Court of Appeals for the Second Circuit

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.

United States District Court for the Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Centre Street  
New York, New York 10007

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

1972; Philadelphia, Pennsylvania

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.

1997 – 2000, Cornell Law School; J.D. (*magna cum laude*), 2000

1996 – 1997, Cornell University, Falcon Intensive Japanese Program; no degree received

1990 – 1994, Cornell University; B.A., 1994

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.

2012 – Present

United States District Court for the Southern District of New York

Thurgood Marshall United States Courthouse  
40 Centre Street  
New York, New York 10007  
United States District Judge

2015 – Present  
New York University School of Law  
40 Washington Square South  
New York, New York 10012  
Adjunct Professor of Clinical Law

2010 – 2011  
Office of the Attorney General of New York  
120 Broadway, 25th Floor  
New York, New York 10271  
Special Counsel to the Solicitor General

2009 – 2010  
White House Counsel's Office  
The White House  
Washington, DC 20502  
Special Assistant to the President and Associate White House Counsel

2008 – 2009  
New York University School of Law  
40 Washington Square South  
New York, New York 10012  
Fritz Alexander Fellow

2006 – 2008  
Fordham University School of Law  
140 West 62nd Street  
New York, New York 10023  
Visiting Assistant Professor of Law

2005 – 2006  
Wilmer Cutler Pickering Hale and Dorr LLP  
399 Park Avenue  
New York, New York 10022  
Associate

2002 – 2005  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, Northwest  
Washington, DC 20006  
Associate

August – November 2004 (on unpaid leave from WilmerHale)  
Kerry-Edwards 2004/Democratic National Committee  
901 15th Street, Northwest  
Suite 600  
Washington, DC 20005  
Volunteer Legal Advisor/Associate National Counsel (unpaid)

2001 – 2002  
Associate Justice John Paul Stevens  
Supreme Court of the United States  
1 First Street, Northeast  
Washington, DC 20002  
Law Clerk

2000 – 2001  
Judge Betty B. Fletcher  
United States Court of Appeals for the Ninth Circuit  
1010 Fifth Avenue  
Seattle, Washington 98104  
Law Clerk

Summer 2000  
Bar/Bri Bar Preparation  
1500 Broadway  
New York, New York 10036  
Student Representative

Summer 2000  
Sandra Babcock, Esq.  
Cornell Law School  
Myron Taylor Hall  
Ithaca, New York 14853  
Research Assistant

Spring 2000  
Professor Robert Hillman  
Cornell Law School  
Myron Taylor Hall  
Ithaca, New York 14853  
Teaching Assistant

Summer 1999  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, Northwest  
Washington, DC 20004

Summer Associate

Summer 1999

National Women's Law Center  
11 Dupont Circle, Northwest, #800  
Washington, DC 20036  
Summer Law Clerk

Summer 1998

Professor Kathryn Abrams  
Cornell Law School  
Myron Taylor Hall  
Ithaca, New York 14853  
Research Assistant

Summer 1998

Cornell Legal Aid  
Myron Taylor Hall  
Ithaca, New York 14853  
Summer Law Clerk

1995 – 1996

Thailand Times English Language Daily  
99 Bromrajachonnee Road Taling Chan  
Bangkok, Thailand  
Editor

Summer 1995

Cornell University Hotel School  
Statler Hall  
Ithaca, New York 14850  
Temporary Administrative Assistant

1994 – 1995

Nova English Language School  
Harajuku 'Carillo'; 1-8-9 Jungu-Mae Shibuya-ku  
Tokyo, Japan  
English Instructor

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.

I did not serve in the military. I was not required to register for the selective service.

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.

Community Service Award, Fordham Outlaws (LGBT Law Student Organization), 2015

Louis J. Lefkowitz Memorial Achievement Award, in recognition of outstanding performance on behalf of the Office of the Attorney General and the people of the State of New York, 2010

WilmerHale, Pro Bono Award, 2003, 2004, 2005

Editor-in-Chief, Cornell Law Review, 1999 – 2000

Order of the Coif, Cornell Law School, 2000

Morris P. Glushien Prize, Cornell Law School, 2000

CALI Excellence for the Future Award, 2000

Frazer Prize, 1999

West Publishing Outstanding Scholastic Achievement Award, 1999

West Publishing Corpus Juris Secundum Award, 1999

Franklin S. Wood Memorial Scholarship Fund, 1999

Uncommon Legacy Foundation Scholarship, 1998

Foreign Language and Area Studies Fellowship (FLAS), full year-long funding by the Department of Education for intensive language study, 1996 – 1997

Quill & Dagger Senior Honor Society, Cornell University, 1994

Dean's List, Cornell University, 1991 – 1994

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.

American Bar Association

American Law Institute, Restatement of the Law of Copyright, Advisor

Cornell Law School Dean's Advisory Council

DC Bar Association, Member of the Litigation Committee

Federal Bar Council Inn of Court

New York City Bar Association

New York State Bar Association

Second Circuit Federal Bar Council

Second Circuit Judicial Conference Program and Planning Committee

Southern District of New York

Bench and Bar Fund Committee

COVID Response Team

Grievance Committee

Security Committee, Chair (2021 to present)

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.

New York, 2003

Washington, DC, 2004

There have been no lapses in membership; since becoming a judge in 2011, however, I am now considered “retired” from the practice of law.

- 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, 2006

United States Court of Appeals for the Second Circuit, 2010

United States Court of Appeals for the Fourth Circuit, 2003

United States Court of Appeals for the Ninth Circuit, 2004

United States District Court for the Southern District of New York, 2003

United States Court of Appeals for the Armed Forces, 2003

United States Army Court of Criminal Appeals, 2003

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.

Downtown United Soccer Club, Coach (2019)

Cornell Law School Dean's Advisory Board, Member (2016 – 2020)

Federal Judges Association, Member (2012 – present)

New York Democratic Lawyers Council, Participant (2008 – 2010). In conjunction with volunteering I did for the Obama campaign, in 2008 I attended several meetings of the New York Democratic Lawyers Council. I attended one additional fundraiser in 2010.

Quill & Dagger Honor Society; in college I became a member of the Quill & Dagger Senior Honor Society; although I have not had any direct involvement since college I am still considered a member.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated 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.

To my knowledge, none of the organizations listed above discriminates or formerly discriminated on the basis of race, sex, religion, or national origin through formal membership requirements or the practical implementation 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.

*In Memoriam: Justice John Paul Stevens*, 133 Harv. L. Rev. 3 (2020). Copy supplied.

Letter to the Editor, *The Truth Is That Executions Go Wrong*, Legal Times (Jan. 21, 2008). Copy supplied.

Commentary, *Please Ignore the Pain*, Legal Times (Jan. 9, 2008). Copy supplied.

*Supreme Court Preview: Baze v. Rees: What Is and Is Not at Stake in the Lethal Injection Litigation*, ACSblog (Jan. 7, 2008). Copy supplied.

In response to an article written by Orin Kerr entitled *What Does Foreign Law Teach Us About the Constitutionality of Methods of Execution?*, Volokh Conspiracy Blog (Jan. 2, 2008), I posted several online comments. Copy supplied.

*Baze-d and Confused: What's the Deal With Lethal Injection?*, 156 U. Pa. L. Rev. Pennumbra 312 (Jan. 2008) (debate with Douglas A. Berman). Copy supplied.

*Arresting Juxtapositions: The Story of Roper v. Simmons*, in *Human Rights Advocacy Stories* (Deena R. Hurwitz and Margaret L. Satterthwaite eds., 2008). Copy supplied.

*Pausing the Machinery of Death: The Supreme Court Takes Baze*, Jurist (Sept. 27, 2007). Copy supplied.

*Supreme Legacy: Gerald Ford and John Paul Stevens*, Jurist (Dec. 31, 2006). Copy supplied.

*History Starts Today: The Perils of Habeas-Stripping*, Jurist (Sept. 26, 2006). Copy supplied.

Letter to the Editor, *Mr. Santorum on the Right to Privacy*, Wash. Post (Apr. 25, 2003). Copy supplied.

Note, *At the Intersection of Domestic Violence and Guns: The Public Interest Exception and the Lautenberg Amendment*, 85 Cornell L. Rev. 822 (2000). 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.



I have not prepared or contributed in the preparation of any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I am or was a member.

- 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 from Law Professors Opposed to Splitting the Ninth Circuit to the Hon. Arlen Specter & the Hon. Patrick J. Leahy (Sept. 27, 2006). Copy supplied.

Letter from Legal Scholars Opposed to S.3923 to Members of Congress (Sept. 26, 2006). 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.

Since starting as a United States District Judge in 2012, I have spoken to high school and elementary school students, college classes, law school classes, civic groups, and bar associations. I have not always kept notes or information about the presentations. I have compiled the list below from my review of my calendars and records and searching publicly available databases, although there may be additional events that I am unable to recall.

March 8, 2021: Guest, Advanced Civil Procedure Seminar, Columbia Law School, New York, New York. I discussed federal practice and procedure from the trial court judge's perspective. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

February 2, 2021: Speaker, Memorial to Judge Debbie Batts, Fordham Law School, virtual event. Remarks supplied.

January 27, 2021 (1 p.m.): Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. Two versions of the speech I typically use supplied.

January 27, 2021 (11 a.m.): Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

January 26, 2021: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. Speech supplied.

January 19, 2021: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

February 27, 2020: Moderator, "Gillers v. Gillers," Federal Bar Council, Nassau, The Bahamas. I moderated a Federal Bar Council Panel on Current Issues in Legal Ethics discussing a variety of legal ethics hypotheticals. I have no notes, transcript, or recording. The address for the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038.

January 31, 2020: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

January 24, 2020: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

November 2, 2019: Moderator, "Changes to Federal Sentencing Guidelines," Federal Bar Council, New Paltz, New York. The panel was on the Federal Sentencing Guidelines. I have no notes, transcript, or recording. The address for the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038.

October 29, 2019: Moot Court Judge, Lile Moot Court at UVA Law School, Charlottesville, Virginia. I judged the finals of UVA Law School's moot court competition. Video available at <https://youtu.be/q9MTIceOu4M>.

August 29, 2019: Speaker, "Judges in Conversation," the Melbourne Law Masters program and the Federal Court of Australia, Melbourne, Australia. This

was an informal dialogue between me and Justice David O'Callaghan of the Federal Court of Australia. The event was co-sponsored by the Melbourne Law Masters program and the Federal Court of Australia. I have no notes, transcript, or recording. The address for the Federal Court is Commonwealth Law Courts, 305 William Street, Melbourne, VIC 3000, Australia.

June 12, 2019: Speaker, "New York Attorney General Office LGBTQ Pride Month Event," Office of the New York Attorney General, New York, New York. Notes supplied.

June 3, 2019: Introduction, "Introduction of Judge J. Paul Oetken," Criminal Bar Association, New York, New York. Notes supplied.

May 31, 2019: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

May 28, 2019: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

May 2, 2019: Speaker, "A Conversation with Judge Deborah A. Batts," Justice For All: Courts and the Community, New York, New York. Video available at <https://justiceforall.ca2.uscourts.gov>.

April 11, 2019: Moderator, "The Fourth Amendment in the Information Age," United States Courts, New York, New York. Notes supplied.

February 13, 2019: Guest, Constitutional Litigation Seminar, NYU School of Law, New York, New York. I served as a judge questioning students doing a mock oral argument of a Supreme Court case from that term. I have no notes, transcript, or recording. The address for NYU School of Law is 40 Washington Square South, New York, New York 10012.

June 8, 2018: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

April 16, 2018: Guest, Advanced Civil Procedure, Columbia Law School, New York, New York. I discussed federal practice and procedure from the trial court

judge's perspective. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

November 14, 2017: Moot Court Judge, Yale Law School Moot Court Competition, Yale Law School, New Haven, Connecticut. Notes supplied.

November 14, 2017: Guest, Constitutional Law class, Yale Law School, New Haven, Connecticut. I answered students' questions during a Constitutional Law class. I have no notes, transcript, or recording. The address for Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

August 24, 2017: Moot Court Judge, "1L Orientation Moot Court," NYU School of Law, New York, New York. Notes supplied.

June 20, 2017: Panelist, Federal Bar Council Diversity Committee Breakfast, New York, New York. I discussed my experience as an openly gay judge as part of a Q&A during LGBT pride month. I have no notes, transcript, or recording. The address for the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038.

April 18, 2017: Speaker, "Cornell Law Dean's Distinguished Alumni Series," Cornell Law School, Ithaca, New York. I answered questions posed by Cornell Law School's Dean. I have no notes, transcript, or recording. The address for Cornell Law School is Myron Taylor Hall, Ithaca, New York 14853.

April 10, 2017: Speaker, "Conversation with Federal Judges," UVA School of Law, Charlottesville, Virginia. This panel was a discussion with other judges and moderated by the UVA School of Law Dean. I have no notes, transcript, or recording. The address for the UVA School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

February 22, 2017: Guest, Advanced Civil Procedure, Columbia Law School, New York, New York. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

November 20, 2016: Mock Trial Judge, "Mock Trial: The People v. King David," Temple Emanu-El Skirball Center, New York, New York. Video available at <https://vimeo.com/237701837>.

November 1, 2016: Moot Court Judge, Harvard Law School Ames Moot Court Competition Final Round, Harvard Law School, Cambridge, Massachusetts. Video available at <https://hls.harvard.edu/2016-ames-moot-court-competition>.

August 29, 2016: Moot Court Judge, "1L Orientation Moot Court," NYU School of Law, New York, New York. As part of NYU Law School's 1L orientation

program, lawyers argue a moot court in front of a panel of judges. I used the same notes that were provided for the moot court on August 24, 2017.

May 27, 2016: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

May 20, 2016: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

May 17, 2016: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

March 7, 2016: Guest, Advanced Civil Procedure, Columbia Law School, New York, New York. I discussed federal practice and procedure from the trial court perspective. I have no notes, transcript, or recording. The address for Columbia Law School is 435 West 116th Street, New York, New York 10027.

February 24, 2016: Panelist, "Love, Law and . . . Clerkships," Milbank Tweed Forum held at NYU School of Law, New York, New York. Video available at <https://www.youtube.com/watch?v=vjX6wLQmMIM>.

December 9, 2015: Mock Trial Judge, Visit from fourth grade students from Friends Seminary, New York, New York. I observed the parents conduct a mock trial at the United States Courthouse and I answered questions from the students. I have no notes, transcript, or recording. The address for Friends Seminary is 222 East 16th Street, New York, New York 10003.

November 15, 2015: Mock Trial Judge, "Mock Trial: The People v. Moses," Temple Emanu-El Skirball Center, New York, New York. Video available at <https://vimeo.com/190168723>.

November 10, 2015: Visit from students at Francis Lewis High School, Justice Resource Center, New York, New York. Students observed portions of a trial and I met with them during a break for Q&A. I have no notes, transcript, or recording. The address for the Justice Resource Center is 122 Amsterdam Avenue, New York, New York 10023.

July 16, 2015: Panelist, "NY City Bar Association Supreme Court Roundup," New York City Bar Association, New York, New York. Notes supplied.

May 29, 2015: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

May 26, 2015: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

May 22, 2015: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

May 19, 2015: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

May 4, 2015: Speaker, Class visit from SUNY Sullivan County Community College students. Students in a college law class visited me in my courtroom for a Q&A. I have no notes, transcript, or recording. The address for SUNY Sullivan County Community College is 112 College Road, Loch Sheldrake, New York 12759.

April 10, 2015: Speaker and Award Recipient, Fordham OUTlaws Community Service Award Dinner, Fordham University Law School, New York, New York. I gave remarks upon receiving the award at the Fordham Alumni dinner. I have no notes, transcript, or recording. The address for Fordham University School of Law is 150 West 62nd Street, New York, New York 10023.

December 13, 2014: Speaker, Visit from students at Stuyvesant High School, Justice Resource Center, New York, New York. I participated in a Q&A with the students at the United States Courthouse. I have no notes, transcript, or recording. The address for the Justice Resource Center is 122 Amsterdam Avenue, New York, New York 10023.

November 20, 2014: Speaker, Roundtable lunch with students from Francis Lewis High School, New York, New York. I answered the students' questions at a Q&A at the United States Courthouse. I have no notes, transcript, or recording.

The address for Francis Lewis High School is 58-20 Utopia Parkway, Queens, New York 11365.

November 16, 2014: Mock Trial Judge, "Mock Trial: The People v. Abraham," Temple Emanu-El Skirball Center, New York, New York. Video available at <https://vimeo.com/123879315>.

November 13, 2014: Moderator, "Federal Bar Council Panel on Congressional Investigations," Federal Bar Council, New York, New York. Notes supplied.

November 13, 2014: Panelist, "A Conversation with Judges" Cornell Curia Society, New York, New York. This was organized by Cornell Curia Society. Q&A with me and other judges. I have no notes, transcript, or recording. The address for Cornell Law School is, Myron Taylor Hall, Ithaca, New York 14853.

October 16, 2014: Panelist, "Juror Misconduct: Social Media, Monitoring, Report, and Implications," Federal Bar Council, New York, New York. The panel was on use of social media by jurors. I have no notes, transcript, or recording. The address for the Federal Bar Council is 150 Broadway, Suite 505, New York, New York, 10038.

August 25, 2014: Moot Court Judge, "1L Orientation Moot Court," NYU School of Law, New York, New York. As part of NYU Law School's 1L orientation program, lawyers argue a moot court in front of a panel of judges. I used the same notes that were provided for the moot court on August 24, 2017.

May 19 and 20, 2014: Jurist-in-Residence, University of Washington School of Law, Seattle, Washington. I visited the law school for two days as a "Jurist-in-Residence." In this capacity I participated in a roundtable discussion with students, attended a Constitutional Law class as a guest and did Q&A, judged a moot court competition, and participated in a clerkship discussion with students. I have no notes, transcript, or recording. The address for the University of Washington School of Law is 4293 Memorial Way Northeast, Seattle, Washington 98195.

April 2, 2014: Guest, Constitutional Litigation Seminar, NYU School of Law, New York, New York. I have no notes, transcript, or recording. The address for NYU School of Law is 40 Washington Square South, New York, New York 10012.

March 31, 2014: Moot Court Judge, Harvard Law School Ames Moot Court Competition Semi-Final Round, Harvard Law School, Cambridge, Massachusetts. I judged this HLS moot court competition. I have no notes, transcript, or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

March 21, 2014: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

March 18, 2014: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

March 14, 2014: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

March 13, 2014: Speaker, "Out in the Law Conference," NYU School of Law, New York, New York. Notes supplied.

March 11, 2014: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

March 6, 2014: Host, Visit from kindergarten class. I observed the parents conduct a mock trial (Rainbows v. Bunnies) at the United States Courthouse. I have no notes, transcript, or recording. The event took place at the Courthouse, 500 Pearl Street, New York New York, 10012.

February 18, 2014: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

December 3, 2013: Mock Trial Judge, Visit from fourth grade students from Friends Seminary, New York, New York. I observed the parents conduct a mock trial at the United States Courthouse and then I answered questions from the students. I have no notes, transcript, or recording. The address for Friends Seminary is 222 East 16th Street, New York, New York 10003.

April 30, 2013: Speaker, Visit from students at Hillcrest High School. Students observed proceedings at the United States Courthouse, and I met with them



afterwards for a Q&A. I have no notes, transcript, or recording. The address for Hillcrest High School is 160-05 Highland Avenue, Queens, New York 11432.

April 24, 2013: Speaker, "Lunch with a Judge," the American Constitution Society of Yale Law School, New Haven, Connecticut. I discussed judging and apply for clerkships in an informal setting with law students. I have no notes, transcript, or recording. The event took place at the Yale Law School, 127 Wall Street, New Haven, Connecticut 06511.

April 16, 2013: Speaker, "Lunch with a Judge," Sponsored by the New York Women's Bar Association. I answered Q&A over lunch. I have no notes, transcript, or recording. The event took place at the United States Courthouse, 40 Centre Street, New York, New York 10007.

April 2, 2013: Panelist, "Applying for Clerkships," Sponsored by the Columbia Law School Chapter of the American Constitution Society. I and other judges spoke about the process and advice for applying for judicial clerkships. I have no notes, transcript, or recording. American Constitution Society Columbia Law School Chapter, 435 West 116th Street, New York, New York 10027.

March 13, 2013: Speaker, "Federal Bar Council First Decade Committee Judicial Luncheon Series," Southern District of New York Bankruptcy Court, New York, New York. This was an informal lunch discussion with young lawyers about legal careers. I have no notes, transcript, or recording. The address for the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038.

March 12, 2013: Speaker, Federal Bar Council Inn of Court Program: To Strike or Not to Strike, That is the Question: The Legality of the U.S. Drone Program, United States Courthouse, New York, New York. I participated in a theatrical CLE Inn of Court program that explored the legal regimes applicable to drone strikes. I have no notes, transcript, or recording. The address for the Federal Bar Council is 150 Broadway, Suite 505, New York, New York 10038.

February 21, 2013: Guest, Constitutional Litigation Seminar, NYU School of Law, United States Courthouse, New York, New York. I served as a judge questioning students doing a mock oral argument of a Supreme Court case from that term. I have no notes, transcript, or recording. The address for NYU School of Law is 40 Washington Square South, New York, New York 10012.

February 20, 2013: Speaker, Visit from students from Grace Church High School, United States Courthouse, New York, New York. I did a Q&A with the students in my courtroom. I have no notes, transcript, or recording. The address for Grace Church High School is 46 Cooper Square, New York, New York 10003.

January 30, 2013: Speaker, Visit from fourth grade students from Friends Seminary, United States Courthouse, New York, New York. Parents did a mock trial and then I answered questions from the students. I have no notes, transcript, or recording. The address for Friends Seminary is 222 East 16th Street, New York, New York 10003.

October 24, 2012: Panelist, "Pathway to the Bench: A Discussion with Recently Appointed Judges," American Constitution Society and Kirkland & Ellis, New York, New York. The panel was a Q&A between a few judges and law students. I have no notes, transcript, or recording. The address for Kirkland & Ellis is 601 Lexington Avenue, 50th Floor, New York, New York 10022.

October 22, 2012: Moderator, "A Conversation with Justice Sotomayor," Cardozo School of Law, New York, New York. Notes supplied.

August 24, 2012: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

August 21, 2012: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

August 17, 2012: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

August 14, 2012: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

June 5, 2012: Presiding District Judge, Attorney Admission Ceremony, United States District Court for the Southern District of New York, New York, New York. I have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 26, 2021, which has been supplied.

April 27, 2012: Presiding District Judge, Naturalization Ceremony, United States District Court for the Southern District of New York, New York, New York. I

have no notes, transcript or recording, but the speech would have been substantially similar to the one on January 27, 2021 (1 p.m.), which has been supplied.

April 13, 2012: Speaker, Women's Leadership Initiative, organized by Jennifer Brown in the Federal Defenders, United States Courthouse, New York, New York. Ms. Brown brought a group of Yale undergraduate students for a "job shadowing" visit to the courthouse. I did a Q&A with the students. I have no notes, transcript, or recording. The address for the Federal Defenders is 52 Duane Street, 10<sup>th</sup> Floor, New York, New York 10007.

Pre 2011:

Prior to accepting a position in the White House Counsel's Office, I was on the law school academic job market during the fall of 2008. Although these were not public presentations, I presented to several law faculties an early draft of a paper relating to the procedural interest in finality in the context of post-conviction habeas challenges brought by state prisoners. The draft, which I did not complete nor seek to publish, is attached. Other presentations are individually listed below.

March 25, 2008: Presenter, Categorical Exclusions to the Death Penalty, invited scholar presentation at Prof. Deborah Denno's Colloquium on Criminal Sentencing and the Death Penalty, Fordham Law School, New York, New York. Notes supplied.

March 7, 2008: Presenter, The Counter-Consensus Difficulty: Constitutional Challenges to Pervasive Methods of Execution, presented at The Lethal Injection Debate: Law and Science, sponsored by the Fordham Urban Law Journal, New York, New York. Notes supplied.

November 7, 2007: Panelist, Supreme Court Preview: OT 2007, Fordham University School of Law, New York, New York. Notes supplied.

April 7, 2005: Panelist, The Impact of *Lawrence v. Texas* on Don't Ask, Don't Tell, Georgetown University Law Center Conference, "Don't Ask, Don't Tell: Different Perspectives," Washington, DC. I participated in a panel on the impact of *Lawrence v. Texas*. I have no notes, transcript, or recording. The address of Georgetown Law is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

April 2, 2005: Panelist, AEDPA and Beyond: Post-Conviction Habeas, Cornell Law Review Symposium, "The Great Writ: Developments In the Law of Habeas Corpus," Ithaca, New York. I participated in a panel on developments in the law of habeas. I have no notes, transcript, or recording. The address of Cornell Law is Myron Taylor Hall, Ithaca, New York 14853.

January 24, 2004: Panelist, Challenging the Military's Criminal Sodomy Prohibition After Lawrence, University of Florida Lambda Legal Alliance GLBT Law and Policy Conference, "The Implications of Lawrence vs. Texas on the Military," Gainesville, Florida. I participated in a panel on the implications of the Supreme Court's decision in *Lawrence v. Texas* on legal challenges to provision in the United States Code for Military Justice. I have no notes, transcript, or recording. The address of the University of Florida Law School is P.O. Box 117620, Gainesville, Florida 32611.

I spoke on an alumni panel at Cornell Law School about clerkships at some point in the year 2001 to 2002. I have no notes, transcript, or recording. The address of Cornell Law is Myron Taylor Hall, Ithaca, New York 14853.

- 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.

Gavin Broady, *A Modern Judicial Role Model: Judge Alison Nathan*, Law 360, Sept. 30, 2014. Copy supplied.

*Nathan '00 Named Associate White House Counsel*, Cornell L. Forum, Fall 2009. Copy supplied.

Sam Cross, *Cornell Law School Alumnus and Professor Join New Administrations*, Cornell Daily Sun, Feb. 2, 2009. Copy supplied.

Christopher Collette, *Supreme Court Blocks Execution of Fla. Child Killer*, WTSP.com, Nov. 15, 2007. Copy supplied.

Paul Flemming and John Torres, *High Court Clears Way for State Executions*, The News-Press, Nov. 2, 2007. Copy supplied.

In 2007, I was interviewed by a news outlet for an online news report about *Baze v. Rees*. I have not been able to locate a copy of the interview or link to the video.

In 2001, I was interviewed by the Cornell Law Forum regarding my clerkship with Justice Stevens. Copy supplied.

Press release, *Cornell Law Professor Kathryn Abrams is Honored for Motivating Law School Women*, Cornell News, May 15, 2000. Copy supplied.

*Students to Resubmit Gay Dorm Proposal to Cornell Officials*, The Post-Standard (Syracuse, NY), Apr. 29, 1994 at B1. Copy supplied.

Michael Winerip, *In School*, N.Y. Times, Apr. 20, 1994 at B13. Copy supplied.

Jonathan D. Salant, *Marchers Demand Gay Rights*, The Post-Standard (Syracuse, NY), Apr. 26, 1993. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since I was sworn in for duty on January 3, 2012, I have served as a United States District Judge for the Southern District of New York. This is an appointed position. The United States District Court for the Southern District of New York is a federal trial court of limited civil and criminal jurisdiction.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over 45 trials.

- i. Of these cases, approximately what percent were:

jury trials:	51%
bench trials:	49%

- ii. Of these cases, approximately what percent were:

civil proceedings:	69%
criminal proceedings:	31%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *E.G. v. City of New York*, No. 20-cv-9879, 2020 WL 7774346 (S.D.N.Y. Dec. 30, 2020)

Parents of school-age children living in New York homeless shelters sued the City of New York, alleging that its failure to provide adequate and reliable access to the internet during the COVID-19 pandemic violated the students' rights under the Education Article (Article XI) of the New York Constitution, New York State

Education Law § 3209, the federal McKinney-Vento Act, the Fourteenth Amendment to the U.S. Constitution, and 42 U.S.C. § 1983. Following briefing and oral argument, I denied the City’s motion to dismiss in advance of an evidentiary hearing on a preliminary injunction motion, concluding, *inter alia*, that plaintiffs had adequately pleaded that the City’s transition to remote learning without providing homeless students reliable means to access the internet created the kind of “barriers to the . . . attendance of homeless children in school or their receipt of comparable services” that New York Education Law § 3209 guards against. With the assistance of the Magistrate Judge, the case then settled prior to the evidentiary hearing. Following a fairness hearing, I certified the parties’ agreed-upon class pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure for the purpose of settling plaintiffs’ claims and approved the class settlement.

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2. *United States v. Sadr Nejad*, No. 18-cr-224, 2019 WL 6702361 (S.D.N.Y. Dec. 6, 2019); *United States v. Sadr Nejad*, 436 F. Supp. 3d 707 (S.D.N.Y. 2020); *United States v. Sadr Nejad*, 487 F. Supp. 3d 206 (S.D.N.Y. 2020); *United States v. Sadr Nejad*, 521 F.Supp.3d 438 (S.D.N.Y. 2021)

Ali Sadr Hashemi Nejad was criminally charged in a six-count indictment. The allegations in the indictment stemmed from payments allegedly routed from a Venezuelan state-owned energy company through banks in the United States to the Swiss accounts of entities owned by Sadr and his family. The Indictment alleged that these transactions violated the International Emergency Economic Powers Act (“IEEPA”) and the Iranian Transactions and Sanctions Regulations. This case was transferred to me following briefing of nine pretrial motions. In two separate opinions, I resolved all of these motions against Sadr, with the exception of his motions for suppression of search warrant evidence and for return of property, which I granted in part and reserved judgment on respectively. I found that a subset of documents the Government intended to rely on at trial were subject to suppression because they were seized following the conclusion of the

Government's responsiveness review and thus were outside of the scope of the search warrants. Following a two-week trial, the jury convicted Sadr of conspiring to defraud the United States, conspiring to violate the IEEPA, bank fraud, conspiring to commit bank fraud, and money laundering. It found him not guilty of conspiring to commit money laundering. After the trial, as a result of *Brady* violations, I vacated the guilty verdicts and the Government moved to dismiss the Indictment. Among other aspects of this case, with the culmination of this criminal trial coinciding with the March 2020 outbreak of COVID-19 in New York City, I fashioned procedures to allow an ill juror to deliberate remotely. This may have been the first such remote deliberation in a federal jury trial.

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3. *United States v. Pizarro*, No. 17-cr-151, 2018 WL 1737236 (S.D.N.Y. Apr. 10, 2018); *United States v. Pizarro*, No. 17-cr-151, 2019 WL 3406603 (S.D.N.Y. July 29, 2019)

Mr. Pizarro and Mr. Rivera were charged with participating in an attempted robbery, kidnapping, and murder of a federal cooperating witness in 2016. During pretrial proceedings, the defendants moved to sever counts against Pizarro from an earlier alleged robbery and to suppress evidence collected pursuant to orders issued under the Stored Communications Act ("SCA"). I denied the motions to sever, finding that severance was not warranted under either Rule 8 or Rule 14 of the Federal Rules of Criminal Procedure, and I denied the suppression motion, finding that Pizarro and Rivera failed to establish their standing to

challenge evidence obtained pursuant to SCA orders. Following a jury trial that lasted more than two weeks, the jury convicted Pizarro and Rivera on all counts. Following the trial, the defendants moved for a judgment of acquittal or, in the alternative, for a new trial, and I denied that motion. I sentenced the defendants to mandatory life imprisonment. Appeals of the criminal judgments are pending. *See* Nos. 19-2391, 19-2419 (2d Cir.).

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4. *United States v. Murgio*, No. 15-cr-769, 2017 WL 4685111 (S.D.N.Y. Oct. 18, 2017), *aff'd sub nom. United States v. Lebedev*, 932 F.3d 40 (2d Cir. 2019), *cert. denied sub nom. Gross v. United States*, 140 S. Ct. 1224 (2020); *United States v. Murgio*, 209 F. Supp. 3d 698 (S.D.N.Y. 2016)

This case involved an unlawful Bitcoin exchange that caused more than \$10 million in Bitcoin-related transactions to be processed illegally through financial institutions. Mr. Gross was charged with accepting more than \$150,000 in bribes as Chairman of the Board of a federal credit union that served primarily low-income residents in New Jersey. During pretrial proceedings, the defendants challenged the sufficiency and wording of the indictment, sought particulars from the Government, requested disclosure of certain information in advance of trial, and, in one case, sought a severance. I granted several requests for a bill of particulars, but otherwise denied all pretrial motions. One such motion required determining whether bitcoin constituted “funds” as that term is used in the federal law prohibiting the operation of unlicensed money transfer businesses. I concluded under the plain meaning of the statute, Bitcoin constituted funds and therefore denied the motion to dismiss. Two defendants, Mr. Lebedev and Gross, went to trial. Following a four-week jury trial, the jury returned guilty verdicts on all counts. Following the trial, Gross moved for a judgment of acquittal or, in the alternative, for a new trial, and I denied that motion. I sentenced Lebedev to 16 months’ imprisonment, supervised release, and forfeiture and Gross to 60 months’ imprisonment and three years’ supervised release. Both were ordered to pay \$126,771 in restitution jointly and severally with their convicted codefendants. The judgments of conviction, as well as Gross’s sentence, were later affirmed by the Second Circuit, and certiorari was denied.

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5. *United States v. Burrell*, No. 15-cr-95, 2020 WL 764887 (S.D.N.Y. Dec. 23, 2020); *United States v. Allen*, No. 15-cr-95, 2018 WL 1889759 (S.D.N.Y. Apr. 17, 2018)

I presided over a gang case involving 63 defendants, which is among the largest number of defendants on a single indictment in the history of Southern District of New York. Members of the Big Money Bosses street gang were charged with conspiring to commit acts of racketeering, conspiring to violate the narcotics laws of the United States, distributing narcotics near playgrounds and schools, and using firearms in furtherance of the charged conspiracies. In the pre-trial process, I coordinated and managed the appointment of counsel, bail hearings, arraignments, and guilty pleas. Following my denial of his motion to dismiss the indictment, defendant Mr. Allen proceeded to trial. Following a one-week jury trial, the jury returned guilty verdicts on all counts against Allen. Following the trial, Allen moved for a judgment of acquittal, and I denied that motion. I subsequently sentenced Allen to a total term of 72 months' imprisonment. Allen's judgment of conviction was later affirmed by the Second Circuit. *See United States v. Allen*, 831 F. App'x 580 (2d Cir. 2020). I sentenced the remaining defendants following guilty pleas to terms of imprisonment ranging from time served to 15-year sentences. Appeals stemming from these convictions and sentences have been affirmed by the Second Circuit. I occasionally still have proceedings with defendants in the case based on allegations of violations of supervised release.

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Counsel for Defendants: Nearly every member of the SDNY Criminal Justice Act (CJA) panel represented defendants in this case and a related matter involving a rival gang. Out of necessity, additional defense lawyers were brought in from the CJA panels in Eastern District of New York, the District of New Jersey, and the District of Connecticut.

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6. *United States v. Le*, No. 15-cr-38 (S.D.N.Y.), *aff'd*, 902 F.3d 104 (2d Cir. 2018)

Mr. Le was charged with attempting to acquire ricin on the dark web, as well as committing postal fraud and identity theft. Following a four-day jury trial, the jury returned guilty verdicts on all counts. I sentenced Le to a term of 192 months' imprisonment and five years of supervised release. The judgment of conviction was subsequently affirmed by the Second Circuit on all counts.

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7. *Buchwald v. Renco Grp.*, 539 B.R. 31 (S.D.N.Y. 2015), *aff'd sub nom. Matter of Magnesium Corp. of Am.*, 682 F. App'x 24 (2d Cir. 2017)

Plaintiff's bankruptcy trustee alleged that defendants had made fraudulent conveyances while insolvent. During pretrial proceedings, defendants moved to preclude testimony of two of the trustee's expert witnesses pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). I denied this motion with respect to one expert witness and granted it with respect to the other, finding the former expert's methodology an accepted and reliable means of valuing a business and finding the latter expert's proposed testimony outside the scope of his expertise. After resolution of numerous other motions in limine, the case proceeded to trial. Following a nearly four-week jury trial, the jury returned a unanimous verdict in plaintiff's favor on claims of fraudulent conveyance, aiding and abetting fraudulent conveyance, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and unjust enrichment and awarded plaintiff \$118 million. Following the verdict and award of damages, defendants moved for judgment as a matter of law or a new trial and plaintiff moved to amend the judgment, and I denied these motions. The judgment was subsequently affirmed by the Second Circuit.

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8. *Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GMBH*, No. 14-cv-585, 2014 WL 2526965 (S.D.N.Y. June 3, 2014); *Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GMBH*, No. 14-cv-585, 2015 WL 4002468 (S.D.N.Y. July 1, 2015), *aff'd*, 843 F.3d 48 (2d Cir. 2016); *Church & Dwight Co. v. SPD Swiss Precision Diagnostics GMBH*, No. 14-cv-585, 2018 WL 4253181 (S.D.N.Y. Sept. 5, 2018)

Church & Dwight, a corporation that sells home pregnancy tests, sued SPD, a competitor, alleging that SPD violated the Lanham Act, 15 U.S.C. § 1125a, and related state law by falsely advertising that its home pregnancy kit could estimate how many weeks a person has been pregnant. I denied SPD's motion to dismiss, concluding that the Lanham Act claims asserted were not "precluded" by the Food, Drug, and Cosmetic Act and the doctrine of primary jurisdiction did not counsel in favor of dismissing the action. After a nearly two-week bench trial on liability, I ruled in favor of Church & Dwight, concluding that SPD engaged in false advertising in violation of the Lanham Act and New York state law and that it engaged in intentional deception of an egregious nature. SDP then filed an interlocutory appeal, challenging the decision on liability. After the Second Circuit affirmed the judgment on liability, I then conducted a separate three-day bench trial to calculate damages and entered judgment for Church & Dwight in the amount of nearly \$10 million.

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9. *United States v. Pham*, No. 12-cr-423 (S.D.N.Y.)

Mr. Pham, an individual who worked as a graphic designer for media produced by the terrorist group al-Qaeda in the Arabian Peninsula, was charged with providing and conspiring to provide material support to a foreign terrorist organization, receiving and conspiring to receive military-type training from a foreign terrorist organization, and possessing, carrying, and using a firearm. Following significant pretrial preparations, including the briefing and review of motions pertaining to classified information, Pham pleaded guilty to three counts charged in the indictment shortly before trial was set to begin. I sentenced Pham to a 40-year term of imprisonment followed by a lifetime term of supervised release. Subsequently, the counts of conviction were vacated on consent of the parties following the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), and the plea agreement was nullified. The Government has filed a superseding indictment and the case is again in a pretrial posture.

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10. *Meda AB v. 3M Co. et al.*, 969 F. Supp. 2d 360 (S.D.N.Y. 2013)

Following an \$854 million acquisition of a pharmaceutical company, Meda AB sued 3M, alleging that 3M breached the acquisition agreement, as well as the implied covenant of good faith and fair dealing. Meda AB also alleged that 3M defrauded Meda AB by failing to disclose that its top-selling drug was due for a price reduction and therefore misrepresenting the value of the acquired company. Following an eight-day bench trial, which included expert testimony on French pharmaceutical regulatory law, I ruled that 3M was not liable because Meda AB neither established any breach of the acquisition agreement or the implied covenant of good faith and fair dealing, nor did it establish scienter for its fraud claim by clear and convincing evidence. Meda AB filed a notice of appeal in the Second Circuit, but the parties subsequently filed a stipulation withdrawing the appeal.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. *United States v. Sadr Nejad*, 18-cr-224, 2020 WL 5549931 (S.D.N.Y. Sept. 16, 2020); 2021 WL 681427 (S.D.N.Y. Feb. 17, 2021)

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2. *Qatar v. First Abu Dhabi Bank PJSC*, 432 F. Supp. 3d 401 (S.D.N.Y. 2020)

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3. *United States v. Stephens*, 447 F. Supp. 3d 63 (S.D.N.Y. 2020)

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4. *Vazquez Perez v. Decker*, No. 18-cv-10683, 2020 WL 7028637 (S.D.N.Y. Nov. 30, 2020)

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5. *Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266 (S.D.N.Y. May 23, 2018)

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6. *United States v. Wey*, 256 F. Supp. 3d 355 (S.D.N.Y. 2017)

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7. *United States v. Pena*, 161 F. Supp. 3d 268 (S.D.N.Y. 2016)

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8. *Ace Securities Corp. Home Equity Loan Trust, Series 2007-HE3 ex rel. HSBC Bank USA, National Association v. DB Structured Products, Inc.*, 5 F. Supp. 3d 543 (S.D.N.Y. 2014)

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9. *Agence France Presse v. Morel*, 934 F. Supp. 2d 547 (S.D.N.Y. 2013)

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10. *American Broadcasting Cos., Inc., et al v. Aereo*, 874 F. Supp. 2d 373  
(S.D.N.Y. 2012)

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- e. Provide a list of all cases in which certiorari was requested or granted.

I am not notified when certiorari is sought in one of my cases unless it is a direct appeal to the Supreme Court. Through my research, I have determined the following:

I have had one case where a petition for certiorari was granted and the Second Circuit's decision, which had affirmed my decision, was reversed by the Supreme Court.

*Am. Broad. Companies, Inc. v. Aereo, Inc.*, 874 F. Supp. 2d 373, 375 (S.D.N.Y. 2012), *aff'd sub nom. WNET, Thirteen v. Aereo, Inc.*, 712 F.3d 676 (2d Cir. 2013), *rev'd and remanded sub nom. Am. Broad. Companies, Inc. v. Aereo, Inc.*, 573 U.S. 431 (2014).

For the following cases, certiorari was sought and denied.

*Shim-Larkin v. City of New York*, No. 16-cv-6099, 2019 WL 1409897 (S.D.N.Y. Mar. 27, 2019), *petition denied sub nom., In re Shim-Larkin*, No. 20-4254, 2021

WL 2222835 (2d Cir. Apr. 7, 2021), *cert. denied sub nom. Shim-Larkin v. District Court*, No. 20-8178, 2021 WL 4508098 (U.S. Oct. 4, 2021)

*Rowell v. Ferreira*, No. 16-cv-6598, 2019 WL 4509048 (S.D.N.Y. Sept. 19, 2019), *aff'd*, 830 F. App'x 698 (2d Cir. 2020), *cert. denied*, No. 20-1799, 2021 WL 4507865 (U.S. Oct. 4, 2021).

*United States v. Jones*, No. 16-cr-0553, 2018 WL 1115778 (S.D.N.Y.), *aff'd*, 965 F.3d 190 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021).

*Charles v. Seinfeld*, 410 F. Supp. 3d 656 (S.D.N.Y. 2019), *aff'd*, 803 F. App'x 550 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 959 (2020).

*Greer v. Mehiel*, No. 15-cv-6119, 2018 WL 1626345 (S.D.N.Y. Mar. 29, 2018), *aff'd*, 805 F. App'x 25 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 136 (2020).

*United States v. Gross*, No. 15-cr-769, 2017 WL 4685111 (S.D.N.Y. Oct. 18, 2017), *aff'd sub nom. U.S. v. Lebedev*, 932 F.3d 40 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 1224 (2020).

*Adam v. Barr*, No. 18-cv-2106, 2019 WL 1426991 (S.D.N.Y. Mar. 29, 2019), *aff'd*, 792 F. App'x 20 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 1119 (2020).

*United States v. Walters*, No. 15-cr-644 (S.D.N.Y.), *aff'd*, 775 F. App'x 25 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 668 (2019).

*Lue v. JPMorgan Chase & Co.*, No. 16-cv-3207, 2018 WL 1583295 (S.D.N.Y. Mar. 27, 2018), *aff'd*, 768 F. App'x 7 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 388 (2019).

*In re BioScrip, Inc. Securities Litigation*, 273 F. Supp. 3d 474 (S.D.N.Y. 2017), *aff'd sub nom. Fresno County Employees' Retirement Association v. Isaacson/Weaver Family Trust*, 925 F.3d 63 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 385 (2019).

*United States v. Le*, No. 15-cr-38 (S.D.N.Y.), *aff'd*, 902 F.3d 104 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 1274 (2019).

*Thompson v. United States*, No. 16-cv-3468, 2018 WL 327249 (S.D.N.Y. Jan. 3, 2018), *appeal dismissed*, No. 18-212, 2018 WL 7135352 (2d Cir. June 27, 2018), *cert. denied*, 139 S. Ct. 296 (2018).

*Sabeniano v. Citibank, N.A., New York*, No. 16-cv-1723, 2017 WL 4326069 (S.D.N.Y. Sept. 1, 2017), *appeal dismissed*, No. 17-3181, 2018 WL 1614252 (2d Cir. Feb. 14, 2018), *cert. denied*, 139 S. Ct. 263 (2018).



*United States v. Knox*, No. 12-cr-829 (S.D.N.Y.), *aff'd*, 687 F. App'x 51 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 224 (2017).

*Garanin v. New York City Housing Preservation & Development*, No. 15-cv-3169, 2016 WL 1690301 (S.D.N.Y. Mar. 30, 2016), *aff'd*, 673 F. App'x 122 (2d Cir. 2016), *cert. denied*, 138 S. Ct. 1004 (2018).

*Buchwald v. Renco Group*, 539 B.R. 31 (S.D.N.Y. 2015), *aff'd sub nom. Matter of Magnesium Corp. of America*, 682 F. App'x 24 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 329 (2017).

*United States v. Cook*, No. 13-cr-777, 2014 WL 12681367 (S.D.N.Y. Nov. 17, 2014), *aff'd sub nom. United States v. Gill*, 674 F. App'x 56 (2d Cir. 2017), *cert. denied*, 137 S. Ct. 2142 (2017).

*United States v. Parrilla*, No. 13-cr-360, 2014 WL 1621487 (S.D.N.Y. Apr. 22, 2014), *aff'd sub nom. United States v. Kirk Tang Yuk*, 885 F.3d 57 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 342 (2018).

*O'Callaghan v. New York Stock Exchange*, No. 12-cv-7247, 2013 WL 3984887 (S.D.N.Y. Aug. 2, 2013), *aff'd*, 563 F. App'x 11 (2d Cir. 2014), *cert. denied*, 135 S. Ct. 216 (2014).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

My decisions have been reversed, vacated, or remanded in the following cases:

*Everard Findlay Consulting, LLC v. Republic of Suriname*, No. 18-cv-8926, 2020 WL 2086092 (S.D.N.Y. Apr. 30, 2020), *vacated*, 831 F. App'x 599 (2d Cir. 2020). I held that a public relations firm's work on a strategic branding campaign for the Republic of Suriname did not fall within the "commercial activity" exception to the Foreign Sovereign Immunities Act, and thus that the court lacked jurisdiction over the firm's claims for breach of contract. The Second Circuit vacated in light of its decision in *Pablo Star Ltd. v. Welsh Government*, 961 F.3d 555 (2d Cir. 2020)—decided after I had issued my decision—which addressed the commercial activity exception for activities related to the promotion of tourism.

*Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 403 F. Supp. 3d 343 (S.D.N.Y. 2019), *rev'd*, 984 F.3d 30 (2d Cir. 2020). I held that a nonprofit was entitled to obtain statistical data on gun suicides from the ATF's Firearms Tracing System (FTS) under the Freedom of Information Act. The case turned on the application of the OPEN FOIA Act of

2009 to a series of budget riders limiting disclosure of FTS data to law enforcement purposes. The OPEN FOIA Act required any statute enacted after its effective date to expressly invoke the Freedom of Information Act's statutory exemption provision to create a statutory exemption to disclosure. The ATF argued before me that the budget riders adopted before the OPEN FOIA Act—and thus not subject to its requirement—remained in effect. I concluded that they did not. The Second Circuit agreed with my analysis that Congress had impliedly repealed the budget riders adopted before the OPEN FOIA Act. However, the Second Circuit exercised its discretion to reach an argument that it acknowledged the ATF raised for the first time on appeal. It held that a later-enacted rider exempted FTS data from disclosure even though that rider did not conform to the OPEN FOIA Act. On remand, I dismissed the action.

*Rasmy v. Marriott Int'l, Inc.*, 343 F. Supp. 3d 354 (S.D.N.Y. 2018), *vacated*, 952 F.3d 379 (2d Cir. 2020). The plaintiff brought this action against his former employer asserting claims for racial, religious, and national origin discrimination. I granted summary judgment for the employer on all federal claims and declined to exercise supplemental jurisdiction over the remaining state and city claims. The Second Circuit vacated, holding that “(1) a hostile work environment claim does not require a plaintiff to show that he or she had been physically threatened by the defendant or that his or her work performance has suffered as result of the claimed hostile work environment; (2) discriminatory conduct not directly targeted at the plaintiff (*e.g.*, discriminatory remarks made in the plaintiff's presence though not directly aimed at such employee) can contribute to an actionable hostile work environment; and (3) dismissal of Rasmy's retaliation claim by summary judgment was improper because Rasmy's submission in opposition to the motion presented disputed issues of material fact that should be resolved by a jury.” The case was remanded and currently waiting on a trial date to be set through the Clerk's Office centralized scheduling of jury trials under the SDNY COVID protocols.

*Kashef v. BNP Paribas SA*, 316 F. Supp. 3d 770 (S.D.N.Y. 2018), *vacated sub nom. Kashef v. BNP Paribas S.A.*, 925 F.3d 53 (2d Cir. 2019). The plaintiffs in this case are alleged victims of atrocities at the hands of the Sudanese regime. They brought suit against BNPP, which previously pled guilty to evading U.S. sanctions on Sudan. The plaintiffs bring various tort claims under New York law alleging that BNPP conspired with and aided and abetted the Sudanese regime in its commission of atrocities, including murder, mass rape, and torture. I granted BNPP's motion to dismiss, concluding that precedent required dismissal pursuant to the act of state doctrine, which prohibits United States courts from declaring invalid an official act of a foreign sovereign. The Second Circuit vacated, holding that the human rights abuses did not qualify as official acts of the Sudanese Government because they contravened Sudanese and international law. Following remand, BNPP renewed its motion to dismiss. I concluded that New York choice of law principles require the application of Swiss law to the claims.

Applying Swiss law, I denied BNPP's motion to dismiss the secondary tort law claims. The parties are now engaged in pre-trial discovery.

*United States v. Laboy*, No. 16-cr-669, 2017 WL 6547903 (S.D.N.Y. Dec. 20, 2017), *vacated*, No. 18-316, 2018 WL 7200834 (2d Cir. Nov. 13, 2018). The defendant pled guilty to possessing a firearm after having been convicted of a felony. At sentencing, the parties disputed the effect of the defendant's 2011 conviction for criminal sale of a controlled substance in the fifth degree on the applicable sentencing guideline calculation. The defendant argued that his 2011 conviction could not be used to enhance his sentence under the "categorical approach." Under that approach, the enhancement would not apply because the defendant could have been convicted under the state law provision for distribution of a drug that was not criminalized under federal law. I rejected the defendant's argument and held that the Guidelines definition for "controlled substance offense" incorporated state offenses as qualifying predicates. I sentenced the defendant to a term of 60 months imprisonment. The Second Circuit vacated and remanded for resentencing in light of *United States v. Townsend*, 897 F.3d 66 (2d Cir. 2018)—decided after my decision—which held that the phrase "controlled substance offense" in the Guidelines included only offenses related to substances illegal under federal law. Following remand, I resentenced the defendant to a term of 42 months imprisonment.

*Valdiviezo v. City of New York*, No. 15-cv-3902, 2017 WL 1191528 (S.D.N.Y. Mar. 29, 2017), *aff'd in part and vacated in part sub nom. Valdiviezo v. Boyer*, 752 F. App'x 29 (2d Cir. 2018). The plaintiff sued under 42 U.S.C. § 1983 alleging that several incidents that occurred while he was being held in pre-trial detention violated his constitutional rights. I dismissed the claims, holding that the plaintiff failed to allege civil rights violations against correctional officers, medical staff, and the City of New York based on their willful indifference to his conditions of confinement. The Second Circuit affirmed in part and vacated in part. It agreed with my analysis of claims based on officer training and a delay in providing medical treatment, but held that claims related to unsanitary conditions and conduct by medical staff should be allowed to proceed. On remand, the defendants filed a motion for summary judgment arguing that the surviving claims were barred by a general release that the plaintiff had signed. I granted the motion for summary judgment. The plaintiff's appeal was dismissed by the Second Circuit.

*L.K. v. New York City Dep't of Educ.*, No. 14-cv-7971, 2016 WL 899321 (S.D.N.Y. Mar. 1, 2016), *aff'd in part, remanded in part*, 674 F. App'x 100 (2d Cir. 2017). In this Individuals with Disabilities Education Act (IDEA) case, I held that while the parents were entitled to partial reimbursement, some of the supplemental services that a student received were not necessary for his educational progress and thus were not reasonably required to be reimbursed under the IDEA. On appeal, the Second Circuit agreed that the parents were not entitled to reimbursement for services provided in excess of a free appropriate

public education. The Court of Appeals observed, however, that it was unclear from the record whether I intended to deny the parents reimbursement for an additional hour and a half of occupational therapy that was based on a different program, and it remanded the case so that I could make that determination. The Court of Appeals also observed that I erred in not determining whether the amount the student's parents paid was reasonable and should be reimbursed in full or whether the amount paid was unreasonable. And finally, it agreed with the parties that I should not have declined to reach the question over which particular services merit reimbursement as applied to this student, and it observed that I should consider that question on remand. On consent, the case was remanded to the State Review Officer.

*United States v. Knox*, No. 14-cr-725, *aff'd and remanded*, 687 F. App'x 51 (2d Cir. 2017). After a three-day jury trial, the defendant was convicted of being a felon in possession of a firearm. As he was on supervised release at the time of the offense, he was also found to be in violation of supervised release. The defendant brought several substantive and procedural challenges on appeal. The Second Circuit affirmed the judgment of conviction. However, it noted that the defendant's sentence on the violation of supervised release was in error. Specifically, the Probation Department had determined that the violation constituted a "crime of violence" under the Career Offender Guidelines and classified the violation as Grade A. Both parties agreed with that determination, and I accepted it. On appeal, the Government conceded error, and the Second Circuit observed that the defendant should have received a supervised release sentenced based on a Grade B violation. The Court of Appeals thus remanded for the limited purpose of re-sentencing on the violation of supervised release.

*Celltrace Commc'ns Ltd. v. Acacia Rsch. Corp.*, No. 15-cv-4746, 2016 WL 3407848 (S.D.N.Y. June 16, 2016), *aff'd in part, vacated in part, and remanded*, 689 F. App'x 6 (2d Cir. 2017). I granted the defendant's motion to compel arbitration after determining that the agreement between the parties evidenced an intent to adjudicate disputes arising out of the agreement through binding arbitration. In doing so, I dismissed the action. On appeal, the Second Circuit affirmed that both parties had agreed to arbitration. But it determined that because a stay was requested, I erred in dismissing the case instead of entering a stay. 687 F. App'x at 55. The Court of Appeals thus vacated the order of dismissal and remanded for entry of a stay, and in doing so it noted that it need not disturb my ruling in any other respect.

*Braintree Labs. Inc. v. Breckenridge Pharm., Inc.*, 170 F. Supp. 3d 555 (S.D.N.Y. 2016), *rev'd*, 688 F. App'x 905 (Fed. Cir. 2017). I held that a colon cleansing solution did not infringe a patent held by a rival manufacturer because the amount of solution required to be used differed between the products. The Federal Circuit reversed, holding that a prior decision precluded arguments related to construction of the patent's claims.

*Rothstein v. GMAC Mortg., LLC*, No. 12-cv-3412, 2013 WL 5437648 (S.D.N.Y. Sept. 30, 2013), *rev'd sub nom. Rothstein v. Balboa Ins. Co.*, 794 F.3d 256 (2d Cir. 2015). I held that homeowners could pursue claims against mortgage loan servicers for overcharging them for lender-placed insurance. Acknowledging a split of authority as to whether such claims were barred by the filed rate doctrine, I certified my order for interlocutory appeal. The Second Circuit reversed, holding that the homeowners' claims would undermine regulations of lender-placed insurance rates, even though those regulations did not expressly cover reimbursement rates charged to homeowners.

*Wat Bey v. City of New York*, Nos. Nos. 99-cv-3873, 01-cv-9406, 2013 WL 12082743 (S.D.N.Y. Sept. 4, 2013), *aff'd in part and rev'd in part sub nom. Rivera v. City of New York*, 594 F. App'x 2 (2d Cir. 2014), *and sub nom. Bey v. City of New York*, 581 F. App'x 95 (2d Cir. 2014). Following a jury verdict in favor of New York City employees on claims that the City discriminated against them on the basis of their being Moorish-Americans, I held that neither party was entitled to a new trial on damages and that the evidence did not support a punitive damages award. The parties cross-appealed. The Second Circuit affirmed in predominant part, but vacated my ruling on punitive damages, reasoning that the City waived that issue by failing to raise it before the verdict.

*Int'l Chartering Servs., Inc. v. Eagle Bulk Shipping Inc.*, No. 12-cv-3463 (S.D.N.Y. Mar. 6, 2013), *rev'd*, 557 F. App'x 81, 82 (2d Cir. 2014). I held that ship brokers were not required to arbitrate their claims against shipping operators because the brokers were not parties to the charter agreements that contained arbitration clauses. The Second Circuit reversed and remanded to determine whether federal maritime law or English law governed the dispute. While the Second Circuit agreed with my analysis under federal maritime law, it held that the arbitration clauses would apply to the brokers under English law. The Second Circuit acknowledged in a footnote that the choice-of-law issue was not squarely presented to the district court. Following remand the case settled.

*Blue Whale Corp. v. Grand China Shipping Dev. Co.*, No. 12-cv-2213, 2013 WL 12129270 (S.D.N.Y. Jan. 11, 2013), *vacated*, 722 F.3d 488 (2d Cir. 2013). I held that English substantive law applied to an alter-ego claim in a dispute over a shipping contract. The Second Circuit reversed, holding that the alter-ego claim was not subject to the contract's choice-of-law provision, and that federal common law therefore governed that issue. On remand the parties stipulated to dismissal.

*Pray v. Billingsley*, No. 12-cv-123 (S.D.N.Y. Sept. 6, 2012), *aff'd in part and vacated in part*, 549 F. App'x 31 (2d Cir. 2014). I held that I lacked jurisdiction over a habeas petition that argued the petitioner should have been eligible for parole. The Second Circuit agreed that I lacked jurisdiction over a challenge to the imposition of the petitioner's sentence but said a challenge to the execution of

that sentence should instead be dismissed on the merits. It vacated in part the dismissal for lack of jurisdiction and remanded for dismissal on the merits.

*Am. Broad. Companies, Inc. v. AEREO, Inc.*, 874 F. Supp. 2d 373 (S.D.N.Y. 2012), *aff'd sub nom. WNET, Thirteen v. Aereo, Inc.*, 712 F.3d 676 (2d Cir. 2013), *rev'd sub nom. Am. Broad. Companies, Inc. v. Aereo, Inc.*, 573 U.S. 431 (2014). I held that Second Circuit precedent foreclosed the plaintiffs' claim that the retransmission of live television broadcasts over the internet infringed its exclusive public performance rights. The Second Circuit affirmed, reasoning that I had correctly applied its precedent that a playback transmission to a single television subscriber did not qualify as a public performance within the meaning of the Copyright Act. The Supreme Court held that transmission to members of the public through separate transmissions nonetheless amounted to a public performance and reversed.

My decision was affirmed on other grounds in the following case:

*Olagues v. Perceptive Advisers LLC*, No. 15-cv-1190, 2017 WL 3605511 (S.D.N.Y. July 26, 2017), *aff'd sub nom. Olagues v. Perceptive Advisors LLC*, 902 F.3d 121 (2d Cir. 2018). I held that a seller of securities was not required to disgorge "short-swing" profits from certain call and put options. I reasoned that under applicable financial industry rules, the seller's call options expired only after it became irrevocably bound to exercise its put options, dropping it below the ownership threshold required to qualify as a statutory insider. On appeal, the Second Circuit expressed "doubts as to whether the district court successfully located the respective moments at which the option holders were irrevocably bound to exercise the puts or let the calls expire." 902 F.3d at 130. However, it affirmed on the alternative ground that a party's status as an insider depends on its ownership share when an option expires, not when it becomes irrevocably bound to complete the transaction.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

With the exception of any sealed orders, all my opinions, memoranda, and orders are publicly docketed on the Court's Electronic Case Filing System (ECF).

Some of my opinions are available through electronic databases including Westlaw and LEXIS. I understand that these services determine which opinions to select for publication. I have authored 1,546 opinions, of which 132 are listed in the Westlaw database as reported.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

*United States v. Maxwell*, No. 20-CR-330, --- F. Supp. 3d ---, 2021 WL 2776658 (S.D.N.Y. June 25, 2021)

*Vazquez Perez v. Decker*, No. 18-cv-10683, 2020 WL 7028637 (S.D.N.Y. Nov. 30, 2020)

*Coronel v. Decker*, 449 F. Supp. 3d 274 (S.D.N.Y. 2020)

*Common Cause/New York v. Brehm*, 432 F. Supp. 3d 285 (S.D.N.Y. 2020)

*Medley v. Decker*, No. 18-cv-7361, 2019 WL 7374408 (S.D.N.Y. Dec. 11, 2019)

*Natural Resources Defense Council v. Department of Interior*, 410 F. Supp. 3d 582 (S.D.N.Y. 2019)

*Yunus v. Robinson*, No. 17-cv-5839, 2019 WL 168544 (S.D.N.Y. Jan. 11, 2019)

*Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266 (S.D.N.Y. May 23, 2018)

*Collins v. City of New York*, 295 F. Supp. 3d 350 (S.D.N.Y. 2018)

*Ahmed v. Decker*, No. 17-cv-0478, 2017 WL 6049387 (S.D.N.Y. Dec. 4, 2017)

*United States v. Gross*, No. 15-cr-769, 2017 WL 4685111 (S.D.N.Y. Oct. 18, 2017), *aff'd*, 932 F.3d 44 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 1224 (2020)

*United States v. Wey*, 256 F. Supp. 3d 355 (S.D.N.Y. 2017)

*Melrose Credit Union v. City of New York*, 247 F. Supp. 3d 356 (S.D.N.Y. 2017), *aff'd*, 889 F.3d 40 (2d Cir. 2018)

*Correction Officers' Benevolent Ass'n v. City of New York*, 192 F. Supp. 3d 369 (S.D.N.Y. 2016)

*Fortunato v. Liebowitz*, No. 10-cv-02681, 2012 WL 6628028 (S.D.N.Y. Dec. 20, 2012)

*Velvet Underground v. Andy Warhol Foundation for the Visual Arts, Inc.*, 890 F. Supp. 2d 398 (S.D.N.Y. 2012)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have sat by designation on the Second Circuit one day a year most years since

2013. I have not authored any opinions while sitting by designation. Below are citations to all cases in which I sat by designation:

*Tompkins v. Metro-N. Commuter R.R. Co.*, 983 F.3d 74 (2d Cir. 2020)

*United States v. Archer*, 977 F.3d 181 (2d Cir. 2020)

*Axon v. Florida's Nat. Growers, Inc.*, 813 F. App'x 701 (2d Cir. 2020)

*Enoh v. Barr*, 794 F. App'x 109 (2d Cir. 2020)

*Thompson v. United States*, 795 F. App'x 15 (2d Cir. 2019)

*Calle-Crespo v. Barr*, 792 F. App'x 885 (2d Cir. 2019)

*Xerox Corp. v. JCTB Inc.*, 787 F. App'x 43 (2d Cir. 2019)

*Negron v. Bank of Am. Corp.*, 768 F. App'x 35 (2d Cir. 2019)

*United States Underwriters Ins. Co. v. Orion Plumbing & Heating Corp.*, 765 F. App'x 534 (2d Cir. 2019)

*Bernardino v. Barnes & Noble Booksellers, Inc.*, 763 F. App'x 101 (2d Cir. 2019)

*United States v. Burke*, 756 F. App'x 93 (2d Cir. 2019)

*Simon v. City of New York*, 893 F.3d 83 (2d Cir. 2018)

*United States v. Rodriguez*, 727 F. App'x 725 (2d Cir. 2018)

*United States v. Wiseberg*, 727 F. App'x 1 (2d Cir. 2018)

*Chris H. v. New York*, 714 F. App'x 83 (2d Cir. 2018)

*Dynamic Concepts, Inc. v. Tri-State Surgical Supply & Equip. Ltd.*, 716 F. App'x 5 (2d Cir. 2017)

*Franchino v. Terence Cardinal Cook Health Care Ctr., Inc.*, 692 F. App'x 39 (2d Cir. 2017)

*Jones v. Cty. of Westchester*, 678 F. App'x 48 (2d Cir. 2017)

*Ultegra LLC v. Mystic Fire Dist.*, 676 F. App'x 33 (2d Cir. 2017)

*Phillips v. Boente*, 674 F. App'x 106 (2d Cir. 2017)



*Gaffney v. Perelmuter*, No. 16-3196, 2017 WL 4127922 (2d Cir. Jan. 11, 2017)

*Rodriguez v. Vill. Green Realty, Inc.*, 788 F.3d 31 (2d Cir. 2015)

*Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92 (2d Cir. 2015)

*Pope Investments II, LLC v. Deheng Law Firm*, 586 F. App'x 1 (2d Cir. 2014)

*United States v. Truman*, 581 F. App'x 26 (2d Cir. 2014)

*In re DPH Holdings Corp.*, 580 F. App'x 10 (2d Cir. 2014)

*Faktorovich v. Mem'l Sloan-Kettering Cancer Ctr.*, 578 F. App'x 41 (2d Cir. 2014)

*Z.C. v. Wal-Mart Stores, Inc.*, 574 F. App'x 52 (2d Cir. 2014)

*Cotzojay v. Holder*, 725 F.3d 172 (2d Cir. 2013)

*Pretzantzin v. Holder*, 725 F.3d 161 (2d Cir. 2013), *as amended*, 736 F.3d 641 (2d Cir. 2013)

*Rinehart v. Akers*, 722 F.3d 137 (2d Cir. 2013)

*Molchatsky v. United States*, 713 F.3d 159 (2d Cir. 2013) (per curiam)

*United States v. Garcia*, 521 F. App'x 22 (2d Cir. 2013)

*United States v. Reyes-Nieto*, 520 F. App'x 29 (2d Cir. 2013)

*Ceparano v. United States*, 519 F. App'x 62 (2d Cir. 2013)

*Malcolm v. Honeoye Falls Lima Cent. Sch. Dist.*, 517 F. App'x 11 (2d Cir. 2013)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I review all cases as they are assigned to me to screen for whether I have a relationship with any party or lawyer that may require consideration of recusal. Additionally, my court employs an “automatic” electronic recusal system by which my docket is monitored daily to assess whether any of the cases assigned to me involves a party with which I have a financial or personal relationship.

I have searched my case files, ECF, electronic databases, and the clerk’s office records and have located the following recusal matters:

My recusal was requested by a party in the following 6 cases:

The pro se plaintiff in *Jackson v. Stanford*, No. 16-cv-09702, made a motion for recusal on the grounds of favoritism towards the defendants after I denied Plaintiff’s motion for reconsideration of an order granting judicial immunity to a defendant, as well as plaintiff’s motion for a writ of habeas corpus, injunctive relief, and a judgment of default against another defendant. I denied the motion in an Order at Dkt. No. 53.

The pro se plaintiff in *Shim-Larkin v. City of New York*, No. 16-cv-6099, made a motion for recusal on the grounds of favoritism towards the defendant after I determined in an opinion that the magistrate judge had erred in imposing certain sanctions against the defendant. I denied the request in an opinion. *See Shim-Larkin v. City of New York*, No. 16-cv-6099, 2020 WL 7646889 (S.D.N.Y. Dec. 23, 2020).

The pro se plaintiff in *Lue v. JPMorgan Chase & Co.*, No. 16-cv-3207, made a motion for recusal on the grounds of incompetence and bias after I denied her motion for an entry of default due to defective service of the summons and complaint. I denied the motion in an Order at Dkt. No. 43.

The Defendants in *De Seto v. Slaine et al.*, No. 15-cv-01118, filed a letter seeking a pre-motion conference for a potential recusal motion. The letter indicated that they believed that my recusal may be required because of certain academic publications written by my spouse and connections that my spouse had with co-counsel for the plaintiff. I researched the question and sought guidance from colleagues. At a conference with the parties, I provided my views that I did not believe recusal was appropriate. Dkt. No. 27. I explained my view that there was not a basis for a reasonable observer to believe that the views expressed by my

spouse are my own, nor that she had any relationship with co-counsel for the plaintiff that would be cause to reasonably question my impartiality. Nevertheless, I informed counsel for the defendants that if they disagreed with my stated views on the recusal issue, they could file a formal motion to recuse. No such motion was filed.

The pro se plaintiff in *Snyder v. Fisher et al.*, No. 14-cv-4989, made a motion for recusal on the grounds that the Clerk's Office provided plaintiff with copies of the complaint that were double-sided instead of single-sided and that the Court did not provide her enough time to serve the defendants. I denied the motion in an Order at Dkt. No. 9.

The pro se plaintiff in *McPherson v. Plaza Athenee, NYC*, No. 12-cv-0785, made a motion for recusal on the grounds of favoritism towards the defendants after I denied her motion to remand the case to state court. I denied the motion in an Order at Dkt. No. 25.

I sua sponte recused myself from the following 15 cases:

*Pro Music Rights, LLC v. Apple, Inc.*, 19cv11599: I own individual stock in the defendant company. After reviewing the Code of Conduct for United States Judges, I determined that recusal was required.

*Doe v. Indyke et al.*, 19cv8673: I learned that a lawyer in the case was a friend with whom I regularly socialize. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Doe v. New York University*, 19cv744: The defendant, New York University, is my spouse's employer. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Chodakowski v. Annucci*, 19cv248: This was a post-conviction challenge to a state court criminal judgment. Upon reviewing the record, I learned that the state court judge who presided over the criminal case was a friend with whom I regularly socialize. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Doe v. The Trustees of Columbia University*, 18cv7831: I learned that a lawyer in the case was a friend with whom I regularly socialize. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Ragbir v. Sessions, III, et al.*, 18cv236: The Petitioner in this case was represented by attorneys from NYU School of Law's clinical program and under the auspices

of Washington Square Legal Services, the clinical program's legal entity. My spouse operates her NYU School of Law clinic under the auspices of Washington Square Legal Services. After reviewing the Code of Conduct for United States Judges, I recused.

*Brennan Center for Just. et al. v. U.S. Dep't of Just. et al.*, 17cv6335: The plaintiff in this case is affiliated with NYU School of Law where my spouse is employed and I am an adjunct professor. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Institutional Investor, LLC v. Alphadyne Asset Management LLC et al.*, 17cv354: I learned that a lawyer in the case was a friend with whom I regularly socialize. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Sacerdote et al. v. New York University*, 16cv6284 (and related case: 17cv8834): The defendant, New York University, is my spouse's employer. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Gaynor v. The City of New York et al.*, 13cv8931: The attorney in the case was an adjunct professor of law at the clinical program at NYU School of law where my spouse teaches and I am an adjunct professor. Under the attorney's supervision, students in NYU's clinical law program were working on this case under the auspices of Washington Square Legal Services, which is the legal entity under which my spouse's clinic operates. After reviewing the Code of Conduct for United States Judges, I recused.

*Harris Interactive Inc. v. Chirag Vyas*, 13cv5029: I learned that my first cousin was a lawyer in the case. After reviewing the Code of Conduct for United States Judges, I recused.

*Mastr. Adjustable Rate Mortgages Trust 2006-OA2 et al. v. UBS Real Estate Securities Inc.*, 12cv7322: I learned that a lawyer in the case was a friend with whom I regularly socialized. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*Capsolas v. Pasta Resources, Inc., et al.*, 12cv5533: I learned that a lawyer in the case was a friend with whom I regularly socialized. After reviewing the Code of Conduct for United States Judges, I determined that my impartiality might reasonably be questioned and recused.

*McPherson v. Nathan*, 12cv3115: I presided over a case in which a pro se plaintiff brought a complaint against a former employer. Displeased with my

rulings, the plaintiff sued me in state court. The case against me was removed to federal court in SDNY and was randomly assigned to me. I immediately recused.

*Fernbach v. 3815 9<sup>th</sup> Ave. Meat and Produce Corp.*, 12cv823: I learned that an issue in the case involve a challenge to the President's recess appointment of members of the NLRB. I had recently (two years prior) been employed in the White House Counsel's Office, which was publicly involved in the issue being presented. I conducted research and sought guidance from the AO. Although I concluded that recusal was not mandatory, I was concerned whether my impartiality might reasonably be questioned given the involvement of the office in which I was recently employed. After I discussed my concern with the then-Chief Judge of SDNY, I chose to recuse.

*Mohamed v. State of New York, et al.*, 11cv6734: The complaint made allegations of impropriety against former colleagues of mine in the Office of the Attorney General of New York, where I had recently been employed. I researched the question and sought guidance from the AO. I determined that my impartiality might reasonably be questioned and recused.

**15. 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.

From 2010 to 2011, I served as Special Counsel to the Solicitor General of New York. I was appointed by New York Attorney General Andrew Cuomo on September 13, 2010.

I served as a Special Assistant to the President and Associate White House Counsel from January 2009 to July 2010. I was appointed by President Barack Obama on January 22, 2009.

I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed 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 Voter Protection Advisor (unpaid), Obama-Biden Campaign for Change; February – November 2008. I provided volunteer legal advice to the

campaign General Counsel on election law and helped to recruit and organize volunteer lawyers during the primaries and general election campaign. I also served on the LGBT issues policy committee.

Obama Administration DOJ Transition Team, volunteer member.

Volunteer Lawyer, Maryland Democratic Party, November 2006.

Legal Advisor/Associate Counsel (unpaid), Kerry-Edwards 2004, Washington D.C., August – November 2000 (on leave from WilmerHale). I provided volunteer legal advice to the campaign General Counsel on election law and I helped to recruit and organize volunteer lawyers. I also served as a volunteer policy advisor on civil rights issues.

Volunteer Lawyer, Democratic National Committee, November 2002.

16. **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 law clerk to Supreme Court Justice John Paul Stevens from 2001 to 2002 and to Ninth Circuit Court of Appeals Judge Betty B. Fletcher from 2000 to 2001.

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

I have never practiced 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;

2002 – 2005  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, Northwest  
Washington, DC 20006  
Associate

2005 – 2006  
Wilmer Cutler Pickering Hale and Dorr LLP  
399 Park Avenue  
New York, New York 10022

Associate

2009 – 2010

White House Counsel's Office

The White House

Washington, DC 20502

Special Assistant to the President and Associate White House Counsel

2010 – 2011

Office of the Attorney General of New York

120 Broadway, 25th Floor

New York, New York 10271

Special Counsel to the Solicitor General

- 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 never 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.

I was a federal law clerk for Judge Betty Fletcher on the Ninth Circuit Court of Appeals from 2000 until 2001 and for Justice John Paul Stevens from 2001 until 2002.

From 2002 until 2006, I was in private practice at the law firm of Wilmer, Cutler, Pickering Hale & Dorr LLP, where I was part of the following practice groups: Litigation, Supreme Court and Appellate Litigation, and Regulatory and Government Affairs. I participated in significant phases of trial and appellate court litigation, including: developing legal strategy, conducting investigations, drafting pleadings and briefs, engaging in discovery, examining witnesses, and arguing motions and appeals in court.

From 2006 until 2008, I was a Visiting Assistant Professor of Law at Fordham University School of Law, where I taught and specialized in civil and criminal procedure and constitutional law.

In late 2008, I decided to pursue employment as a government lawyer. I was offered and accepted a position in the White House Counsel's Office, where I reviewed legislation, analyzed various legal issues, advised staff members on legal matters, and assisted in the preparation of judicial and executive branch nominees for confirmation hearings. I served in the

Counsel's Office until returning with my family to New York in July 2010. At that time, I decided to remain in government service and served from 2010 until 2011 as Special Counsel to the Solicitor General of New York. In that capacity, I drafted briefs and argued cases in the state and federal trial and appellate courts. I also supervised Assistant Solicitors General in their brief and oral argument preparations.

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

When I was in private practice, I had a range of clients, including large corporations, media organizations, national advocacy organizations, and indigent criminal defendants. I specialized in complex federal litigation and constitutional law. In government service, I provided legal advice to executive officials and represented governmental agencies. I continued to specialize in federal civil procedure, complex federal litigation, appellate litigation, and constitutional law.

- 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.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 75%
- 2. state courts of record: 24%
- 3. other courts: 1%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 85%
- 2. criminal proceedings: 15%

- 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. What percentage of these trials were:

- 1. jury: 0%
- 2. non-jury: 100%

Prior to taking the bench, I did not try any cases to verdict, although I was involved in various litigation matters in state and federal court as described above in 16(b)(ii). In private practice, I served as associate counsel on approximately six trial court litigation matters that reached judgment or final decision (including based on dispositive motions). One of those matters was an evidentiary



hearing/bench trial that was tried to judgment in federal district court. In addition, while at the New York Attorney General's Office, I tried a civil case, *Burns v. Martinez et. al.*, 08cv4035, to a jury in May 2011. After the jury reached its verdict but before the verdict was announced, the case settled. I served as associate counsel.

- 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 was a member of the Supreme Court bar. While in private practice at WilmerHale, I was a member of the Supreme Court and Appellate Litigation practice group. In this capacity, I participated in the drafting and filing of several petitions for certiorari and amicus briefs before the Supreme Court. In addition, while a Visiting Assistant Professor at Fordham School of Law, I served as primary author and counsel of record for one amicus brief filed with the Supreme Court. In my position as Special Counsel to the Solicitor General of New York, I also participated in Supreme Court litigation.

I served as counsel on the following briefs:

*Cahill v. Alexander*, No. 10-203, Reply Brief for the Petitioner, 2010 WL 4803773

*Baze v. Rees*, No. 07-5439, Brief for the Fordham School of Law Stein Center as Amicus Curiae in Support of Petitioner, 2007 WL 3407041

*Clark v. Arizona*, No. 05-5966, Brief Amicus Curiae for the American Psychological Association, the American Psychiatric Association, and the American Academy of Psychiatry and the Law Supporting Petitioner, 2006 WL 247277

*Hill v. McDonough*, No. 05-8794, Brief for Amicus Curiae Walker in Support of Petitioner, 2006 WL 558286

*Mayle v. Felix*, No. 04-563, Brief of Amici Curiae Habeas Law Scholars in Support of Respondent, 2005 WL 682095

*Walker v. True*, No. 05-6942, Petition for Certiorari and Reply filed on behalf of WilmerHale client Mr. Walker, 2004 WL 3770765. The Supreme Court granted, vacated, and remanded for further consideration. 546 U.S. 1086 (2006).

17. **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. *Liden v. Devane*, 96 A.D.3d 584 (N.Y. App. Div. 1st Dep't 2012)

This case involved an individual who the New York Board of Examiners of Sex Offenders determined must register in New York as a sex offender based upon a conviction from another jurisdiction. The Petitioner challenged that determination in an administrative proceeding. His petition was dismissed as untimely and he appealed to the Appellate Division, First Department. I was the lead appellate lawyer in the Solicitor General's Office defending the Board's determination and the lower court's dismissal of his petition.

My co-counsel:

Benjamin Gutman (formerly NY Office of the Solicitor General)  
Oregon Department of Justice  
1162 Court Street Northwest  
Salem, OR 97301  
(503) 378-4402

Counsel for Petitioner:

Robert Newman  
The Legal Aid Society  
199 Water Street  
New York, NY 10038  
(212) 577-3354

2. *Seneca Nation of Indians v. Paterson*, No. 10-CV-687A, 2010 WL 4027796 (W.D.N.Y. Oct. 14, 2010) (and multiple related matters in the Northern and Western District of New York and in the Second Circuit)

Multiple Indian Tribes brought suit against New York state officials in federal district courts in the Western and Northern Districts of New York challenging the constitutionality of recent amendments to a New York State tax law relating to the taxation of cigarettes sold by reservation retailers to individuals who are not Tribal members. I was part of a state team of lawyers, led by Solicitor General Barbara Underwood, who were defending the constitutionality of the state tax statute. My role

included legal analysis and strategy as well as drafting district court and appellate court pleadings and briefs.

In the Western District of New York, the matters were before Judge Arcara (Nos. 10-CV-687A; 10-CV-711A; 10-CV-811A) and in the Northern District of New York, the matter was before Judge Hurd (No. 6:10-cv-01071). Judge Arcara denied the Tribes' request for a preliminary injunction, but stayed enforcement of the tax statute pending appeal. Judge Hurd granted the Tribes' motion for a preliminary injunction. All of the matters were consolidated before the Court of Appeals for the Second Circuit (10-4272; 10-4265; 10-4598).

My co-counsel:  
Barbara Underwood  
Steven Wu  
New York Office of the Solicitor General  
120 Broadway, 25th Floor  
New York, NY 10271  
(212) 416-8020

Andrew Bing (formerly New York Office of the Solicitor General)  
I have searched for but not been able to find contact information for Mr. Bing.

Opposing counsel:  
David DeBruin  
Jenner & Block LLP  
1099 New York Avenue, Northwest, Suite 900  
Washington, DC 20001  
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Riyaz Kanji  
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300 Detroit Street, Suite 400  
Ann Arbor, MI 48104  
(734) 769-2701

Carol Heckman  
Lippes Mathias (formerly Harter Secrest & Emery LLP)  
50 Fountain Plaza, Suite 1700  
Buffalo, NY 14202  
(716) 853-5100

3. *People ex rel. Cuomo v. Greenberg*, 95 A.D.3d 474 (N.Y. App. Div. 1st Dep't 2012)

This was an action for civil penalties and injunctive relief under the Martin Act, New York State's securities fraud statute. The lawsuit alleged that the former heads of a major insurance company initiated and structured two sham reinsurance transactions that misled

the investing public. The trial court granted New York's summary judgment motion with respect to one of the transactions and denied the defendants' summary judgment motion with respect to the other. The Solicitor General's office handled the appeals of these interlocutory rulings. I worked on the brief defending the trial court's denial of the defendants' summary judgment motion. The issues in the case centered on evidentiary rulings and the summary judgment standard.

My co-counsel:  
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Office of the Attorney General of New York  
120 Broadway, 25th Floor  
New York, NY 10271  
(212) 416-8020

Richard Dearing (formerly Office of the Attorney General of New York)  
New York City Law Department  
100 Church Street  
New York, NY 10007  
(212) 356-1000

Richard Jackson (formerly Office of the Attorney General of New York)  
I have searched for but not been able to find contact information for Mr. Jackson.

Opposing counsel:  
David Boies  
Boies, Schiller & Flexner, LLP  
55 Hudson Yards, 20th Floor  
New York, NY 10001  
(212) 446-2300

4. *Red Earth LLC v. United States*, 657 F.3d 138 (2d Cir. 2011)

This case involved a constitutional challenge by remote sellers of cigarettes to the Prevent All Cigarette Trafficking (PACT) Act, which provided that internet and other remote sellers of tobacco products must comply with the state and local laws that apply in the areas where their products are delivered, including state and local laws that prevent sales to children and that require payment of excise taxes. The district court concluded that the Due Process Clause does not permit Congress to require that interstate tobacco retailers comply with the laws of the states and localities into which their products are physically delivered.

I served as lead counsel on a multi-state amicus brief filed in support of the United States. Forty-one States and the District of Columbia joined the brief I authored.

My co-counsel:  
Barbara Underwood

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(212) 416-8020

Benjamin Gutman (formerly NY Office of the Solicitor General)  
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Counsel for the United States:  
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Department of Justice, Civil Division  
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(866) 576-1039

Beth Brinkmann (formerly Department of Justice, Civil Division)  
Covington & Burling  
850 10th Street, Northwest  
Washington, DC 20001  
(202) 662-5312

Michael Abate (formerly Department of Justice, Civil Division)  
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(502) 540-8280

Opposing counsel:  
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Kanji & Katzen, PLLC  
300 Detroit Street, Suite 400  
Ann Arbor, MI 48104  
(734) 769-2701

5. *Warney v. State of New York*, 947 N.E.2d 639 (N.Y. 2011)

Warney sued the State of New York pursuant to Court of Claims Act § 8-b (Unjust Conviction Act), seeking compensation for his wrongful conviction. His claim was

dismissed by the Court of Claims based upon § 8-b(4), which bars claimants from compensation if their conduct caused or brought about their conviction. The Appellate Division affirmed. The Court of Appeals granted leave to appeal and the case was argued on February 8, 2011. I argued the appeal on behalf of the State. On March 31, 2011, the Court of Appeals reversed and denied the State's motion to dismiss.

My co-counsel:  
Barbara Underwood  
Frank Walsh  
New York Office of the Solicitor General  
120 Broadway, 25th Floor  
New York, NY 10271  
(212) 416-8020

Andrew Bing (formerly New York Office of the Solicitor General)  
I have searched for but not been able to find contact information for Mr. Bing.

Opposing counsel:  
Peter Neufeld  
Neufeld Scheck & Brustin, LLP  
99 Hudson Street, 8th Floor  
New York, NY 10013  
(212) 965-9081

6. *Hayes v. New York Attorney Grievance Committee*, 672 F.3d 158 (2d Cir. 2012)

This case involved a First Amendment challenge to one of New York's attorney advertising rules. The rule in issue governs statements by attorneys in which they describe themselves as certified specialists in a particular area of law. The federal district court (Western District of New York) rejected the challenge and granted summary judgment in favor of the State. The Second Circuit reversed the district court's decision, concluding as to one component of the law and remanded with directions to enter judgment for the plaintiff. I was the lead lawyer handling the case in the SG's office.

My co-counsel:  
Nancy Spiegel (retired)

Opposing counsel:  
J. Michael Hayes  
Law Office of J. Michael Hayes  
69 Delaware Avenue, Suite 1111  
Buffalo, NY 14202  
(716) 852-1111

7. *Shell Oil Company v. Franco*, No. 03-CV-8846 (PJWx), 2005 WL 6184247 (C.D. Cal. Nov. 10, 2005) (multiple litigation matters in the Central District of California)

WilmerHale represented Shell Oil Company in multiple pieces of litigation that arose out of tort judgments entered against U.S. companies by courts in Nicaragua. In the above captioned component of the litigation, WilmerHale filed a complaint seeking a declaration that the \$489 million Nicaraguan court judgments entered against Shell Oil and other defendants were not enforceable in the United States. District Court Judge Nora M. Manella granted the summary judgment motion, holding that the judgments were not enforceable because the Nicaraguan court had lacked personal jurisdiction over Shell Oil, which had never done business in that country. My role on the litigation team consisted of factual investigation, working with experts, developing legal arguments, drafting dispositive motions, and conducting and responding to extensive discovery requests.

My co-counsel:

David Ogden

Wilmer Cutler Pickering Hale and Dorr LLP

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Washington, DC 20006

(202) 663-6000

Ethan Shenkman (formerly Partner, WilmerHale)

Arnold & Porter

601 Massachusetts Avenue, Northwest

Washington, DC 20001

(202) 942-5267

Jennifer O'Connor (formerly Partner, WilmerHale)

Northrop Grumman Corp.

4733 Bethesda Avenue

Bethesda, MD 20814

(301) 656-1396

David O'Neil (formerly Associate, WilmerHale)

Debevoise & Plimpton

801 Pennsylvania Avenue, Northwest

Washington, DC 20004

(202) 383-8040

Counsel for Defendants:

Walter J. Lack

Engstrom, Lipscomb & Lack

10100 Santa Monica Boulevard, 12th Floor

Los Angeles, CA 90067

(310) 552-3800

Thomas V. Girardi (retired)

8. *Walker v. True*, 399 F.3d 315 (4th Cir. 2005), *vacated and remanded*, 546 U.S. 1086 (2006) (multiple litigation matters in the Eastern District of Virginia, before Judge Claude Hilton, the Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States)

WilmerHale represented pro bono Mr. Walker, an indigent death row inmate in Virginia, in a variety of different habeas proceedings, appeals and litigation matters. My role included factual investigation; working with experts; developing legal arguments and strategy; drafting pleadings, dispositive motions, and appellate briefs; conducting discovery; and examining and cross-examining witnesses. The litigation team sought Supreme Court review at several instances and the Supreme Court twice granted, vacated, and remanded our petitions. Mr. Walker was ultimately executed by the Commonwealth of Virginia in May 2010.

My co-counsel:

Seth Waxman

David Ogden

Danielle Spinelli

Jody Kris (retired)

Wilmer Cutler Pickering Hale and Dorr LLP

1875 Pennsylvania Avenue, Northwest

Washington, DC 20006

(202) 663-6000

Counsel for the Commonwealth of Virginia:

Robert Q. Harris

Office of the Attorney General of Virginia

900 East Main Street

Richmond, VA 23219

(804) 786-2071

9. *United States v. Marcum*, 60 M.J. 198 (C.A.A.F. 2004) and *United States v. Meno*, ARMY 2000733 (A.C.C.A. 2003).

WilmerHale represented pro bono several national civil rights organizations that sought to challenge the military's criminal prohibition against consensual, private sodomy following the Supreme Court's decision in *Lawrence v. Texas*. In the *Marcum* case, the Court of Appeals of the Armed Forces granted us leave to file briefs and make oral argument on the constitutional issues. Although the conviction was affirmed on other grounds, the Court of Appeals for the Armed Forces adopted significant components of our argument, concluding that *Lawrence v. Texas* does apply to the military. My role in the matter consisted of developing legal strategy and arguments and brief drafting.

My co-counsel:



Stuart Delery (formerly Partner, WilmerHale)  
White House Counsel's Office  
The White House  
Washington, DC 20502

Josh Goldfoot (formerly Associate, WilmerHale)  
Department of Justice, Criminal Division  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530  
(202) 514-2000

Counsel for Defendant:  
Frank Spinner  
Law Offices of Richard V. Stevens  
7035 Campus Drive, Suite 904  
Colorado Springs, CO 80920  
(888) 399-0693

Colonel Beverly B. Knott  
I have searched for but not been able to find contact information for Colonel Knott.

Counsel for the United States:  
Colonel LeEllen Coacher  
Air Force Legal Services Agency  
United States Air Force  
(202) 767-1546

In a similar case that followed *Marcum* and involved the same issues, WilmerHale continued to represent pro bono several national civil rights organizations as amici in *Meno v. United States*. In addition to drafting the appellate brief, I argued this matter on behalf of amici. Our arguments prevailed.

My co-counsel:  
Stuart Delery (formerly Partner, WilmerHale)  
White House Counsel's Office  
The White House  
Washington, DC 20502

Josh Goldfoot (formerly Associate, WilmerHale)  
Department of Justice, Criminal Division  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530  
(202) 514-2000

Counsel for Defendant:  
Captain Fansu Ku

I have searched for but not been able to find contact information for Captain Ku.

Counsel for the United States:

Captain Abraham Carpio

I have searched for but not been able to find contact information for Captain Carpio.

10. *In re Certain Baseband Processor Chips & Chipsets (Broadcom v. Qualcomm)*, Inv. No. 337-TA-543 (June 21, 2005)

WilmerHale client, Broadcom, was involved in significant litigation before the U.S. International Trade Commission related to Tariff Act protections regarding the importation and sale of certain processor chips. I was part of the litigation team that focused on opposing an effort to disqualify WilmerHale. My role consisted of legal research, development of legal strategy, drafting pleadings, and preparing for oral argument.

My co-counsel:

Bill Lee

Paul Wolfson

Wilmer Cutler Pickering Hale and Dorr LLP

1875 Pennsylvania Avenue, Northwest

Washington, DC 20006

(202) 663-6000

Opposing counsel:

Michael Kellogg

Mark Hansen

Reid Feigel

Aaron Panner

Geoffrey Klineberg

Kellogg Huber

Sumner Square

1615 M Street, Northwest, Suite 400

Washington, DC 20036

(202) 326-7900

18. **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.)

I am currently serving as the Chair of the Security Committee for the Southern District of New York. I meet regularly with representatives from the SDNY District Executive's

Office, the SDNY United States Marshal's Office, the Second Circuit, the Bankruptcy Court, the Court of International Trade, the SDNY US Attorney's Office, and the SDNY Federal Defenders to discuss and coordinate issues related to courthouse and judicial security. In my capacity as Chair, I along with other judges have met with members of the New York State Senate and the Assembly to discuss state legislation related to judicial security. As the Chair of the Security Committee I also am a member of the SDNY COVID Response Team, which works with the Chief Judge as well as other SDNY stakeholders on the District's COVID policies and protocols.

I am a member of the SDNY Grievance Committee. In this capacity I review and participate in decisions regarding attorney discipline.

In my position as Special Counsel to the New York Solicitor General, I provided legal advice to the trial lawyers in litigation involving violations of the Martin Act, New York State's civil and criminal security fraud statute.

As an Associate White House Counsel, I engaged in significant legal activities such as reviewing legislation, analyzing statutory and constitutional questions, advising staff members of the Executive Office of the President on legal matters, and preparing judicial and executive branch nominees for confirmation hearings.

When I was in private practice at WilmerHale, I assisted partners Howard Shapiro and Seth Waxman in representing a media client and reporters during an investigation by a U.S. Attorney into whether violations of law occurred in the leaking of the identity of a CIA agent. My role in the representation included legal research and analysis.

I have not performed lobbying activity or registered as a lobbyist.

19. **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.

Federal Judicial Practice Externship, NYU School of Law, 2015 to present (co-taught with Adjunct Professor Michelle Cherande). The students are placed in district or circuit court chambers for the externship. The weekly seminar component covers a variety of federal practice and procedure topics, including: judicial ethics; the procedural life of federal civil and criminal cases; judicial opinion writing; sentencing theory and practice; oral argument strategies and a moot appellate argument. Fall 2020 syllabus supplied.

1L Reading Group on the Supreme Court (co-taught with Dean Trevor Morrison), NYU School of Law, 2019 to present. Informal reading group with 1L students that meets three to four times a year. We read and discuss books in the genre of insider accounts of the Supreme Court and biographies of justices. 2020 reading list supplied.

Civil Procedure, Fordham School of Law, 2007, 2008. First year civil procedure class that covered issues ranging from personal and federal subject matter jurisdiction, anatomy of civil litigation, joinder and preclusion, and the Federal Rules of Civil Procedure. Spring 2008 syllabus supplied.

Constitutional Law Seminar on the Supreme Court and the Death Penalty, Fordham School of Law, 2006, 2007. Weekly seminar that explored topics ranging from theories of punishment, Supreme Court jurisprudence on the death penalty, and the law of habeas corpus. Fall 2007 syllabus supplied.

20. **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.

None.

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

I expect to continue teaching as an Adjunct Professor at NYU School of Law. I will teach a course at Cornell Law School in 2023 as a Jurist in Residence.

22. **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).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements 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.

Having served on the District Court since 2012, I expect to have few conflicts other than those I have identified at the district court level. This includes any litigation involving relatives, close personal friends, my spouse's employer (where I also teach as an adjunct), and any companies in which I hold individual stocks. In the event that any of those individuals or entities is involved in litigation pending before me, I would recuse myself consistent with the Code of Conduct for United States Judges and all relevant statutes, including 28 U.S.C. §455.

I would of course also recuse from any case in which I was the presiding district judge.

- 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 continue to carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any other laws, rules, and practices governing such circumstances.

25. **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 workload, 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.

While in private practice, I devoted substantial portions of time to pro bono representations. For example, I worked on significant pro bono matters including the *Walker* matter described above in Question 17. I received WilmerHale's Pro Bono Award several years in a row. I also served as a volunteer for the Georgetown Supreme Court Advocacy Project. I continued to do pro bono work while a Visiting Assistant Professor at Fordham School of Law. While employed at the White House, I was a participant in a mentor program for local area high school girls, which was organized by the First Lady. Mentors would accompany mentees on various events, such as a visit to the Supreme Court or preparation of grocery bags of donated food for low income families.

26. **Selection Process**:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I was contacted by a member of Senator Schumer's Judicial Selection Committee on January 26, 2021, inquiring as to my interest in being considered for the Second Circuit and requesting the submission of materials. I was also contacted by White House Chief of Staff Ron Klain on February 14, 2021, and asked if I was interested in being considered for nomination to the Second Circuit. I interviewed with Senator Schumer on March 14, 2021. I was contacted by a lawyer from the White House Counsel's Office on March 30, 2020. On March 31, 2020, I was interviewed by several lawyers from the White House Counsel's Office. Since March 31, 2021, I have been in contact with lawyers from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. In that time period, I spoke with the White House Chief of Staff, Ron Klain, on October 5, 2021 and I spoke with the White House Counsel, Dana Remus, on June 14, 2021, October 8, 2021, and November 16, 2021. On November 17, 2021, the President announced his intent to nominate me.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.