

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR MICHAEL B. MUKASEY, ATTORNEY GENERAL
NOMINEE**

PUBLIC

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

Michael Bernard Mukasey

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

Attorney General

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.

Patterson, Belknap Webb & Tyler
1133 Avenue of the Americas
New York, NY 10036

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

1941, the Bronx, New York

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

Married to Susan Elaine Bernstock Saroff Mukasey, née Susan Elaine Bernstock, retired.
We have no dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, 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.

Yale Law School, September 1963, September 1964 – June 1967, LLB, June 1967

Columbia College, September 1959 – June 1963, BA, June 1963.

7. **Employment Record**: List in reverse chronological order, listing most recent first, 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 job description where appropriate.

Patterson, Belknap, Webb & Tyler
1133 Avenue of the Americas
New York, NY 10036
Member (September 2006-present)

William Nelson Cromwell Foundation
Director (1997-present)

Jewish Children's Museum
Board of Directors (2004-present)

United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007
United States District Judge (January 1988-September 2006)

Columbia Law School
435 West 116th Street
New York, NY 10027
Lecturer in Law (January 1993-May 2007)

Patterson, Belknap, Webb & Tyler
1133 Avenue of the Americas
New York, NY 10036
Member (1978-1987)
Associate (1976-1978)

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
Chief, Official Corruption Unit (1975-76)
Assistant United States Attorney (August 1972-March 1976)

Webster, Sheffield, Fleischmann, Hitchcock & Brookfield
Firm no longer in existence, formerly at
One Rockefeller Plaza
New York, NY 10122
Associate (September 1967-August 1972)
Law Clerk (June-September 1966)

Yale Law School
127 Wall Street
New Haven, CT 06511
Assistant in Instruction (September 1966-June 1967)

National Labor Relations Board
1717 Pennsylvania Ave., NW
Washington, DC 20006
Student Assistant (June-August 1965)

United Press International
1060 Broad Street
Newark, NJ 07102
Reporter (May-August 1964)

Echelons Office Temporaries
485 Madison Avenue
New York, NY 10022
Employee (May 1964)

Construction company (unable to recall name)
Beer distributor (unable to recall name)
Columbine, CO
Employee (July 1963-August 1963)

Craig Lumber Company
Craig, CO
Employee (July 1963)

8. **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.

I have not served in the military.

9. **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.

To the best of my recollection, the list below includes the awards and honors I have received that may be of interest to the Committee. This list may not be comprehensive.

Ari Halberstam Award from the Jewish Children's Museum, 2007

Federal Bar Council's Learned Hand Medal for Excellence in Federal Jurisprudence,
May 2004

LLB (honoris causa), Brooklyn Law School, June 2002

Board of Editors, YALE LAW JOURNAL, 1965-67

Two awards from the Respect for Law Alliance

2 awards from the Seymour Association (organization of AUSAs who served under USA Seymour)

The William Tandy Award from the Fiske Association (organization of AUSAs who served under USA Fiske)

10. **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

Judicial Conference of the United States
(Committee on Automation and Technology)

American Bar Association

New York State Bar Association
(Chairman, Committee on Public Access to Information and Proceedings, 1984-1987)

Association of the Bar of the City of New York
(Federal Courts Committee, 1979-1982)
(Communications Law Committee, 1983-1986)

Council of New York Law Associates

11. **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, December 21, 1967, no lapses in membership

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

New York, December 21, 1967

U.S. District Court for the Southern District of New York, January 23, 1969

U.S. District Court for the Northern District of New York, October 12, 1982

U.S. Court of Appeals for the Second Circuit, October 1, 1975

U.S. Court of Appeals for the District of Columbia Circuit, June 1, 1978
U.S. Court of Appeals for the Fourth Circuit, June 25, 1982
U.S. Court of Appeals for the Third Circuit, December 29, 1983
U.S. Court of Appeals for the Tenth Circuit, February 26, 1986
Supreme Court of the United States, November 5, 1979

I am currently a member in good standing of each of these courts and am not aware of any lapses in membership.

12. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, 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.

Respect for Law Alliance, Inc. (2007-present)

William Nelson Cromwell Foundation (Director, 1997-present)

National Conference on Soviet Jewry (approx. 1980s)

Anti-Defamation League of B'nai B'rith (National Legal Affairs Committee) (approx. 1980s)

University Club (New York) (1971-January 1987)

It is possible that the Senior Society of Sachems, a Senior Society at Columbia, considers me to be a member.

Similarly, it is possible that the Heritage Foundation considers me to be a member based on a small monetary donation that I made to the Foundation.

My firm also makes contributions to a wide variety of organizations. I have no reason to believe that any of those organizations consider me a member as a result of the donations.

- b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The University Club in New York did not admit women to membership. I tried unsuccessfully to co-sponsor a woman for membership and then resigned in January 1987 after more than one vote by club members to continue the ban on women members.

13. **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. Please supply four (4) copies of all published material to the Committee.

I have listed below those articles and pieces that I wrote since graduating from college that I have been able to recall or obtain.

Shortly after graduating from college, I worked for a brief period of time as a reporter for the now-defunct news organization UPI. I do not have copies of all articles that I wrote; however, I have been able to locate two articles through a diligent search:

“Riots On Again In Jersey City,” *Western Kansas Press*, August 4, 1964, pg. 1

“Streets Calm in Paterson,” *Western Kansas Press*, August 15, 1964, pg. 1

I also recall writing a piece on the return of the body of either Andrew Goodman or Michael Schwerner, one of the three civil rights workers murdered in Mississippi in the summer of 1964, and the near simultaneous arrival at the same airport of a group that had participated in civil rights activities in the South. I cannot locate a copy of the article.

In addition to my work for UPI, I have published the following works:

Note, “Confrontation and the Hearsay Rule,” 75 *YALE L.J.* 1434 (1967)

“The Last of the Big-Time Bosses [Book Review]” *NEW YORK TIMES*, October 17, 1971

“In Defense of a Vigorous United States Attorney,” *NEW YORK TIMES*, Dec. 2, 1985

“Dealing with the Prosecutor,” chapter in *BUSINESS CRIMES: A GUIDE FOR CORPORATE AND DEFENSE COUNSEL*, Practising Law Institute (1986)

“The Discovery Phase of Libel Litigation,” chapter in *LIBEL LITIGATION 1986*, Practising Law Institute (1986)

“The Spirit of Liberty,” THE WALL STREET JOURNAL, May 10, 2004

“Jose Padilla Makes Bad Law: Terror trials hurt the nation even when they lead to convictions,” THE WALL STREET JOURNAL, August 22, 2007

- b. Please 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, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

The Judicial Conference and the Judicial Conference Committee on Automation and Technology issue two reports each per year. Copies of the reports issued during the time period I served on the Conference are attached. The Federal Courts and the Communications Law Committees of the Association of the Bar of the City of New York issued reports during the time period I served on these committees. I do not have any copies in my possession, but am attempting to obtain copies. It is also possible that the Committee on Public Access to Information and Proceedings of the New York State Bar Association did produce four reports during the time I served as Chairman, 1984-1987. I do not recall any specific reports and do not have any copies in my possession.

- c. Please 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.

While serving as Chief Judge of the United States District Court for the Southern District of New York, I did present remarks on at least two occasions: the dedication of the Constance Baker Motley jury room and the Charles L. Brieant conference room, and the dedication of the Daniel Patrick Moynihan United States Courthouse. I do not have copies of the remarks that I gave and have been unable to locate any transcripts. The remarks generally consisted of praise of the honored individuals and references to the history of the court itself.

I also testified on October 20, 1987 at a hearing entitled “Confirmation Hearing On: Robert E. Cowen, Michael B. Mukasey, and George C. Smith.”

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please 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 tape recording of your remarks, please 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, please furnish a copy of any outline or notes from which you spoke.

The following is a list of speeches that I was able to locate after a review of my records.

In addition to the specific remarks listed below, from time to time I gave remarks when presiding over naturalization ceremonies, or when swearing in new attorneys. When speaking at naturalization ceremonies, I generally discussed the importance of their citizenship as a personal achievement and the rights they came to enjoy as citizens (particularly the right to vote), and would express my hope that they celebrate the day with their families. When speaking to newly sworn in lawyers, I encouraged them to do pro bono work, as it would help the lawyers and the legal system as a whole. I also had the opportunity on occasion to address alumni groups from Columbia Law School and student groups from different institutions. I do not know the dates or frequency of those remarks, and do not have notes or transcripts of those remarks. In general, I would discuss my experiences on the bench, which could have included recent cases or developments in the law. I do not have any specific recollections of any particular subject matters or cases.

I am confident that there are additional speeches or remarks that I have given, but the list below reflects what I have been able to recollect.

Remarks given, likely in 1984, in Queens, NY, as part of my work with the Victory '84 campaign, on behalf of President Reagan's position with a particular emphasis on defense issues (No notes or remarks available)

Remarks given, likely in 1996 or 1997, to the Respect for Law Alliance in New York, NY (Remarks, as prepared, provided)

Remarks at Brooklyn Law School in 2002 upon receipt of honorary degree (Remarks, as prepared, provided)

Jethro Sabbath Speech, given at The Central Synagogue, New York, NY, likely in 2003 (Remarks, as prepared, provided)

Remarks on the Occasion of Receiving the Federal Bar Council's Learned Hand Medal for Excellence in Federal Jurisprudence at its Law Day Dinner, New York, NY, May 5, 2004 (Remarks, as prepared, provided)

Eulogy for District Judge Milton Pollack, 2004 (Remarks, as prepared, provided)
Remarks given upon presentation to Judge Feinberg of the 22nd Annual Devitt Distinguished Service to Justice Award, October 22, 2004, New York, NY (Remarks, as prepared, provided)

Kol Nidrei—A Judicial Perspective, remarks delivered likely in 2005 at the 92nd Street YMHA (Remarks, as prepared, provided)

Remarks given on May 26, 2005, in New York, NY, upon receipt of a Jurist Award from the Respect for Law Alliance (No remarks or notes available, comments were very limited in time and scope)

I also participated on January 24, 2007, in a panel discussion hosted by the Foundation for the Defense of Democracies on the occasion of the inaugural event of its Center for Law & Counterterrorism. The following is a link to a video of the panel: <http://fora.tv/fora/showthread.php?t=641>.

Remarks given in 2007, upon acceptance of the Ari Halberstam award from the Jewish Children's Museum (Remarks, as prepared, provided)

Remarks on "Terrorists and Unlawful Combatants" delivered on April 25, 2007, to a physician's organization during their annual banquet (Remarks, as prepared, provided)

"Injunctions after *e-Bay*" given at the Intellectual Property Owners' Association Conference in September 2007 (Outline, as prepared, provided)

On October 5, 2006, I moderated a panel sponsored by the New York chapter of the Federalist Society entitled "After *Hamdan*: The Supreme Court and the Future of U.S. Responses to Terrorism." (No notes or remarks available). I believe that I have moderated one other panel for the New York chapter of the Federalist Society, although I do not recall the date or topic.

I have spoken at least twice to the Senior Society of Sachems, a student organization at Columbia, once in 1988 about my confirmation process, and once more recently on terrorism-related issues. (No notes or remarks available)

- e. Please 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.

While I was an Assistant United States Attorney and a United States District Court Judge, I had a policy of not giving interviews. Shortly before retiring from the bench, I did give two interviews. The articles based on those interviews are listed below. It is possible that I spoke with a writer for a magazine published by the Federal Bar Council at some point during my tenure as a District Judge, but I do not recall the subject matter, there was no transcript, and I do not have a copy of the article.

“As Judge Leaves for Law Firm, His Legacy Is Remembered” THE NEW YORK SUN, July 26, 2006

“Unassuming Chief Oversaw Court’s Adjustment to Terrorism,” N.Y.L.J., August 1, 2006

14. **Judicial Office**

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

I believe that I have presided over upwards of 100 cases that have gone to verdict. I cannot estimate how many have gone to judgment in the sense of a grant of summary judgment.

- i. Of these, approximately what percent were:

jury trials: 95%
bench trials: 5%

civil proceedings: 10%
criminal proceedings: 90%

- b. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature 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 (3) the citation of the case (if reported) or the docket number (if not reported).

Please see Appendix A

- c. 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.

Please see Appendix B

- d. Provide a brief summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings

Please see Appendix C

- e. 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, please provide copies of the opinions.

Please see Appendix D

- f. 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.

Please see Appendix E

15. **Recusal:** Please provide a list of any cases, motions or matters that have come before you as a judge in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself *sua sponte*. (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.) Please 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.

In three cases in which a party moved for my recusal, I wrote responsive opinions, and those cases are described directly below. In addition, I believe that the clerk of the court would automatically (and without notifying me) reassign any case in which my son represented the government as an Assistant U.S. Attorney if the case had been initially assigned to me through the court’s normal assignment process. My son served as an Assistant U.S. Attorney in the Southern District of New York from September 14, 1997, through September 15, 2005. Moreover, I made it a practice to recuse myself from, *inter alia*, any cases that were assigned to me if any party to the case was represented by my then former (and now current) law firm, Patterson, Belknap, Webb & Tyler, if I or anyone to whom I was immediately related might have a significant financial stake in the outcome, or if I had a significant relationship with a party. On the last ground, I recused myself from cases to which Mayor Giuliani was more than a nominal party in his official capacity as Mayor of New York. Whenever I would recuse myself on my own motion, I would submit a memorandum to the court’s Assignment Committee requesting reassignment of the case to another judge of the court. I do not specifically recall the

names of all cases in which I requested reassignment. Based on my recollection, and after a diligent search, I have listed below all of the cases of which I am aware. If I become aware of any other such cases, I shall apprise the Committee accordingly.

Cases in which a party moved for my recusal:

1. *United States v. El-Gabrownny*, 844 F. Supp. 955 (S.D.N.Y. 1994)
 - a. The named defendant in this matter moved through counsel for my disqualification under 28 U.S.C. §§ 144 and 155.
 - b. The defendant was charged (along with fourteen co-defendants) with seditious conspiracy to conduct a war of urban terrorism against the United States. Based on requests for disclosure in the defendant's motion, it appeared that my disqualification was sought due to my hypothesized support for political Zionism and the State of Israel. In addition, the defendant's counsel pointed to four rulings that, *inter alia*, purportedly supported an inference of my bias against Muslim defendants such as the defendant: (1) my denial of a request that the Metropolitan Correction Center (the "MCC") be directed to permit communal prayer by the Muslim defendants, which was alleged to indicate that I was not concerned with "quality of life issues," (2) my scheduling of a court appearance on a Friday "over the defense objection that a long appearance would interfere with defendants' Juma observance," which allegedly betrayed an insensitivity to the Muslim defendants' religious observances, (3) my statement (in an opinion denying the defendant's release on bond) that he was taking the position he could not return to Egypt because of his opposition to the government of Egypt rather than that he would be persecuted there, which allegedly reflected my lack of concern with the Egyptian government's human rights record, and (4) my allegedly harsh response to leaks by defendants as compared to my response to leaks by the government, which reflected bias against the Muslim defendants.
 - c. In ruling on the motion, I reviewed the factual bases for the motion and determined that they were without merit. I also considered what appeared to be the underlying rationale for the motion (my alleged support for the State of Israel, based on, among other things, my ethnicity), and determined after reviewing a variety of precedents that such generalized considerations did not support a motion for disqualification under the controlling authorities.
 - d. Because I concluded that there was no indication of bias or potential conflict of interest as contemplated in the controlling statutes, I took no further action in response to the defendant's request for my disqualification.

2. *Williams v. Josephs*, No. 91 CIV 8178 (MBM), 1993 WL 403969 (S.D.N.Y. Oct. 7, 1993)
 - a. The plaintiff, who appeared pro se, moved for my recusal.
 - b. The above-referenced order granted summary judgment to the final defendant named in this action involving constitutional and civil rights claims arising from the reassignment of the plaintiff, a temporary employee, within a New York City agency after an altercation with her immediate supervisor. The plaintiff had moved for my recusal on the grounds that that my prior rulings—which included orders of summary judgment for the other two defendants in the case—justified my disqualification. I denied the motion.
 - c. In ruling on the motion, I reviewed the controlling authorities, including the decision of the Court of Appeals for the Second Circuit in *Hodgson v. Liquor Salesmen's Union Local No. 2*, 444 F.2d 1344 (2d Cir. 1971). That case among others made clear that prior adverse rulings could not, without more, support a motion for recusal, so I denied the motion.
 - d. Because I concluded that there was no indication of bias or potential conflict of interest as contemplated in the controlling authorities, I took no further action in response to the defendant's motion for my recusal.

3. *Lewis v. Tuscan Dairy Farmers, Inc.*, 829 F. Supp. 665 (S.D.N.Y. 1993)
 - a. One of the defendants in this case, the president of the defendant union, moved for my recusal.
 - b. The above-referenced opinion and order affirmed a finding of liability against the defendant union on grounds that the union had breached its duty of fair representation to union members. In a separate and unrelated matter, I had ruled that the president of the defendant union had not testified credibly and had ordered him jailed on contempt charges for refusing to order striking union members back to work. The president, who was an individual defendant in this case, filed an affidavit of bias on the grounds of these earlier rulings, but I denied the motion for recusal in an unpublished ruling.
 - c. In ruling on the motion, I reviewed the controlling authorities, which made clear that prior adverse rulings could not, without more, support an allegation of bias and motion for recusal, so I denied the motion. The ruling was challenged on appeal, and the Court of Appeals for the Second Circuit affirmed. See *Lewis*, 25 F.3d 1138, 1141 (2d Cir. 1994).
 - d. Because I concluded that there was no indication of bias or potential conflict of interest as contemplated in the controlling authorities, I took no further action in response to the defendant's motion for my recusal.

Cases from which I recused myself on my own motion:

1. *Dresner Co. v. First Fidelity Bank, N.A.*, No. 95 CV 1924 (S.D.N.Y.)

The award of attorneys' fees in the case could have affected the financial interest of a friend of both my wife's and mine. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

2. *Argonaut Partnership L.P. v. Bankers Trustee Co. Ltd.*, 96 CV 1970, *Argonaut Partnership L.P. v. Bancomer, S.A.*, No. 96 CV 2222 (S.D.N.Y.)

Counsel for the plaintiff in these cases advised that a friend of my wife's and mine had a financial interest in the outcome of the litigation. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

3. *Stewart v. Munnich et al.*, No. 98 CV 3256 (S.D.N.Y.)

I had an ongoing relationship with an attorney who had represented the plaintiff in another matter, and I had thus become familiar with some facts relating to this case. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

4. *Int'l Action Ctr. v. Safir*, No. 98 CV 6012 (S.D.N.Y.)

This case involved a claim against the Commissioner of the New York City Police and the government of the City of New York. Because Mayor Giuliani was (and remains) a good friend and because he was more than a nominal defendant in the case, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety. I believe that counsel for the New York Civil Liberties Union raised the issue of recusal in court.

5. *Reynolds v. Giuliani*, No. 98 CV 8877 (S.D.N.Y.)

This class action involved a claim against Mayor Giuliani and other defendants in their official capacities as officers of the City of New York. Because Mayor Giuliani was (and remains) a good friend and because he was more than a nominal defendant in the case, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

6. *Griffin v. Ambika Corp.*, No. 98 CV 8985 (S.D.N.Y.)

My then former (and now current) law firm represented the defendants in this case. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

7. *Nat'l Congress for Puerto Rican Rights v. City of New York*, No. 99 CV 1695 (S.D.N.Y.)

This case involved claims against the government of the City of New York. Because Mayor Giuliani was (and remains) a good friend and because he was more than a nominal defendant in the case, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

8. *Daily News v. Newspaper & Mail Deliverers Union*, No. 99 CV 2011, 99 CV 2117 (S.D.N.Y.)

While I was in private practice, I occasionally handled legal matters for the *Daily News*, one of the principal parties in this litigation. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

9. *J.L.B. Equities, Inc. v. Ocwen Fin. Corp.*, No. 99 CV 10000 (S.D.N.Y.)

I owned stock in the defendant corporation when this case was assigned to me and thus had an indirect financial interest in the outcome of the litigation. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any appearance of impropriety.

10. *Fletcher v. A&E*, No. 99 CV 10151 (S.D.N.Y.)

The defendant in this case was represented by my then former (and now current) law firm, Patterson, Belknap, Webb & Tyler. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

11. *SEC v. Windgate Fund, et al.*, No. 96 CV 2502 (S.D.N.Y.)

This case involved an SEC order that provided for reimbursement of expenses to the law firm of which my son was then a member. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

12. *Showers v. Pfizer, Inc.*, No. 04 CV 9866 (S.D.N.Y.)

This case involved claims about the safety and marketing of a prescription drug that my wife had used for some time. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

13. *United States v. Sakhai*, No. 04 CR 584 (S.D.N.Y.)

The defendant in this case was a personal acquaintance of my wife's and mine. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

14. *DRF Jeweler Corp. v. American Express Co.*, No. 03 CV 9517 (S.D.N.Y.); *Italian Colors Restaurant v. American Express Co.*, No. 03 CV 9592 (S.D.N.Y.)

At the time these cases was assigned to me, I had an outstanding (albeit minor) billing dispute with American Express, the defendant, so I concluded that my impartiality might be questioned if I were to preside over the matter. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case.

15. *In re Hilly Realty Corp.*, No. M-47 (S.D.N.Y.)

One of the parties to this case was represented by my then former (and now current) law firm, Patterson, Belknap, Webb & Tyler. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

16. *Sandhaus v. McCann-Erickson, Inc.*, No. 03 CV 6743 (S.D.N.Y.)

One of my former law clerks represented a party in this matter. In order to avoid any appearance of partiality or impropriety, I wrote a memorandum to the Assignment Committee seeking reassignment of the case.

17. *Dow Jones & Co. v. Harrods*, No. 02 CV 3979 (S.D.N.Y.)

I had represented the plaintiff in this case on matters when I was in private practice. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

18. *Zanowicz v. Reno*, No. 97 CV 5292 (S.D.N.Y.)

This case involved claims against the United States Marshals Service. At the time this case was assigned to me, I was under the protection of the Marshals Service and had a full-time protective detail provided by the Marshals Service. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

19. *Kaufman v. City of New York*, No. 98 CV 2648 (S.D.N.Y.)

This case involved a challenge to a practice of the City of New York with which Mayor Giuliani has been personally identified. Because Mayor Giuliani was (and remains) a close friend, I concluded that it might appear improper for me to preside over the matter. As a result, I wrote a memorandum to the Assignment Committee seeking reassignment of the case in order to avoid any claim of partiality or appearance of impropriety.

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

- a. List chronologically any public offices you have held, 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.

Student Assistant
National Labor Relations Board
(Chairman Frank W. McCulloch)
June 1965-August 1965

Assistant United States Attorney
Southern District of New York
1972-1976
Appointed by Attorney General Richard Kleindienst

United States District Court Judge
Southern District of New York
January 1988 – September 2006
Appointed by President Ronald W. Reagan after confirmation by the United States Senate

- 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, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was involved in the campaign of Rudy Giuliani for President of the United States. Mr. Giuliani filed as a candidate for President in February 2007. From the beginning I have distributed information on his behalf and encouraged individuals to support his candidacy. From July to partway through September, 2007, I served as a member of his Justice Advisory Committee. I have not collected money on behalf of his campaign or hosted any fundraiser on behalf of his campaign.

In 1984, I was involved in the Victory '84 campaign. This was a campaign sponsored by the New York Jewish Coalition (Speaker's Bureau), which conducted speeches and debates in the New York area on behalf of the Reagan-Bush ticket, including debates against Democratic candidates and office holders. I recall giving at least one speech in 1984, in Queens, on behalf of President Reagan's position, with a particular emphasis on defense issues.

I was Treasurer of a campaign committee for Elliot G. Sagor in a campaign for New York State Supreme Court Justice in 1982. I likely collected donations in that capacity, although I have no specific recollections and I am aware of no complaints concerning the campaign's finances.

17. **Legal Career:** Please 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 did not serve as a clerk to a judge.

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

I have not 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.

Patterson, Belknap, Webb & Tyler
1133 Avenue of the Americas
New York, NY 10036
Member (September 2006 – present and 1978-1987; Associate, 1976-1978)

United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007
United States District Judge (January 1988 – September 2006)

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
Assistant United States Attorney (August 1972 – April 1976)
Chief, Official Corruption Unit (1975-76)

Webster, Sheffield, Fleischmann, Hitchcock & Brookfield
Firm no longer in existence, formerly at
One Rockefeller Plaza
New York, NY, 10122
Associate (July 1967 – August 1972).

b. Describe:

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

From 1967-1972, as an associate at Webster Sheffield, my practice initially included corporate work, securities work, and litigation. I drafted contracts, engaged in negotiations, and participated in public offerings representing both issuers and underwriters. From 1969-1972, my practice focused increasingly on civil litigation, including participation in products liability and securities fraud trials, labor and stock exchange arbitrations, and motions practice in state and federal courts.

From 1972-1976, I served as an Assistant United States Attorney for the Southern District of New York. My practice consisted of criminal litigation on behalf of the government, including investigation and prosecution of narcotics, bank robbery, interstate theft, securities fraud, fraud on the government and bribery cases. My responsibilities included supervision of federal agents in investigations, presentation of cases before grand juries, trials, appeals to the United States Court of Appeals for the Second Circuit, and supervision of other Assistant United States Attorneys. For the period during which I served as Chief of the Official Corruption Unit (1975-76), I specialized in public corruption prosecutions. From time to time, I would also coordinate, on a case-by-case basis, with other components of the Department of Justice. Overall during this period, I tried approximately 20 cases and argued approximately 15 appeals to United States Courts of Appeals.

From 1976 until I took the bench in 1988, I practiced at Patterson, Belknap. I became a member of the firm in 1978. My practice during this period centered on litigation, including both civil litigation and counseling, and criminal defense litigation and counseling. I had principal responsibility for virtually all of the cases in which I participated and supervised other lawyers.

From 1988-2006, I served as a United States District Judge for the Southern District of New York.

From August 2006 to the present, I have practiced at Patterson, Belknap. My practice consists of providing strategic advice to clients with respect to litigation. I have also done arbitration and mediation.

- ii. your typical clients and the areas, if any, in which you have specialized.

At the two law firms where I have worked, typical clients have included major corporations and other institutions, as well as smaller companies and individuals. Several clients from 1983 through 1988 were attorneys. After working as an Assistant United States Attorney, I also served as a defense lawyer intermittently, including pre-indictment and post-conviction representation. I also specialized in defense of libel cases.

As an Assistant United States Attorney, I represented the United States.

- 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.

Approximately 90% of my legal practice has been in litigation.

From 1967 to 1972, I appeared in court only occasionally. As an Assistant United States Attorney, from 1972 to 1976, I appeared in court frequently. From 1976 to 1987, I continued to appear in court, although not as frequently as I had as an Assistant United States Attorney. Since my return to Patterson, Belknap in 2006, I have appeared one time in court.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 60%
 - 2. state courts of record: 40%
 - 3. other courts.

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 80%
 - 2. criminal proceedings: 20%

- d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 27 cases to verdict or judgment; five as associate counsel and 22 as chief or sole counsel.

- i. What percentage of these trials were:
 1. jury: 89%
 2. non-jury: 11%

- e. Describe your practice, if any, before the Supreme Court of the United States. Please 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 do not recall any Supreme Court practice and a search of the Supreme Court databases did not reflect any Supreme Court practice.

18. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. 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. *Nemeroff v. Abelson*, 704 F.2d 652 (2d Cir. 1983) (appeal).
U.S. Court of Appeals for the Second Circuit; Honorable Jon O. Newman, Honorable Lawrence W. Pierce, and Honorable William H. Timbers

This appeal, which I argued and for which I wrote the brief, established the right of Alan Abelson and other defendants to recover attorneys' fees from a Boston firm, then-named Hale and Dorr, and its plaintiff client, for prosecuting a stock fraud claim after it became apparent the claim was baseless. This case preceded the existence of Federal Rules of Civil Procedure, Rule 11, which provides explicitly for the recovery of attorneys' fees in such cases.

Opposing counsel:

Honorable Simon H. Rifkind (deceased),
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Honorable Robert S. Smith
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207-1095
(518) 455-7700

Co-counsel:

Andrew C. Freedman
Fulbright & Jaworski
666 Fifth Avenue
New York, NY 10103-3198
(212) 318-3000

2. *Udell v. New York News Inc.*, 124 A.D.2d 656, 507 N.Y.S.2d 904 (N.Y. App. Div. 1986) (libel trial and appeal)

Trial court: Supreme Court, Kings County; Honorable Irving S. Aronin (deceased)
Appellate court: Appellate Division, Second Department; Honorable Guy J. Mangano, Honorable Moses M. Weinstein, Honorable James F. Neihoff, and Honorable Isaac Rubin.

This case involved a libel claim by an attorney against my client, New York News Inc., based on an article that reported the plaintiff had pleaded his client guilty in a criminal case without knowing “the first thing” about the underlying facts. I was chief counsel for the defendant, and argued the appeal. The jury rendered a verdict for the plaintiff in the amount of \$650,000, reduced on appeal to \$75,000. The case was tried from June 3, 1985, to June 21, 1985. After my nomination to the Southern District of New York, the New York Court of Appeals dismissed a motion for leave to appeal. 70 N.Y.2d 745 (N.Y. 1987).

Opposing counsel:

Albert J. Brackley
16 Court St
Brooklyn, NY 11241-0102
(718) 625-5884

3. *Peacock v. New York News Inc.*, Index No. 18616/79
Trial court: Supreme Court, New York County; Honorable Martin Evans (ret.)

This was a libel trial in which I was chief counsel representing the defendant. The plaintiff's name had been identified in a newspaper article as the alias of a notorious Harlem drug dealer—a description conceded at the trial to have been false. The plaintiff claimed damage to reputation and psychological injury. The jury returned a verdict for the defendant following a six-day trial in March, 1983. This case presented substantial difficulties from the defense standpoint, including the subsequent firing of one of the reporters for allegedly falsifying a story. That fact was kept out of evidence through a motion *in limine*.

Opposing counsel:

Steven J. Hyman
McLaughlin & Stern, LLP
260 Madison Avenue
New York, NY 10016
(212) 448-1100

4. *United States v. Stirling*, 571 F.2d 708 (2d Cir. 1978)
Trial court: U.S. District Court for the Southern District of New York; Honorable Marvin E. Frankel (deceased)

The case was a major stock fraud prosecution at the time, and posed problems for the defense in that certain defendants had a defense strategy that put them in conflict with other defendants, notwithstanding efforts to minimize such conflicts.

I represented, as chief counsel, a Mississippi lawyer who was a defendant in this criminal stock fraud prosecution. The jury returned guilty verdicts against all defendants following a trial that lasted approximately three weeks in December 1976 and January 1977. I tried the case and argued the appeal.

Opposing counsel:

W. Cullen MacDonald
Hawkins, Delafield & Wood
One Chase Manhattan Plaza
New York, New York 10005-1401
(212) 820-9333

Counsel for codefendants:

Albert J. Gaynor (deceased)
White Plains, New York 20603

Sidney Feldshuh (deceased)
47 Penn Blvd
Scarsdale, NY 10583

Honorable Douglas F. Eaton
U.S. Magistrate Judge
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Room 1360
New York, New York 10007
(212) 805-6175

5. *SafeCard Servs, Inc. v. Dow Jones & Co.*, 537 F. Supp. 1137 (E.D. Va. 1982), *aff'd*, 705 F.2d 445 (4th Cir. 1983), *cert. denied*, 464 U.S. 831 (1983).
U.S. District Court for the Eastern District of Virginia; Honorable Richard L. Williams

The plaintiff in this action claimed that Dow Jones and other defendants had conspired to lower the price of the stock and to promote the fortunes of its chief competitor through, *inter alia*, a series of articles in *Barron's*, all in violation of federal securities and antitrust laws. The case was essentially a libel claim brought as securities and antitrust claims. I was chief counsel for Dow Jones and its editors. Summary judgment was granted in favor of the Dow Jones defendants on the eve of trial. The case was significant in that plaintiff sought to avoid the burden of proof in a libel case by pursuing securities fraud and antitrust theories.

Opposing counsel:

Hugo L. Black, Jr.
One Biscayne Tower, Suite 2930
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 358-5700

Counsel for codefendants:

David G. Fiske
Bankers Square, 100 N Pitt Street, Suite 206
Alexandria, Virginia 22314
(703) 518-9910

6. *Triad Financial Establishment .v Tumpane Co.*, 611 F. Supp. 157 (N.D.N.Y. 1985).
U.S. District Court for the Northern District of New York; Honorable Neal P. McCurn

The plaintiff in this action, an entity owned by Saudi arms merchant Adnan Khashoggi, sued for a commission based on alleged services rendered to assist the defendant in procuring a contract to supply arms-related services to the Saudi government. I was chief counsel for the defendant, took and supervised discovery, and argued the motion that resulted in partial summary judgment for the defendant. The case was settled shortly afterward. The case was significant in that it involved

some intricate choice-of-law issues and turned on an interpretation of a Saudi royal decree barring commission payments of the type by plaintiff.

Opposing counsel:

James D. St. Clair (deceased)
Hale & Dorr
Boston, Massachusetts 02109

Thomas M. O'Connor
O'Connor, Carnathan and Mack, LLC
30 Rowes Wharf, Suite 410
Boston, Massachusetts 02110
(781) 359-9000

7. *Gaeta v. New York News, Inc.*, 115 Misc. 2d 483, 454 N.Y.S.2d 179 (N.Y. Sup. Ct. 1982), *aff'd*, 95 A.D.2d 315, 466 N.Y.S.2d 321 (N.Y. App. Div. 1983), *rev'd*, 62 N.Y.2d 340, 465 N.E.2d 802 (1984).

Court of Appeals, State of New York; Honorable Judith Kaye, Honorable Matthew Jasen, Honorable Theodore Jones, Honorable Sol Wachtler, Honorable Bernard Meyer and Honorable Richard Simons

This libel case arose from a *Daily News* article reporting the case history of a released mental patient. The article reported – falsely – that the patient had become insane after his son's suicide which was precipitated, in turn, by the extra-marital affairs of the patient's wife, who was the plaintiff. The Court of Appeals entered summary judgment for my clients, the *Daily News* and its reporter and editor, reversing the decisions below. The case clarified the applicability of standards governing summary judgment in libel cases arising from articles on matters of public concern.

Opposing counsel:

Frank C. McDermott
188 Montague Street
Brooklyn, New York 11201-3609
(718) 858-3395

8. *Shapiro v. Ferrandina*, 352 F. Supp. 641 (S.D.N.Y. 1973), *aff'd*, 355 F. Supp. 563 (S.D.N.Y. 1973), *modified*, 478 F.2d 894 (2d Cir. 1973).

Trial court: U.S. District Court for the Southern District of New York; Milton Pollack (deceased); Habeas corpus judge: Murray I. Gurfein (deceased)

Appellate court: U.S. Court of Appeals for the Second Circuit; Honorable Henry Friendly (deceased), Honorable James Oakes, and Honorable Oscar Davis (of the U.S. Court of Claims, by designation) (deceased)

I represented the government of the United States, acting on behalf of the government of Israel in this extradition case. The case was tried initially before Judge Milton

Pollack, sitting as a committing magistrate. It was then appealed by habeas corpus to Judge Gurfein, and his denial of the writ was appealed to the Court of Appeals.

The case refined several principles of international extradition, including the principle of specialty that permits extradition by the asylum state to the demanding state solely for trial on specified offenses.

Opposing counsel:

Nathan Lewin
Lewin & Lewin, L.L.P.
1828 L Street NW, Suite 901
Washington, DC 20036
(202) 828-1000

9. *United States v. Carlin Communications, Inc.*, 815 F.2d 1367 (10th Cir. 1987)
(argued on appeal by Harold R. Tyler, Jr.)
Trial court: United States District Court for the District of Utah; Honorable Bruce S. Jenkins
Appellate court: U.S. Court of Appeals for the Tenth Circuit; Honorable Bobby R. Baldock, Honorable Monroe McKay, and Honorable Wesley E. Brown (of the District of Kansas, by designation)

This was a criminal prosecution of Carlin Communications, which was operating a so-called “dial-a-porn” service in New York, for alleged interstate transportation of obscene materials. I represented the defendants, Carlin Communications, Inc. and two of its executives. I directed the strategy and legal research, drafted major portions of the papers, and gave the principal argument in support of the motion to dismiss the indictment for failure to charge a federal crime. In essence, the government had charged violation of three statutes that did not apply to the defendants’ conduct; they had not violated the one statute that did apply to their conduct. The significance of the case lies in the principles of statutory construction it involved, notably the rule of lenity.

Opposing counsel:

Richard N. Lambert,
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Ste 1600
P.O. Box 45340
Salt Lake City, Utah 84144
(801) 532-3333

Counsel for co-defendants:

Frank H. Wohl
Lankler, Siffert & Wohl
500 Fifth Ave
33rd Floor

New York, New York 10110
(212) 921-8399

John H. Weston
Weston, Garrou & DeWitt
Suite 900
12121 W. Wilshire Blvd
Los Angeles, California 90025-1176
(310) 442-0072

Local counsel:

Stephen R. McCaughey
McCaughey & Metos
10 West Broadway Suite 650
Salt Lake City, Utah 84101
(801) 364-6474

Christine F. Soltis
Utah Attorney General's Office, Appeals Division
160 East 300 South, 6th Floor
P. O. Box 140854
Salt Lake City, Utah 84114-0854
(801) 366-0180

10. *Matter of Roy M. Cohn*, 118 A.D.2d 15, 503 N.Y.S.2d 759 (N.Y. App. Div. 1986)
Trial tribunal: Departmental Disciplinary Committee First Judicial Department;
John L. Amabile, Andrew J. Connick, Donald Diamond, Charles J. Hynes, Eliot A.
Lumbard, Dean George W. Shea, & Irwin Zlowe (deceased).
Appellate court: Appellate Division, First Department; Honorable Leonard H.
Sandler, Honorable Arnold L. Fein, Honorable J. Robert Lynch, Honorable Ernst H.
Rosenberger and Honorable Betty Weinberg Ellerin

This was an attorney disciplinary proceeding in which I was co-lead counsel for the respondent, along with my partner, Harold R. Tyler, Jr. We both presented evidence by examination and cross-examination of witnesses, and argued to the panel. I was the principal author of the briefs. The case was tried intermittently over approximately nine months, from April through December 1984, with post-hearing submissions thereafter and a subsequent appeal to the Appellate Division, First Department. Three of the four charges were sustained by the hearing panel. On cross-appeals, the Appellate Division affirmed the findings sustaining three charges, and reversed the finding that failed to sustain the fourth. The respondent was disbarred. The case was protracted and complex, and notable for the kinds of problems that accompany representation of a highly visible and vocal client, including public disclosure of the proceeding before it reached the Appellate Division.

Opposing counsel:

Departmental Disciplinary Committee
41 Madison Avenue
New York, New York 10010
(212) 685-1000

Michael A. Gentile
The Chrysler Building
405 Lexington Avenue, 26th Floor
New York, New York 10174
(212) 907-6453

Sarah Diane McShea
260 Madison Avenue, 22nd Floor
New York, New York 10016
(212) 679-9090

Howard Benjamin
260 Madison Ave, 19th Floor
New York, New York 10016
(212) 832-3006

19. **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. Please 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.)

As an Assistant United States Attorney, I was consistently in a position to determine whether charges should be brought and a prosecution pursued. As the Chief of the Official Corruption Unit, I had an integral role in determining whether or not to pursue investigations or bring charges in numerous cases, some of them high profile. Additionally, part of my job as an Assistant United States Attorney was to see that the law was uniformly enforced.

From 1976 until I became a United States District Judge, I represented several clients in connection with criminal or disciplinary investigations that ended without the initiation of litigation or the bringing of charges. Such representation consisted of ongoing contact with prosecutors or disciplinary authorities and, at times, the submission of detailed factual memoranda outlining why charges or litigation would be inappropriate.

In addition, in 1986 and 1987, I participated with my partner Harold R. Tyler, Jr., and two lawyers from another firm in preparing a report for the Metropolitan Transportation Authority dealing with the 1983 arrest and subsequent death of a young African-American man. Allegations of racially-motivated brutality had been made against the Transit Authority police involved, although a criminal trial of six of the officers had ended in acquittal on all charges. We interviewed all Transit Authority police patrol personnel and superior officers involved, conducted other investigatory activity, and submitted to the Transit Authority a 30-page report, later made public. I participated in all aspects of the investigation and preparation of the report, including witness depositions, legal research, and writing of the report.

While I was a United States District Judge, I participated in the Judicial Conference of the United States. The Judicial Conference serves to make policy with regard to the administration of the U.S. Courts, and serves to supervise the Director of the Administrative Office of the United States Courts. While I served on the Conference, it considered a number of resolutions relating to the management and operation of the federal courts, including a resolution calling for enhancements to judicial security in the wake of violent and highly-publicized assaults on state and federal judges and their families. The Judicial Conference Committee on Automation and Technology, on which I also served, developed and provided recommendations on specified subjects to the Judicial Conference. Overall, the Committee was responsible for updating the Long-Range Plan for Automation in the U.S. Courts and formulating recommendations on issues relating to, among other things, Internet access to judicial materials, and electronic docketing and case management, and using electronic interfaces to facilitate access to the courts by individuals with hearing impairment.

I also presided over numerous naturalization ceremonies during my time as a District Court Judge, and I took that opportunity to speak to new citizens about the importance of their achievement and the rights to which they were now entitled, particularly the right to vote. Similarly, I also swore in new attorneys on a fairly frequent basis. When swearing in the new attorneys, I would encourage them to do pro bono work, as doing so would help both the legal system and the attorneys themselves. Additionally, I served as a judge for numerous moot court competitions, at schools such as Fordham Law School and Brooklyn Law School. While I served as Chief Judge, I worked to ensure that the federal courthouse could host appropriate educational and civic activities, such as commemorating Dr. Martin Luther King, Jr.

Part of my role as Chief Judge included management of the Southern District of New York, one of the busiest and largest of the United States District Courts. The Southern District has averaged in recent years over 15,000 civil cases a year, has 28 active district court judges, and employs upwards of 750 people. As Chief Judge, I was involved in all facets of management, including the fiscal aspects of administering the court, resolution of personnel conflicts, space allocation, and security. My duties included ultimate responsibility for the designation of judges and assignment of cases, and I served as the chair of the court's assignment committee. Similarly, I determined who should be appointed to the approximately 20 committees within the court, which focus on issues

ranging from technology to criminal law. I presided over meetings of the court's Board of Judges, during which we discussed topics ranging from the appointment of magistrate judges to general policy issues. I also served as the court's liaison to bar associations.

During my tenure, the court transitioned to an electronic case filing system, which was a significant administrative challenge. Similarly, while I served as Chief Judge, the court began to install modernized technological courtrooms. I was ultimately responsible for ensuring that the court continued to run, even in the face of events such as the attacks of September 11, 2001, and a later blackout. I authorized the continuity of operations (COOP) plan that is still operative today. I was charged with managing another logistical and strategic challenge, namely the commencement of the comprehensive renovation of the Thurgood Marshall United States Courthouse.

Since my return to private practice, I have participated in efforts to establish a formal grievance committee within the United States Court of Appeals for the Second Circuit. I have also been a member of the Respect for Law Alliance, Inc., having joined in 2007. This non-profit association promotes respect for law and law enforcement through recognition at an annual banquet of achievements by law enforcement officers, an essay contest for students, and other activities including monthly breakfasts with featured speakers.

I have not performed any lobbying activities on behalf of any clients.

20. **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, please provide four (4) copies to the committee.

From January 1993 through May 2007, I was a part-time Lecturer at Columbia School of Law. I taught trial advocacy.

I also taught a few classes of a seminar at Yale Law School.

I was also an instructor at an ALI-ABA Trial Practice Seminar in Philadelphia, PA, in October 1982. I do not have a syllabus or notes from that course and do not recall which part of the course I taught.

21. **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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As a retired United States District Judge, I am entitled to payment of my full salary until my death.

Pursuant to my partnership agreement with Patterson, Belknap Webb & Tyler, I will receive payment for my capital account (approximately \$103,000) and shares of undistributed firm net income attributable to the period when I served as a partner. This will be made in five equal installments, completed by approximately September 2008.

22. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I have no such plans, commitments, or agreements.

23. **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, patents, 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.)

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

25. **Potential Conflicts of Interest:**

- a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest I would consult with the Department of Justice Ethics Official and would follow their guidance.

26. **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

servicing the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While in private practice, I participated myself and have supervised others in representing Federal and state prisoners at the trial and appellate level, and in protecting the rights of such other litigants as discharged servicemen and a Social Security claimant. When an apparently deserving and indigent mental patient declined the services of publicly paid counsel and requested instead that private counsel represent him, I volunteered my own services and those of my firm to try to secure his placement in a less restricted facility and to protect his meager assets from seizure by the state.

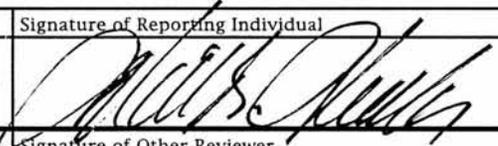
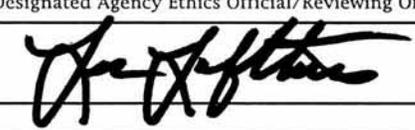
In addition, I worked with associates at my firm to help relieve the burden on the New York City Corporation Counsel’s Office in civil cases and the New York County District Attorney’s Office in criminal cases by supervising those associates in pro bono civil trials and criminal appeals on behalf of those public offices.

Finally, prior to joining the bench, I worked to help formulate policies of the B’nai B’rith Anti-Defamation League, through its National Legal Affairs Committee. Although I have not always agreed with every position that the organization has adopted, I believe it is firmly committed to helping achieve equal justice for all citizens under the law.

As a United States District Judge, when I would swear in new attorneys, I would take the opportunity to encourage those attorneys to engage in pro bono representation, as it would benefit both the legal system and the attorneys themselves.

Since my return to private practice, I have advised an associate in my law firm regarding an asylum petition. In addition, I assisted in the development of a formal grievance committee in the United States Court of Appeals for the Second Circuit.

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent <input type="checkbox"/>	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate <input checked="" type="checkbox"/>	Termination Filer <input type="checkbox"/>	Termination Date (If Applicable) (Month, Day, Year)	<p style="text-align: center;">Fee for Late Filing</p> <p>Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.</p> <p style="text-align: center;">Reporting Periods</p> <p>Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.</p> <p>Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.</p> <p>Nominees, New Entrants and Candidates for President and Vice President:</p> <p>Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.</p> <p>Schedule B--Not applicable.</p> <p>Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.</p> <p>Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.</p> <p>Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.</p>
Reporting Individual's Name	Last Name			First Name and Middle Initial			
	Mukasey			Michael B.			
Position for Which Filing	Title of Position			Department or Agency (If Applicable)			
	Attorney General			Department of Justice			
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code)				Telephone No. (Include Area Code)		
	1133 Ave of the Americas Ny NY 10036				212-336-2000		
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held						
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination			Do You Intend to Create a Qualified Diversified Trust?			
	Committee on Judiciary			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Certification	Signature of Reporting Individual				Date (Month, Day, Year)		
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.					9/21/07		
Other Review (If desired by agency)	Signature of Other Reviewer				Date (Month, Day, Year)		
					9/25/07		
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official				Date (Month, Day, Year)		
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).					9/24/07		
Office of Government Ethics Use Only	Signature				Date (Month, Day, Year)		
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)							
(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>							
(Check box if comments are continued on the reverse side) <input type="checkbox"/>							
Agency Use Only							
OGE Use Only							

SCHEDULE A continued
 (Use only if needed)

Reporting Individual's Name		SCHEDULE A continued (Use only if needed)											Page Number																										
Mukasey, Michael B.													3 of 11																										
Assets and Income		Valuation of Assets at close of reporting period										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																											
BLOCK A		BLOCK B										BLOCK C																											
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type				Amount				Date (Mo., Day, Yr.) Only if Honoraria														
																	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000		\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)						
1	IRA: Franklin Total Return Fund (FT)			X									X										X																
2	IRA: Franklin Growth Fund (FT)				X								X								X																		
3	IRA: American Mutual Fund (AMF)					X							X												X														
4	IRA: Capital Income Builder (AMF)				X								X												X														
5	IRA: Europacific Growth (AMF)				X								X												X														
6	IRA: Fundamental Investors (AMF)					X							X												X														
7	IRA: Income Fund of America (AMF)					X							X												X														
8	IRA: Washington Mutual (AMF)				X								X												X														
9	PBWT: MoneyPurchase Plan:Vanguard 500 Fund (V)			X									X								X																		

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Reporting Individual's Name Mukasey, Michael B.	SCHEDULE B	Page Number 6 of 11
--	-------------------	------------------------

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Certificate of divestiture	
	Example Central Airlines Common	x			2/1/99			x										
1																		
2																		
3																		
4																		
5																		

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$260, and (2) travel-related cash reimbursements received from one source totaling more than \$260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by

the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$104 or less. See instructions for other exclusions.

None

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	\$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	\$300
1			
2			
3			
4			
5			

Reporting Individual's Name Mukasey, Michael B.	SCHEDULE C	Page Number 7 of 11
--	------------	------------------------

Part I: Liabilities			Category of Amount or Value (x)													
Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude		a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.	None <input checked="" type="checkbox"/>													
	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000
Examples	First District Bank, Washington, DC John Jones, 123 JSt., Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand			x		x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements			of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.		
Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves			None <input type="checkbox"/>		
	Status and Terms of any Agreement or Arrangement	Parties	Date		
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85		
1	Pursuant to partnership agreement, filer will receive payment for capital account and his shares of undistributed firm				
2	net income attributable to period he served as partner; made in 5 equal installments by approximately September 2008				
3	on dates firm makes payments to partners	PBWT NY NY	9/06		
4	Filer will withdraw vested benefit funds from PBWT Defined Benefit Plan within 60 days of withdrawal from partnership	PBWT NY NY	1/07		
5	Filer will leave PBWT 401k funds and Money Purchase Plan funds in mutual funds (reported on Schedule A) with				
6	no further contributions made by filer or firm after filer's withdrawal from partnership.	PBWT NY NY	9/06		

Reporting Individual's Name Mukasey, Michael B.	SCHEDULE D	Page Number 8 of 11
--	------------	------------------------

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY ----- Doe Jones & Smith, Hometown, State	Non-profit education ----- Law firm	President ----- Partner	6/92 ----- 7/85	Present ----- 1/00
1	Patterson Belknap Webb & Tyler	Law Firm	Partner	09/2006	present
2					
3					
4					
5					
6					

Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.
None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State ----- Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services ----- Legal services in connection with university construction
1	Mrs. Theodate L. Coates NY NY	Legal Services
2	Dennis J. Buckley, Liquidating Ttee of DVI, Inc. NY NY	Legal Services
3	US Bank National Association Tttee XL Capital Assur-ance Inc. Chicago IL	Legal Services
4	Nomura Credit + Capital Inc. and Harris Nesbitt Corp Wilmington DE	Legal Services
5	Herve Gouraige Newark NJ	Legal Services
6	Estate of Douglas Hancock, Honeywell Intl, Inc. ExcelAire Svces NYNY, Phil PA	Legal Services

Reporting Individual's Name Mukasey, Michael B.	SCHEDULE D	Page Number 9 of 11
--	-------------------	------------------------

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	IDT Aerotel Advice Newark NJ	Legal Services
2	Linda Philips Lay/Goldman Sachs 1999 Exchange Place Fund Hous TX, NY NY	Legal Services
3	Public Serv Elect & Gas of Newark NJ/Delmarva Pwr & Elect Co. Wash DC	Legal Services
4	Quinn Emanuel Urquhart Oliver & Hedges LLP NY NY	Legal Services
5	Renco Group INC NY NY	Legal Services
6	Reynold Porter Chamberlain LLP London England	LEgal Services

Reporting Individual's Name	SCHEDULE D	Page Number <div style="text-align: center; font-size: 1.1em;">10 of 11</div>
-----------------------------	------------	--

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Solow Realty & Dev Co. LLC NY NY	Legal Services
2	Sotheby's Inc. NY NY	Legal Services
3	Tadiran Telecom Inc. /Sprint Products Group NY NY	Legal Services
4	Village Voice Media/MARsh USA Inc. NY NY, Los Angeles CA	Legal Services
5	Winston & Strawn LLP Chicago IL	Legal Services
6	PBW&T	Legal Services

Reporting Individual's Name	SCHEDULE D	Page Number // of //
-----------------------------	------------	-------------------------

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY ----- Doe Jones & Smith, Hometown, State	Non-profit education ----- Law firm	President ----- Partner	6/92 ----- 7/85	Present ----- 1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.
None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State ----- Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services ----- Legal services in connection with university construction
1	XE Capital Management Chicago IL	Legal Services
2	Yale New Haven Hospital Board of Directors New Haven CT	Legal Services
3		
4		
5		
6		

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		78	702	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		693	000
Real estate owned-add schedule	2	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:							
PBWT capital account		103	514				
Mutual Funds - Franklin /Templeton IRA		447	290				
IRA Accounts - American Funds		871	374	Total liabilities		693	000
Money purchase and 401(k) mutual funds - Patterson Belknap		124	015	Net Worth	3	581	895
Total Assets	4	274	895	Total liabilities and net worth	4	274	895
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Real Estate Owned

Personal residence \$ 2,500,500

Real Estate Mortgages Payable

Personal residence \$ 693,000

APPENDIX A

14b. 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 (if not reported).

1. United States v. Rahman: I presided over the nine-month jury trial of ten defendants (including Omar Abdel Rahman—the “Blind Sheik”) accused of seditious conspiracy and other offenses related to a terrorist plot to bomb New York City landmarks, including the World Trade Center. The defendants were convicted in 1996, and I issued sentences ranging from 25 years to life imprisonment. These cases resulted in several published decisions, including: 861 F. Supp. 247 (holding that government surveillance complied with FISA); 870 F. Supp. 47 (ordering the government to disclose a limited amount of confidential information); 854 F. Supp. 254 (denying the defendants’ motion to be tried separately); 837 F. Supp. 64 (disqualifying the Kunstler & Kuby firm from representing multiple defendants in the case); 861 F. Supp. 266 (disqualifying that firm from representing its lone remaining defendant-client); 876 F. Supp. 495 (affirming a search of one of the defendants on inevitable-discovery grounds); and 844 F. Supp. 955 (denying a recusal motion based upon my alleged political opinions and religious beliefs).

Government’s counsel:

Patrick J. Fitzgerald (for the United States)
United States Attorney for the
Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5300

Defendants’ counsel:

Emmanuel A. Moore (for Abdel Rahman)
125-10 Queens Blvd, Ste 320
Kew Gardens, New York 11415
(718) 793-5535

Ronald L. Kuby (for Siddig Ali)
740 Broadway, 5th Fl
New York, New York 10003-9518
(212) 529-0223

Kenneth D. Wasserman (for Hampton-El)
401 Broadway, Suite 1101
New York, New York 10013-3005
(212) 966-9742

Wesley M. Serra (for Alvarez)
Irom, Wittels, Freund, Berne & Serra, P.C.
349 East 149th Street
Bronx, New York 10451-5603
(718) 665-0220

2. *Padilla v. Rumsfeld*, 243 F. Supp. 2d 42 (S.D.N.Y. 2003): In this habeas case involving now-convicted terror suspect Jose Padilla, who sought to be freed from detention by the Department of Defense as an enemy combatant, I ruled that the President had authority to detain, as “enemy combatants,” citizens captured in the United States during a time of war. In addition, I ruled that Padilla had the right to controvert alleged facts and should have monitored access to counsel.

Petitioner’s counsel:

Donna R. Newman (for Padilla)
445 Park Ave, 14th Fl.
New York, New York 10022
(212) 229-1516

Andrew G. Patel (for Padilla)
111 Broadway, Suite 1305
New York, New York 10006
(212) 396-0230

Respondent’s counsel:

James B. Comey (for the United States)
Lockheed Martin
6801 Rockledge Drive
Bethesda, Maryland 20817
(301) 897-6000

Eric B. Bruce (for the United States)
Assistant U.S. Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10007
(212) 637-2200

3. *SR Int’l Bus. Ins. Co. v. World Trade Ctr. Props., LLC*, No. 01 Civ. 9291(MBM) (S.D.N.Y.): Following the 2001 World Trade Center attack, Larry Silverstein, the buildings’ leaseholder, sought to recover billions of dollars in insurance payments from insurers and Lloyd’s-of-London syndicates. At issue was whether the two-plane attack on the World Trade Center constituted one or two “occurrences” for insurance purposes. I presided over a two-phase jury trial addressing that question. The jury found that the contracts between Silverstein and nine of the insurers and all 20 of the Lloyd’s syndicates treated the attacks as one occurrence, while the agreements with nine other

insurance companies treated the attack as two occurrences. I declined to find Silverstein in contempt for making public statements in violation of a court order because a contempt order would ultimately be more prejudicial to the fairness of the proceedings than Silverstein's public statements.

Plaintiffs' counsel:

Herbert M. Wachtell (for World Trade Ctr. Props. and Silverstein Props.)
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1216

Defendants' counsel:

Barry Ostrager (for SwissRe)
Simpson Thacher
425 Lexington Ave.
New York, New York 10017
(212) 455-2655

Milton H. Pachter (for Port Authority of New York and New Jersey)
Office of Senior Litigation Counsel
225 Park Ave S
New York, New York 10003
(212) 435-3507

4. *In re Assicurazioni Generali s.p.a. Holocaust Insur. Litig.*, 340 F. Supp. 2d 494 (S.D.N.Y. 2004): I dismissed this suit against an Italian insurer brought by policy beneficiaries and surviving family members of Holocaust victims on the ground that the plaintiffs' legal claims conflicted with the diplomatic policy favored by the President, which was to resolve Holocaust insurance claims through an international tribunal established exclusively for that purpose.

Plaintiffs' counsel:

Robert Swift (for Cornell and Smetana plaintiffs)
Kohn, Swift and Graf, P.C.
One South Broad Street
Suite 2100
Philadelphia, PA 19107
(215) 238-1700

Michael D. Hausfeld (for Schenker plaintiffs)
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
1100 New York Avenue, N.W., Suite 500
Washington, D.C. 20005
(202) 408-4600

Joseph P. Garland (for plaintiff Tabaksman)
275 Madison Avenue, 11th Floor
New York, New York 10016
(212) 213-1812

Defendant's counsel:

Franklin B. Velie (for Assicurazioni Generali S.p.A.)
Sullivan & Worchester, L.L.P.
1290 Avenue of the Americas
New York, New York 10104
(212) 660-3037

Marco E. Schnabl (for Assicurazioni Generali S.p.A.)
Skadden, Arps, Slate, Meagher & Flom, LLP & Affiliates
Four Times Square
New York, New York 10036
(212) 735-2312

5. *United States v. Cuff*, 38 F. Supp. 2d 282 (S.D.N.Y. 1999); *Heatley v. United States*, 00 CIV 4313(MBM), 2002 WL 1836753 (S.D.N.Y. 2002): The “Preacher Crew” was a notoriously violent drug gang that operated in New York City. In 1996, a federal grand jury returned federal racketeering charges against members of the crew, and I presided over the proceedings against them. Before trial, the United States signaled its intention to seek the death penalty against Clarence Heatley (the “Preacher”) and John Cuff for murders connected to the racketeering enterprise. Both men then entered guilty pleas, and I sentenced them to life in prison. They subsequently filed habeas petitions challenging their convictions and sentences, which I denied.

Petitioner's counsel:

Carl Herman (for Cuff)
443 Northfield Avenue
West Orange, NJ 07052
(973) 324-1011

Irving Cohen (for Cuff)
233 Broadway, Suite 2701
New York, New York 10279
(212) 964-2544

Respondent's counsel:

Christine Chi (for the United States)
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, New York 10019-6092
(212) 259-6864

Sharon McCarthy (for the United States)
Kostelanetz & Fink, LLP
530 Fifth Avenue, 22d Floor
New York, New York 10036
(212) 808-8100

6. *United States v. Lindauer*, 448 F. Supp. 2d 558 (S.D.N.Y. 2006): I denied a government motion requesting that the court compel a defendant to take psychotropic drugs for the purpose of rendering her competent to stand trial. The defendant, a woman accused of acting as an agent of the Iraqi government, had been found incompetent to stand trial due to delusions of grandiosity and paranoia.

Government's counsel:

Michael J. Garcia (for the United States)
United States Attorney for the
Southern District of New York

Edward O'Callaghan (for the United States)
Assistant U.S. Attorney
One St. Andrews Plaza
New York, New York 10007
(212) 637-2200

Defendant's counsel:

Sanford Talkin (for Lindauer)
Talkin, Muccigrosso & Roberts L.L.P.
40 Exchange Place, Suite 1800
New York, New York 10007
(212) 482-000

7. *Antidote Int'l Films v. Motion Picture Assoc. of Am.*, No. 03 Civ. 9373 (Dec. 5, 2003): In this case, I preliminarily enjoined the Motion Picture Association of America (MPAA) from enforcing a ban on the distribution of new movies to critics and awards groups. The MPAA instituted the ban to combat movie piracy resulting from the distribution of films prior to release. I found that the plaintiffs had provided enough evidence—for purposes of the injunction—showing that the MPAA's ban violated federal antitrust law and that plaintiffs had demonstrated sufficiently probable economic harm resulting from the ban.

Plaintiff's counsel:

Gregory L. Curtner (for Antidote)
1450 Broadway, 41st Floor
New York, New York 10018
(212) 704-4400

Defendant's counsel:

Richard M. Cooper (for MPAA)
Williams & Connolly
725 12th Street, N.W.
Washington, DC 20005
(202) 434-5466

8. *United States v. Cheng Chui Ping*, 1:94-mj-02577-UA (S.D.N.Y.): Cheng Chui Ping had a long career smuggling Chinese immigrants into the United States. She financed the trip of the Golden Venture, a ship carrying approximately 300 Chinese nationals that ran aground off the shore of New York, leading to the death of ten individuals who attempted to swim ashore. She was charged with immigrant smuggling, money laundering, and trafficking in kidnapping proceeds. The jury found her guilty after a trial over which I presided, and I sentenced her to 35 years in prison.

Government's counsel:

Tai Hyun Park (for the United States)
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
(212) 848-5364

Defendants' counsel:

Stephen Goldenberg (for defendants)
225 Broadway, No. 1610
New York, New York 10007
(212) 346-0600

Joel Michael Cohen (for defendants)
Clifford Chance US, LLP
31 West 52nd Street
New York, New York 10019
(212) 878-3215

9. *United States of America v. Riggi*, No. 00 Cr. 1118 (S.D.N.Y.) : In 2000, a federal grand jury indicted members of the Decavalcante Organized Crime Family of La Cosa Nostra. The indictment charged the family members with racketeering arising out of murders and conspiracies to murder, extort, engage in loan-sharking and commit securities fraud. I presided over the proceedings against the men, which included several jury trials. The alleged boss of the family, John Riggi, pleaded guilty to a murder charge, and I sentenced him to ten years in prison. One jury trial resulted in guilty verdicts against three family members and a police officer for their roles in a 1998 racketeering-related murder. I sentenced one of the men to life in prison and the police officer to 12 years for being an accessory after-the-fact. Another seven-week jury trial of three high-ranking family members led to racketeering convictions, and I imposed a life sentence on one of the men.

Government's counsel:

John M. Hillebrecht (for the United States)
Assistant U.S. Attorney

Lisa P. Korologos
Assistant U.S. Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
(212) 637-2262

Defendant's counsel:

Paul Brennan (for Riggi)
401 Broadway, Suite 306
New York, New York 10013
(212) 925-8640

10. *United States v. Henderson, et al.*, CR No. 1:02-CR-00451-MBM-ALL (S.D.N.Y.):

I presided over the initial proceedings involving two defendants who faced the death penalty for their alleged involvement in a triple-murder that involved torture of the victims. Notably, I revoked Becton's bail and ordered him detained awaiting trial. After I departed the bench, the case was assigned to Judge Owen. Becton pleaded guilty, but has not yet been sentenced; Darryl Henderson was convicted by a jury on some, but not all, counts and was sentenced to life imprisonment.

Government's counsel:

(As of May 31, 2007)
Daniel Rody
Assistant U.S. Attorney
Southern District of New York
One S. Andrew's Plaza
New York, NY
(212) 637-2200

Daniel M. Gitner (for the United States)
Lankler Siffert Wohl LLP
500 5th Avenue, 33d Floor
New York, New York 10110
(212) 921-8399

Defendants' counsel:

Sanford N. Talkin (for Henderson)
Talkin, Muccigrosso & Roberts
40 Exchange Place
New York, New York 10005

(212) 482-0007

Jeremy Schneider (for Becton)
Rothman, Schneider, Soloway & Stern, LLP
100 Lafayette Street, Suite 501
New York, New York 10013
(212) 571-5500

APPENDIX B

14c. 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. Lindauer*, 448 F. Supp. 2d 558 (S.D.N.Y. 2006)

Government's counsel:

Michael J. Garcia (for the United States)
United States Attorney for the
Southern District of New York

Edward C. O'Callaghan
Assistant U.S. Attorney
One St. Andrews Plaza
New York, New York 10007
(212) 637-2200

Defendant's counsel:

Sanford Talkin (for Lindauer)
Talkin, Muccigrosso & Roberts L.L.P.
40 Exchange Place
Suite 1800
New York, New York 10007
(212) 482-0007

2. *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litigation*, 340 F. Supp. 2d 494 (S.D.N.Y. 2004)

Plaintiffs' counsel:

Robert A. Swift (for Cornell and Smetana plaintiffs)
Kohn, Swift & Graf, P.C.
One South Broad Street
Suite 2100
Philadelphia, Pennsylvania 19107
(215) 238-1700

William Marks (for Cornell plaintiffs)
The Marks Law Firm
75 Claremont Rd.
Suite 204
Bernardsville, New Jersey 07924
(908) 204-9980

Nancy Sher Cohen (for Smetana plaintiffs)
Rene L. Siemens
Stephen N. Goldberg
Heller Ehrman White & McAuliffe, LLP
333 South Hope Street
39th Floor
Los Angeles, California 90071-1406
(213) 689-0200

Elizabeth J. Cabraser (for Schenker plaintiffs)
Morris A. Ratner
Caryn Becker
Lieff, Cabraser, Heimann & Bernstein, LLP
780 Third Avenue, 48th Floor
New York, New York 10017-2024
(212) 355-9500

Melvin I. Weiss (for Schenker plaintiffs)
Milberg Weiss
One Pennsylvania Plaza
49th Floor
New York, New York 10119
United States
(212) 946-9326

Thomas R. Fahl (for plaintiff David)
Squires I
16535 W. Bluemound Road
Brookfield, Wisconsin 53005
(262) 754-3700

William M. Shernoff (for Brauns, Mandil, Szekeres, Lightner, Sladek, and
Haberfeld plaintiffs)
Shernoff, Bidart, Darras & Dillon
600 South Indian Hill Blvd.
Claremont, California 91711
(909) 621-4935

Harvey Levine (for Mandil, Levine, Steinberg, Miller & Huver plaintiffs)
Levine, Steinberg, Miller & Huver
550 West C Street, Suite 1810
San Diego, California 92101-8596
(619) 231-9449

Patricia L. Glaser (for plaintiff Brauns)
Christensen, Glaser, Fink, Jacobs, Weil & Shapiro

10250 Constellation Boulevard -19th Floor
Los Angeles, California 90067
(310) 553-3000

Joseph P. Garland (for plaintiff Tabaksman)
275 Madison Avenue 11th Floor
New York, New York 10016
(212) 213-1812

Edward J. Klein (for plaintiff Tabaksman)
Jay Solomon
Klein & Solomon, LLP.
275 Madison Avenue, 11th Floor
New York, New York 10016
(212) 661-9400

Samuel J. Dubbin (for Weiss plaintiffs)
Dubbin & Kravetz, LLP
701 Brickell Avenue, Suite 1650
Miami, Florida 33131
(305) 371-4700

Herbert L. Fenster (for Anderman plaintiffs)
McKenna Long & Aldridge LLP
1900 K Street NW
Washington, District of Columbia 20006-1108
(202) 496-7500

Defendant's counsel:

Franklin B. Velie (for Assicurazioni Generali S.p.A.)
Sullivan & Worcester
1290 Avenue of the Americas
New York, New York 10104
(212) 660-3037

Peter Simshauser (for Assicurazioni Generali S.p.A.)
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, Massachusetts 02108
(617) 573-4800

Lance A. Etcheverry (for Assicurazioni Generali S.p.A.)
Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Avenue
Suite 3400

Los Angeles, California 90071
(213) 687-5000

3. *Padilla v. Rumsfeld*, 243 F. Supp. 2d 42 (S.D.N.Y. 2003)

Petitioner's counsel:

Donna R. Newman (for Padilla)
445 Park Ave, 14th Fl.
NY, New York 10022
(212) 229-1516

Andrew G. Patel (for Padilla)
111 Broadway
Ste 1305
New York, New York 10006
(212) 396-0230

Respondent's counsel

James B. Comey (for the United States)
Lockheed Martin
6801 Rockledge Drive
Bethesda, Maryland 20817
(301) 897-6000

Eric B. Bruce (for the United States)
Assistant U.S. Attorney
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10007
(212) 637-2200

4. *In re the Application of the United States for a Material Witness Warrant*, 213 F. Supp. 2d 287 (S.D.N.Y. 2002)

Witness's counsel:

Neil S. Cartusciello (for Witness)
7 Hilltop Road
Mendham New Jersey 07945
(973) 543-8200

Government's counsel:

James B. Comey (for the United States)
Lockheed Martin
6801 Rockledge Drive
Bethesda, Maryland 20817

(301) 897-6000

Christopher Morvillo (for the United States)
Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C.
565 Fifth Avenue
New York, New York 10017
(212) 856-9600

5. *Tommy Hilfiger Licensing, Inc. v. Nature Labs, L.L.C.*, 221 F. Supp. 2d 410 (S.D.N.Y. 2002)

Plaintiff's counsel:

Louis S. Ederer (for Tommy Hilfiger)
Arnold & Porter
399 Park Avenue
New York, New York 10022-4690
(212) 715-1000

Joseph H. Lessem (for Tommy Hilfiger)
Graubard Miller
The Chrysler Building
405 Lexington Avenue
New York, New York 10174-1901
(212) 818-8800

Defendant's counsel:

Robert Mason (for Nature Labs)
Mason & Petruzzi
402 Carillon Tower West
13601 Preston Road
Dallas, Texas 75240
(972) 788-1500

Adam D. Cole (for Nature Labs)
Greenberg Traurig
MetLife Building
200 Park Avenue
New York, New York 10166
(212) 801-9200

6. *Farrell Lines, Inc. v. Columbus Cello-Poly Corp.*, 32 F. Supp. 2d 118 (S.D.N.Y. 1997)

Plaintiff's counsel:

Peter A. Junge (for Farrell Lines)
Carol N. Lambos

The Lambos Firm
New York Office
29 Broadway
9th Floor
New York, New York 10006-3101
(212) 381-9700

Defendants' counsel:

Anthony J. Pruzinsky (for Columbus Cello-Poly Corp., Cigna Ins. of Europe,
UMS Generali Marine S.p.A., La Reunion Francaise S.A.,
La Fondiaria Assicurazioni, S.p.A., and UTECO, S.p.A.)

Hill Rivkins Loesberg O'Brien Mulroy & Hayden
45 Broadway, Suite 1500
New York, New York 10006-3739
(212) 669-0600

William J. Manning (for Ceres Terminals)
Jackson Lewis, LLP
One North Broadway
15th Floor
White Plains, New York 10601
(914) 514-6115

7. *In re Chateaugay Corp.*, 193 B.R. 669 (S.D.N.Y. 1996)

Plaintiff's counsel:

Edmund M. Emrich (for LTV Steel Co.)
Kaye, Scholer, Fierman, Hays & Handler
425 Park Avenue
New York, New York 10022-3598
(212) 836-8000

Defendants' counsel:

Robert A. White (for Aerospace Metals, Inc.)
Murtha, Cullina, Richter & Pinney
CityPlace I
185 Asylum Street, 29th Floor
Hartford, Connecticut 06103
(860) 240-6000

Laura B. Ahearn (for AVCO Corporation)
Washington, D.C.

Michael P. Last (for Dana Corporation)
Boston, Massachusetts
One Financial Center

Suite 2900
Boston, Massachusetts 02111
(617) 951-1192

Jeffrey R. Porter (for Dana Corporation)
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 348-1711

David Reis (for Flowline Corporation)
Thorp, Reed & Armstrong
One Oxford Centre
301 Grant St, 14th Floor
Pittsburgh, PA 15219
(412) 394 7711

8. *United States v. El-Gabrownny*, 876 F. Supp. 495 (S.D.N.Y. 1994)

Government's counsel:

Mary Jo White (for the United States)
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
(212) 909-6260

Patrick J. Fitzgerald (for the United States)
United States Attorney for the
Northern District of Illinois
219 S. Dearborn Street, Fifth Floor
Chicago, IL 60604
(312) 353-5300

Defense counsel:

Ronald L. Kuby (for El-Gabrownny)
740 Broadway, 5th Fl
New York, NY 10003-9518
(212) 529-0223

William M. Kunstler (deceased) (for El-Gabrownny)
New York, New York

9. *First Nationwide Bank v. Gelt Funding Corp.*, 820 F. Supp. 89 (S.D.N.Y. 1993)

Plaintiffs' counsel:

Roger B. Mead (for First Nationwide Bank)

Margaret E. Murray
Folger, Levin & Kahn, LLP
Embarcadero Center West
275 Battery Street, 23rd Floor
San Francisco, California 94111
(415) 986-2800

Robert M. Abrahams (for First Nationwide Bank)
Schulte, Roth & Zabel
919 Third Avenue
New York, New York 10022
(212) 756-2000

Lynn E. Judell (for First Nationwide Bank)
Andrews Kurth LLP
450 Lexington Avenue
New York, New York 10017
(212) 850-2984

Defendants' counsel:

Lewis R. Clayton (for Gelt Funding Corp.)
Paul, Weiss, Rifkind, Wharton, & Garrison
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Mark A. Silberman (for Gelt Funding Corp.)
Hofstra University School of Law
Hempstead, New York 11549-1210
(516) 463-5917

Nathan Lewin (for Herzka)
Lewin & Lewin, L.L.P.
1828 L Street NW
Suite 901
Washington, DC 20036
(202) 828-1000

Irving P. Seidman (for 1261 Central Avenue Owners Corp., 36 Plaza Street
Owners Corp., & Wolf)
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 922-1900.

Robin Feingold Singer (New Heights LP, Temple Apt. Mgmt. Corp, & Crown
Equities LP)

New York, New York
(no known current address)

Edward D. Fagan (for Eckstein and 505 Realty Assoc.)
5 Penn Plaza FL 23RD
New York, New York 10001-1810
(646) 378-2225

Sheldon Rudoff (for Malek, Rebenwurz, Adar Two Realty, 730 Realty Assoc.,
740 Realty Associates, and 2344 Davidson Assoc.)

Labaton Sucharow LLP
140 Broadway
New York, New York 10005
(212) 907-0758

Meir Rosenfeld (for Wolf)
Rosenfeld & Maidenbaum
132 Spruce Street
Cedarhurst, New York 11516-1915
(516) 295-5405

10. *United States v. Mendez*, 691 F. Supp. 656 (S.D.N.Y. 1988)

Government's counsel:

Martin Klotz (for the United States)
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019-6099
(212) 728-8688

Defense counsel:

Ruth Chamberlin (for Mendez)
New York, New York
(no known current address)

APPENDIX C

14d. Provide a brief summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings

1. *Tomassi v. Insignia Finan. Group, Inc.*, 478 F.3d 111 (2d Cir. 2007), *rev'g* 398 F. Supp. 2d 263 (S.D.N.Y. 2005): In this age-discrimination case, I granted summary judgment to the defendants, concluding that there was insufficient evidence to support a reasonable finding that the plaintiff was fired on account of her age. Specifically, I determined that a handful of remarks made by the plaintiff's supervisor were "stray remarks" that, under prior Second Circuit precedent, were not sufficient to support age-discrimination claims. The Second Circuit disagreed with this conclusion. Noting that its "precedents may have been somewhat confusing," on the nature of such "stray" remarks and their impact on age-discrimination claims, the Second Circuit clarified that it "did not mean to suggest that remarks should first be characterized either as stray or not stray and then disregarded if they fall into the stray category."

2. *Banker v. Esperanza Health Sys., Ltd.*, No. 06-0603, 2006 WL 2853045 (2d Cir. Sept. 29, 2006), *rev'g in part* No. 05-4115, 2005 WL 3077513 (S.D.N.Y. Nov. 17, 2005): In this case involving an attorney seeking fees from his former clients, I held that the court lacked personal jurisdiction over both the individual and the corporate defendants. The Second Circuit affirmed my ruling as to the individual defendants but held that sufficient facts had been pleaded to create a prima facie case of jurisdiction over the corporate defendants and therefore reversed my dismissal of the claims against them.

3. *Blakely v. Wells*, No. 05-4846, 2006 WL 3770840 (2d Cir. Dec. 13, 2006) *rev'g sub nom Martin Luther King Jr. High Sch. Parents v. New York City Dep't of Education*, 2004 WL 1656598 (S.D.N.Y. July 23, 2004): In this case involving claims of violations of various federal and state laws against numerous state agencies and officials involved in the oversight of a junior high school, I dismissed the plaintiffs' second amended complaint with prejudice for failure to comply with Federal Rule of Civil Procedure 8(a), which requires a complaint to contain a "short and plain" statement of the claim showing entitlement to relief. The Second Circuit agreed with my decision to dismiss the second amendment complaint, as it spanned 57 pages, contained 597 numbered paragraphs and, in the words of the Second Circuit, "was far from short or plain." Nevertheless, the Second Circuit held that the complaint should have been dismissed without prejudice because the plaintiffs filed the second amended complaint without notice of the defects in their first amended complaint and were not on notice that the second amended complaint would be dismissed with prejudice if those defects were not corrected.

4. *Shechet v. Abby Favali Corp. Counsel NYC*, No. 05-5022, 2006 WL 1308656 (2d Cir. May 9, 2006), *rev'g* No. 05-05742 (S.D.N.Y. June 22, 2005): I dismissed the plaintiff's civil rights claim, holding that it was barred by res judicata because it arose out of the same "transaction or occurrence" as a prior case filed in the Eastern District of New York, which had been dismissed for lack of jurisdiction. The Second Circuit

reversed, holding that res judicata was inapplicable when a prior case was dismissed for lack of jurisdiction, and it remanded the case for my reconsideration in light of a recent Supreme Court decision.

5. *Christie v. Hollins*, 409 F.3d 120 (2d Cir. 2005), rev'g No. 01-11605, 2003 WL 22299216 (S.D.N.Y. Oct. 7, 2003): In this habeas case, the petitioner sought relief based on the exclusion of a defense witness's prior testimony. I denied the petition, agreeing with the Magistrate Judge that the question was a close one but ultimately holding that it was not unreasonable for the state courts to conclude that the witness was not "unavailable" and that her testimony would not have affected the verdict. I granted a certificate of appealability to petitioner to seek further resolution of her claim in the Second Circuit. The Second Circuit held that in spite of the "conscientiousness of the state courts that have sustained Christie's conviction" and the "due regard to the careful consideration given by the District Court," it was "fully persuaded that this case presents that unusual instance" where the state courts had denied the plaintiff the right to present a defense and had therefore unreasonably applied federal law.

6. *Konits v. Valley Stream Ctr. High Sch. Dist.*, 394 F.3d 121 (2d Cir. 2005), overruling *Nonnenmann v. City of New York*, 174 F. Supp. 2d 121 (S.D.N.Y. 2001): In *Nonnenmann*, I had held that alleged retaliation based on an individual's identification as a witness in a fellow employee's discrimination suit could not give rise to a First Amendment cause of action. An intra-court split arose in 2002, when another judge in the Southern District held that such alleged retaliation could give rise to a First Amendment cause of action. The Second Circuit resolved this split in *Konits*, holding that such alleged retaliation could, in fact, give rise to a First Amendment cause of action and explicitly overruled *Nonnenmann* to the extent it held otherwise.

7. *Jacobs v. Ramirez*, 400 F.3d 105 (2d Cir. 2005), rev'g in part No. 02-CV-2282 (S.D.N.Y. Mar. 22, 2002): The plaintiff filed a 42 U.S.C. § 1983 action against parole officers claiming, among other things, that his civil rights were violated when he was paroled to his mother's house, which was unsafe and unsanitary. I dismissed his action for failure to state a claim. The Second Circuit reversed as to this claim, noting that, although the plaintiff chose to be paroled at his mother's home, he also alleged that the parole authorities "compelled" him to live in the unsafe conditions. Accordingly, the Second Circuit determined that it could not conclude "beyond doubt" that the plaintiff could prove no set of facts that would entitle him to relief.

8. *Robinson v. New York City Hous. Auth.*, No. 02-9188, 2004 WL 2889916 (2d Cir. Dec. 15, 2004), rev'g No. 02-6508 (S.D.N.Y. Aug. 15, 2002): I dismissed the plaintiff's complaint for failure to state a claim. The Second Circuit affirmed my dismissal of the plaintiff's injunctive or declaratory relief claims under *Younger*, but it remanded for my consideration whether *Rooker/Feldman* or other doctrines barred the remainder of the plaintiff's claims.

9. *Murray v. New York City*, Nos. 02-0194, 02-0197, 2004 WL 2030233 (2d Cir. Sept. 13, 2004), rev'g Nos. 02-3350, 02-3351 (S.D.N.Y. May 1, 2002): I dismissed the

plaintiff's 42 U.S.C. § 1983 claims for failure to state a claim. On appeal, the plaintiff asserted that I did not address his excessive force claim. The Second Circuit noted that the facts in the plaintiff's complaint did not "appear to rise to a claim of excessive force against [the officer]; however, it is possible, if unlikely, that [the plaintiff] could amend his claim to assert a colorable claim of excessive force." Accordingly, the Second Circuit vacated and remanded to allow the plaintiff to amend his complaint.

10. *B. Lewis Prods., Inc. v. Angelou*, Nos. 03-7864, 03-7922, 2004 WL 1147071 (2d Cir. May 21, 2004) vacating in part No. 01-0530, 2003 WL 21709465 (S.D.N.Y. July 23, 2003): In this case involving a dispute over the right to market certain goods related to the poet Maya Angelou's work, I granted summary judgment to the defendants, holding that the letter agreement between the parties lacked certain terms necessary to create a joint venture or an exclusive agency agreement under either New York or North Carolina law. The Second Circuit agreed with my interpretation of the law but remanded for a determination as to whether the letter agreement formed a contract other than a formal joint venture or exclusive agency agreement, an argument not raised by the parties initially.

11. *Jones v. Kelly*, 378 F.3d 198 (2d Cir. 2004), rev'g No. 99-1203 (S.D.N.Y. Jan. 6, 2004): After *Krimstock, infra*, was remanded to my court, I worked with the parties to craft an order establishing a "hearing for vehicles seized as arrest evidence or as an instrumentality of a crime." Both parties provided comments to my draft order. The City expressed concern about including "arrest evidence" in the order, since *Krimstock* concerned only vehicles seized as an instrumentality of a crime. The City appealed the final order. The Second Circuit vacated the part of my order that related to cars held as arrest evidence, noting that they did not vacate the order for "flawed legal reasoning, as to which we take no position, but because it is premised on assumptions and conclusions that have not been tested in a hearing."

12. *U.S. v. Jacques*, 321 F.3d 255 (2d Cir. 2003), rev'g No. 01-167 (S.D.N.Y. June 25, 2001): The defendant pleaded guilty to Social Security fraud but appealed the restitution order that I imposed. Finding the record unclear, the Second Circuit vacated the sentence and remanded the case for a determination as to the defendant's ability to pay restitution.

13. *Padilla v. Rumsfeld*, 352 F.2d 695 (2d Cir. 2003), rev'g 243 F.Supp.2d 42 (S.D.N.Y. 2003), 243 F. Sup.2d 564 (S.D.N.Y. 2002), later rev'd by 542 U.S. 426 (2004): In this habeas case involving now-convicted terror suspect Jose Padilla, who sought to be freed from detention by the Department of Defense as an enemy combatant, I held that, among other things, Secretary of Defense Donald Rumsfeld was a proper respondent, that jurisdiction was proper in the Southern District of New York, that the Constitution and statutes provided the President with the authority to detain Padilla as an enemy combatant, and that Padilla was entitled to consult with counsel and present facts and argument to rebut the government's determination that he was an enemy combatant. The Second Circuit agreed with my determinations with respect to Secretary Rumsfeld and jurisdiction, but held that the Authorization for the Use of Military Force enacted by Congress following the attacks of September 11th, 2001, did not confer authority upon

the President to detain Padilla as an enemy combatant. The Supreme Court, in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), reversed the holdings that Secretary Rumsfeld was the proper respondent and that jurisdiction was proper in the Southern District of New York and did not reach the question as to the President's authority to detain Padilla. The Court held that the proper respondent was Commander Melanie Marr, the commander of the naval brig in Charleston, South Carolina, where Padilla was being held and that jurisdiction was proper only in the District of South Carolina.

14. *Seabury Const. Corp. v. Jeffrey Chain Corp.*, 289 F.3d 63 (2d Cir. 2002), rev'g No. 98-5941 (S.D.N.Y. May 7, 2001): The plaintiff in this case sued for breach of contract arising from failures in an industrial collector chain. Dismissing plaintiff's suit, I concluded that defendant's compliance with a required testing protocol trumped otherwise applicable contract specifications. The Second Circuit reversed, holding that the terms of the purchase order did not override either the hardness requirements or performance assurances specified in the contract. The Second Circuit remanded with instructions to enter judgment in favor of the plaintiff and to determine damages.

15. *DiRienzo v. Philip Servs. Corp.*, 294 F.3d 21 (2d Cir. 2002), rev'g 49 F. Supp. 2d 629 (S.D.N.Y. 1999): In this securities fraud case brought principally by American investors in a Canadian company, the Judicial Panel on Multidistrict Litigation transferred all of the actions, over the objections of several plaintiffs, to the Southern District of New York. I dismissed the actions under the doctrine of *forum non conveniens*, holding that the case was best litigated in Canada. The Second Circuit ultimately reversed this dismissal in two related appeals after reconsidering the controlling Supreme Court precedent in an *en banc* rehearing of another case.

16. *Rodriguez v. Bennett*, 303 F.3d 435 (2d Cir. 2002) remanding No. 00-401, 2001 WL 682446 (S.D.N.Y. June 18, 2001): In this habeas case, I initially determined that the petitioner's second habeas petition was timely based on then-controlling circuit precedent because the period for filing the petition was tolled during the pendency of the initial federal habeas petition, as well as the pendency of the petitioner's state petition for a writ of *coram nobis*. Nevertheless, the same day that I issued my initial decision, the Supreme Court released *Duncan v. Walker*, 533 U.S. 167 (2001), which did not permit tolling during the pendency of a federal petition. As a result, I revised my ruling, determined that tolling was not appropriate during the pendency of the initial federal petition, and held, as a result, that the second federal petition was untimely. The Second Circuit agreed with my interpretation of the law, but remanded for a determination as to whether equitable tolling might be available to the petitioner.

17. *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), rev'g *Krimstock v. Safir*, No. 99-12041, 2000 WL 1702035 (S.D.N.Y. 2000): The plaintiffs challenged the constitutionality of the New York City statute that authorized the city to seize cars, prior to a forfeiture proceeding, if the car could be considered an instrumentality of certain crimes. I applied the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to ascertain the level of procedural safeguards required by the Fourteenth Amendment. I held that the "plaintiffs' due process right to a meaningful hearing at a

meaningful time does not require the additional safeguard of a probable cause hearing.” Specifically, I held that plaintiffs’ interests were adequately protected by a probable cause arrest and the eventual forfeiture proceeding and I dismissed the constitutional claim. The Second Circuit reversed and, after balancing the *Eldridge* factors, found that the Fourteenth Amendment required that the “plaintiffs be afforded a prompt post-seizure, pre-judgment hearing before a neutral judicial or administrative officer to determine whether the City [was] likely to succeed on the merits of the forfeiture action” and if a shorter retention of the car could “satisfy the City’s need to preserve it from destruction or sale during the pendency of the proceedings.”

18. *Building Trades Employers’ Educ. Ass’n v. McGowan*, 311 F.3d 501 (2d Cir. 2002), rev’g No. 98-4998, 2001 WL 682740 (S.D.N.Y. June 18, 2001). This case presented the issue of the impact of federal labor law preemption on the regulatory activities of a state agency. Plaintiffs sought to compel the NY State Labor Department to interpret and comply with one of its own regulations. The Department, in turn, concluded that federal labor law preempted any action on the regulation and refused the plaintiffs’ request. I granted summary judgment for the Department. The Second Circuit reversed, however, holding that federal labor law required the Department to act.

19. *Schonfeld v. Hilliard*, 218 F.3d 164 (2d Cir. 2000), rev’g in part 62 F. Supp. 2d 1062 (S.D.N.Y. 1999): In this case involving allegations of fraud, breach of contract, and breach of fiduciary duties, I granted summary judgment in favor of the defendants on all but the fraud claim, holding that the plaintiff could not prove the existence or amount of damages for lost profits or lost asset damages, excluding testimony as irrelevant, and holding that that plaintiff was not entitled to punitive damages. The Second Circuit agreed with my ruling as to the plaintiff’s claim for lost profits and punitive damages. Nevertheless, the Second Circuit held that claims for lost asset damages could be distinguished from lost profit damages, that the value of such assets could be shown with reasonable certainty, and that expert testimony could be provided with respect to such claims.

20. *Nussle v. Willette*, 224 F.3d 95 (2d Cir. 2000), overruling *Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884 (S.D.N.Y. 1998), rev’d by 534 U.S. 516 (2002): In *Beeson*, I held that the exhaustion requirement of the Prison Litigation Reform Act of 1995 (PLRA) applied to claims brought by inmates alleging assault or excessive force because such claims fell within the meaning of “prison conditions” in the statute. My view accorded with the position adopted by some judges in the Southern District of New York, as well as the United States Court of Appeals for the Third Circuit and the United States Court of Appeals for the Sixth Circuit. Nevertheless, other district judges in the Southern District of New York and the District of Connecticut took a different view, holding that the PLRA’s exhaustion requirement did not apply to such claims. The Second Circuit agreed with the latter position and overruled my decision in *Beeson*. The Supreme Court subsequently overruled the Second Circuit’s interpretation in *Porter v. Nussle*, 534 U.S. 516 (2002), holding that the PLRA’s exhaustion requirement applied to all inmate claims about prison life.

21. *Jordan v. Lefevre*, 206 F.3d 196 (2d Cir. 2000), *rev'g in part* 22 F. Supp. 2d 259 (S.D.N.Y. 1998): In this habeas case, the petitioner argued that the state trial court that convicted him of stabbing an acquaintance to death did not properly handle the analysis of his claim that the state prosecutor had improperly used race as a basis for striking jurors in violation of *Batson v. Kentucky*, 276 U.S. 79 (1986). I held that the state trial court had met the requirements of *Batson* in relying on the race neutral reasons for the peremptory challenges provided by the state prosecutor. The Second Circuit held that, under *Batson*, the state trial court should have independently assessed the credibility of the prosecutor's race neutral reasons to determine the prosecutor's actual intent in striking jurors. As a result, the Second Circuit reversed and remanded for a finding as to the state prosecutor's state of mind during the pre-trial proceedings.

22. *Consolidated Edison Co. of New York v. United States*, 221 F.3d 364 (2d Cir. 2000) *rev'g* 34 F. Supp. 2d 160 (S.D.N.Y. 1998): In this case involving ConEd's use of untaxed fuel for taxable purposes, I granted summary judgment for the United States because ConEd had reason to know that the fuel was untaxed and there were no disputed issues of material fact as to ConEd's reason to know. The Second Circuit reversed, holding that there was a disputed issue of material fact as to what a reasonable taxpayer would have known from the examination of the ticket accompanying the fuel shipment to ConEd.

23. *Flores v. Demskie*, 215 F.3d 293 (2d Cir. 2000), *rev'g* 11 F. Supp. 2d 299 (S.D.N.Y. 1998): In this habeas case, petitioner argued that he was denied the right to effective assistance of counsel at trial because he failed to seek a new trial when the prosecution failed to hand over the prior statement of a witness to be called at trial. I held that, although the prosecution had failed to turn over a memo book containing a witness statement, the statement fell within an exception to the general New York state rule that such statements must be turned over because it was the "duplicative equivalent" of statements already turned over to the defense. As a result, I denied the petition on the ineffective assistance claim. The Second Circuit reversed, holding that under New York law the presence of "minor" inconsistencies between the memo book and other statements already provided to the defense precluded a finding that the documents were "duplicative equivalents." The Second Circuit further held that the omissions in the memo book could form the basis for cross-examination and therefore held that trial counsel's waiver of the opportunity to seek a new trial rendered his performance objectively unreasonable.

24. *United States v. Rahman*, 189 F.3d 88 (2d Cir. 1999), *aff'g and rev'g in part* 854 F. Supp. 254 (S.D.N.Y. 1994), 861 F. Supp. 247 (S.D.N.Y. 1994), 876 F. Supp. 495 (S.D.N.Y. 1994): This case involved the trial and sentencing of ten defendants convicted of seditious conspiracy and other offenses for their roles in numerous terrorist plots, including the first World Trade Center bombing. The Second Circuit affirmed all procedural decisions and convictions and remanded for the sole purpose of re-sentencing one defendant, Ibrahim El-Gabrownny. During sentencing, I had stated that I would have sentenced El-Gabrownny to 24 years less than the Sentencing Guidelines required if I had had the authority. While the court recognized that this point of law was not settled in the

Circuit, it stated that district courts do in fact have downward departure authority in such circumstances. The court also noted that I was required to make specific, individualized findings linking El-Gabrowny to the World Trade Center bombing in order to deny him an inchoate offense sentence reduction.

25. *Jenkins v. Haubert*, 179 F.3d 19 (2d Cir. 1999), rev'g 1996 WL 350685 (S.D.N.Y. June 26, 1996), 1998 WL 148332 (S.D.N.Y. Mar. 30, 1998): In this 42 U.S.C. § 1983 prisoner suit, I concluded that Supreme Court decisions in *Edwards v. Balisok*, 520 U.S. 641 (1997), and *Heck v. Humphrey*, 512 U.S. 477 (1994), barred a § 1983 claim where a prisoner challenges a disciplinary sanction that has no effect on the duration of the prisoner's overall confinement. The Second Circuit acknowledged that this was an open question in the Circuit, but held that a prisoner may challenge the conditions of confinement through § 1983 where the prisoner is unable to do so through a federal habeas corpus petition.

26. *Salahuddin v. Mead*, 174 F.3d 271 (2d Cir. 1999), rev'g 1997 WL 357980 (S.D.N.Y. June 26, 1997): In this 42 U.S.C. § 1983 suit, a prisoner claimed that prison officials violated his First Amendment rights by preventing him from meeting with a prison chaplain. I dismissed the action for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), which was enacted after the prisoner filed suit. The Second Circuit held that requirements adopted by the PLRA cannot be applied to an action pending as of the time that the PLRA was enacted.

27. *LNC Investments, Inc. v. First Fidelity Bank, N.A. New Jersey*, 173 F.3d 454 (2d Cir. 1999), vacating No. 92-7584 (S.D.N.Y. Mar. 31, 1998): In this matter, the plaintiff bondholders sued the defendant trustees for breach of fiduciary duty, breach of contract, and violation of the Trust Indenture Act in connection with the trustees' conduct during the bankruptcy of a company in possession of property secured by the bonds held by the plaintiffs. After a jury verdict in the trustees' favor, I dismissed all claims. The Second Circuit vacated and remanded, finding that the bondholders were entitled to a jury instruction on the applicability of a relevant New York statute and that the instruction on reliance was clearly erroneous. The court further held that another instruction was erroneous because it invited the jury to decide a legal issue.

28. *Rocket Jewelry Box, Inc. v. Noble Gift Packaging*, 157 F.3d 174 (2d Cir. 1998), vacating in part 986 F. Supp. 231 (S.D.N.Y. 1997): In this patent infringement dispute, the patentee filed a petition to confirm an arbitration award in its favor and the licensee cross-petitioned to vacate the award. The licensee argued that the issue of the patent's validity was not submitted to arbitration and still needed to be litigated and only a "final" award can be confirmed by the court. I found that the Second Circuit had two different and potentially conflicting standards of "finality" for purposes of confirming an arbitration award. Under one of these standards, the licensee's claim of an outstanding litigable issue could have precluded finality. I concluded, however, that the licensee's argument would fail if litigated and accordingly confirmed the award. The Second Circuit affirmed the confirmation on different grounds. It held that the existence of a

legal claim not submitted to arbitration did not detract from the arbitration's finality and thus vacated as unnecessary my assessment of the merits of the licensee's claim.

29. *Morelli v. Cedel*, 141 F.3d 39 (2d Cir. 1998), *rev'g* No. 96-2874, 1997 WL 61499 (S.D.N.Y. Feb 13, 1997): In this employment discrimination suit, a former employee sued her former employer, a Luxembourg bank, under the Age Discrimination in Employment Act (ADEA). I dismissed the complaint for lack of subject matter jurisdiction, because the ADEA applies only to employers with a minimum of twenty employees. The defendant employer had only ten employees in the United States, and I ruled that employees employed outside the United States are not counted as employees for purposes of the statutory minimum both because they are not "employees" protected by the statute and because the prohibitions of the ADEA do not apply to foreign companies' foreign operations. On appeal, the Second Circuit held that foreign employees may be counted for purposes of determining whether the corporation is subject to the ADEA.

30. *NBN Broadcasting, Inc. v. Sheridan Broadcasting Networks, Inc.*, 105 F.3d 72 (2d Cir. 1997), *rev'g in part* No. 95-10395, 1996 WL 194314 (S.D.N.Y. Apr. 24, 1996): In this action for a breach of a partnership agreement related to the operation of a radio network, I dismissed the claims as barred by res judicata in light of a prior state proceeding involving the same parties and partnership. The Second Circuit affirmed this holding except with respect to one claim, which the court deemed not decided in the prior litigation.

31. *Valentin v. Dinkins*, 121 F.3d 72 (2d Cir. 1997), *rev'g* No. 95-1191 (S.D.N.Y. Mar. 25, 1996): In this case, the plaintiff was a prisoner, incarcerated on unrelated charges, who brought a civil rights action against city officials and an unidentified police officer alleging use of excessive force. I dismissed the complaint for failure to follow my order to provide a more detailed description of the defendant officer for purposes of identifying a defendant. The Second Circuit vacated my order, reasoning that as a *pro se* litigant who was incarcerated, the plaintiff had made sufficient efforts to assist in determining the identity of the officer. The case was remanded so for further inquiry into the identity of the officer in question.

32. *Maxwell v. City of New York*, 102 F.3d 664 (2d Cir. 1996), *rev'g* No. 93-5834 (S.D.N.Y. Apr. 27, 1995): The plaintiff in this matter brought suit against various police officials and officers for alleged violations of his constitutional and civil rights after he was stopped by police at a vehicle checkpoint. I denied qualified immunity to four officials responsible for planning and ordering the establishment of the checkpoint, but the Second Circuit held that establishing the checkpoint was not a violation of the plaintiff's Fourth Amendment rights and that the defendants were entitled to qualified immunity.

33. *U.S. v. Burd*, 86 F.3d 285 (2d Cir. 1996), *rev'g* No. 92-109 (S.D.N.Y. May 30, 1995): The defendant, who was convicted on twelve counts of wire fraud, appealed my order correcting a technical illegality in his original sentence. The Second Circuit

reversed my amended judgment, finding that the district court lacked the jurisdiction to make the correction. The court remanded the case for re-sentencing but with authorization to impose the original sentence.

34. *New York State Health Maintenance Org. Conference v. Curiale*, 64 F.3d 794 (2d Cir. 1995), rev'g No. 93-1298, 1994 WL 482951 (S.D.N.Y. Feb. 25, 1994): In this case, I permanently enjoined New York State from enforcing a health insurance regulation on the ground that it was preempted by the Employee Retirement Income Security Act of 1974 (ERISA). The Second Circuit held that the regulation did not implicate ERISA so as to be preempted and vacated my order.

35. *Bel Geddes v. Zeiderman*, 22 F.3d 1091 (2d Cir. 1994), rev'g No. 92-6849, 1993 WL 318908 (S.D.N.Y. Aug. 13, 1993): The defendants sought Rule 11 sanctions against plaintiff in this case after she dismissed her action against them in federal court. I denied the motion and fined defense counsel \$100 each for filing the motion, which I deemed manifestly unreasonable under existing precedent. The Second Circuit vacated my order without written opinion.

36. *United States v. Medina*, 32 F.3d 40 (2d Cir. 1994), rev'g No. 93-20 (S.D.N.Y. July 27, 1993): In this criminal case, the defendant was convicted, after a jury trial, of attempted robbery, conspiracy to commit robbery, and aiding and abetting robbery (Count One) and using and carrying a firearm during and in relation to a crime of violence, and aiding and abetting that offense (Count Two). The Second Circuit affirmed the defendant's conviction on Count One, but reversed his conviction on Count Two for insufficiency of evidence. As the basis for its reversal, the Second Circuit noted that the defendant had not participated in the actual robbery and had neither provided a firearm to be used in the robbery nor encouraged the use of a weapon.

37. *Deere & Co. v. MTD Products, Inc.*, 41 F.3d 39 (2d Cir. 1994), questioning *Lobo Entm'ts, Inc. v. Tunnel, Inc.*, 693 F. Supp. 71 (S.D.N.Y. 1988). The Second Circuit, in a footnote, stated that *Lobo Entertainments* erroneously stated that an earlier Circuit opinion identified "predatory intent" as an element of an anti-dilution claim, rather than a relevant factor in assessing an anti-dilution claim.

38. *In Design v. K-Mart Apparel Corp.*, 13 F.3d 559 (2d Cir. 1994), questioning *Love v. Kwitny*, 772 F. Supp. 1367 (S.D.N.Y. 1991): *Love* was a copyright infringement case in which I held that neither willful nor non-willful infringers should be allowed to deduct income taxes in calculating profits derived from the infringement. My decision in *Love* was affirmed on appeal, but the Second Circuit later noted in *In Design* that, under controlling precedent, a non-willful infringer should be allowed to deduct taxes paid on profits and thereby pay an after-tax damage award to the plaintiff.

39. *Orsini v. Kugel*, 9 F.3d 1042 (2d Cir. 1993), rev'g in part *Orsini v. Pierre*, 1992 WL 358769 (S.D.N.Y. Nov. 30, 1992): The underlying case was a diversity automobile accident case in which the jury returned a verdict in plaintiffs' favor. I entered judgment against one set of defendants on a cross-claim for contribution asserted by the other set of

defendants. While the Second Circuit affirmed my award of \$222,000 on the cross-claim for contribution, my reward of pre-judgment interest was reversed. The court held that pre-judgment interest is not permitted on a claim for contribution in a personal injury case under New York law.

40. *United States v. Martinez*, 987 F.2d 920 (2d Cir. 1993), vacating No. 88-902 (S.D.N.Y. July 28, 1992): In this criminal case, one defendant, Martinez, pleaded guilty and the other defendant, Ortiz, was convicted by a jury of conspiracy to distribute more than five kilograms of cocaine. I initially sentenced Ortiz to two concurrent terms of 151 months imprisonment under the United States Sentencing Guidelines. My initial calculation under the Guidelines accounted for the fact that the conspiracy distributed more than five kilograms of cocaine. The Second Circuit vacated the sentence and remanded for a finding of whether Ortiz knew or should have known prior to joining the conspiracy that Martinez sold four or more kilograms of cocaine. On remand, the government relied upon a statute requiring a ten year minimum sentence for conspiracy convictions involving more than five kilograms of cocaine. I sentenced Ortiz to the statutory minimum and the Second Circuit again vacated and remanded, holding that, even under the statutory minimum, the government must provide that Ortiz knew or should have known about the quantity of drugs sold prior to his joining the conspiracy.

41. *Ortiz v. Regan*, 980 F.2d 138 (2d Cir. 1992) rev'g 77 F. Supp. 1185 (S.D.N.Y. 1991): In this dispute over the award of attorney fees, I determined that a counsel for a retiree who prevailed on a procedural due process challenge to a suspension of pension benefits without a hearing was entitled only to fees incurred before the defendant offered a post-deprivation hearing to the retiree under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988. The Second Circuit held that the attorney was entitled to additional fees because more was at stake than the post-deprivation hearing and that the attorney was entitled to fees for work done after the retiree learned of the right of the post-deprivation hearing.

42. *Associated Indem. Corp. v. Fairchild Indus., Inc.*, 961 F.2d 32 (2d Cir. 1992), rev'g 138 F.R.D. 384 (S.D.N.Y. 1991): In this action for declaratory relief, a company sued to determine whether it was covered under several insurance policies for certain environmental liabilities. I granted a motion for Rule 11 sanctions for one defendant's refusal to dismiss another defendant from the lawsuit. The Second Circuit concluded that my factual finding was erroneous and reversed the awarding of sanctions, finding that the defendant could have reasonably believed that it faced \$25 million in environmental liability.

43. *Seiden Assocs., Inc. v. ANC Holdings, Inc.*, 959 F.2d 425 (2d Cir. 1992), rev'g 768 F. Supp. 89 (S.D.N.Y. 1991): The plaintiff in this case was a recruiter attempting to recover fees from placing a CEO with a client company. I granted summary judgment in favor of the defendants based on the clear language of their contract. The Second Circuit disagreed with my finding that the contract's language was unambiguous and reversed and remanded to give the parties an opportunity to present extrinsic evidence to establish the intent of the original contracting parties.

44. *Alier v. Tuscan Dairy Farms, Inc.*, 979 F.2d 946 (2d Cir. 1992), rev'g 752 F. Supp. 116 (S.D.N.Y. 1990): A number of union members sued their former employer and union claiming the employer breached their collective bargaining agreement and the union breached its duty of fair representation. Following a bench trial on liability, I ruled in favor of the union members on both claims and ordered a judgment against the defendants. A few months after this decision, the Supreme Court decided *Air Line Pilots Association, International v. O'Neil*, 499 U.S. 65 (1991), which clarified the standard to be applied to fair-representation claims against a union. The Second Circuit vacated my judgment and remanded to permit reconsideration of the claims in light of *O'Neil*.

45. *Rivera v. U.S.*, 928 F.2d 592 (2d Cir. 1991), rev'g in part 728 F. Supp. 250 (S.D.N.Y. 1990): This case dealt with the execution of search warrants in an apartment complex which plaintiffs alleged violated their constitutional, statutory, and common law rights. I dismissed plaintiffs' claims for failure to state a claim upon which relief can be granted and granted summary judgment. The Second Circuit determined that the Fourth Amendment claims with respect to some defendants and the common law tort claims should have been allowed to move forward.

46. *Bank of China v. Chan*, 937 F.2d 780 (2d Cir. 1991), rev'g in part No. 88-0232, 1990 WL 53007 (S.D.N.Y. Apr. 23, 1990): The Bank of China sued an individual guarantor of a corporate debt, seeking to recover his personal guarantee. I granted summary judgment to the Bank. Chan appealed, and the Second Circuit reversed my grant of summary judgment, holding that genuine issues of material fact existed on two issues.

47. *United States v. Miranda-Ortiz*, 926 F.2d 172 (2d Cir. 1991): The defendant in this case was convicted of distribution of cocaine and conspiracy to distribute cocaine. On appeal, the Second Circuit affirmed the conviction but reversed his sentence and remanded for resentencing. The court held that the defendant's base offense level for sentencing should not have been calculated on the basis of quantities of cocaine distributed by co-conspirators before the defendant joined the conspiracy, absent evidence that the defendant knew of the quantities previously distributed.

48. *Taggart v. Time Inc.*, 924 F.2d 43 (2d. Cir. 1991), rev'g No. 87-3408, 1990 WL 16956 (S.D.N.Y. Feb. 20, 1990): In this case, a plaintiff alleged that his employer discriminated against him on the basis of age when it declined to hire him for a new position after his old position was eliminated. I granted summary judgment for the employer, finding that the employer proffered a legitimate, non-discriminatory reason for refusing to rehire the plaintiff. The Second Circuit reversed, finding that a reasonable juror could infer discriminatory animus from the employer's stated reason that the plaintiff was overqualified for the position.

49. *Rosen v. Thornburgh*, 928 F.2d 528 (2d. Cir. 1991), rev'g No. 87-4495, 1990 WL 7514 (S.D.N.Y. Jan. 29, 1990): In this Title VII action, the plaintiff brought a suit against his former employer for religious discrimination. The employer claimed that he

was terminated for failing to pass the driving exam. I granted summary judgment for the employer, holding that the plaintiff failed to demonstrate a prima facie case for religious discrimination by failing to show a connection between his termination and his Jewish religion. The Second Circuit reversed, holding that material fact issue existed as to whether anti-Jewish animus affected the employer's driving requirement as applied to the trainee.

50. *1st Interstate Credit Alliance, Inc. v. Clark*, 930 F.2d 910 (2d Cir. 1991), rev'g No. 89-3263, 1989 WL 149078 (S.D.N.Y. Dec. 4, 1989): The plaintiff in this case sought to recover funds owed by the defendant, a guarantor of another company's debts. I granted summary judgment to the plaintiff as to liability but denied the motion as to damages. The Second Circuit reversed without opinion.

51. *United States v. Joyner*, 924 F.2d 454 (2d Cir. 1991): In this criminal case, I granted a downward departure to two co-defendants based on the disparity resulting from differences in applicable Guideline ranges among co-defendants. On appeal, the Second Circuit concluded that the Sentencing Commission contemplated and approved of the differences and held that disparity among co-defendants is not a permissible basis for a downward departure.

52. *Gollust v. Mendell*, 501 U.S. 115 (1991), aff'g *Mendell In Behalf of Viacom, Inc. v. Gollust*, 909 F.2d 724 (2d. Cir. 1990) rev'g No. 87-0085, 1988 WL 123703 (S.D.N.Y. Nov 8, 1988): This case involved the issue of whether one must be a current holder of stock in order to bring an insider trading action under § 16(b) of the Securities Exchange Act. I held that that a § 16(b) action may be prosecuted only by the issuer itself or the holders of its securities. A divided panel of the Second Circuit reversed, holding that nothing in the text of the Act prohibited a former owner from asserting a § 16(b) action, and the Supreme Court affirmed.

53. *U.S. v. Wong Chi Keung*, 916 F.2d 67 (2nd Cir. 1990), vacating No. 88-571, 1990 WL 48078 (S.D.N.Y. Apr. 9, 1990): The Second Circuit vacated a defendant's convictions for conspiracy and substantive drug charges after trial and remanded the case for further fact-finding regarding the actions of defendant's former and current counsel. The defendant claimed that his former counsel, who had represented the defendant in connection with a prior immigration charge, participated with the prosecution and a government informant (and current client) in arranging for the informant to "set up" the defendant for the benefit of counsel's current client. The defendant further alleged that the former counsel thereafter recommended his current counsel for the case in question. My opinion made no findings on these issues and the Second Circuit remanded for further consideration and disposition as warranted by the findings.

54. *Gutierrez v. Bowen*, 898 F.2d 307 (2d Cir. 1990), rev'g 702 F. Supp. 1050 (S.D.N.Y. 1989): In this case, supplemental security income (SSI) claimants challenged the decision of the Social Security Administration (SSA) to reopen their case and to deny them eligibility for SSI due to their additional financial resources. I held that the SSA had the authority to *sua sponte* reopen a case under the applicable regulations and that

good cause existed to reopen the claimants' case. While assuming without deciding that the SSA had the authority to *sua sponte* reopen a case, the Second Circuit held that no good cause existed to reopen the case.

55. *Abdul-Hakeem v. Koehler*, 910 F.2d 66 (2d Cir. 1990), rev'g 718 F. Supp. 1211 (S.D.N.Y. 1989): A prisoner filed a petition for a writ of habeas corpus seeking to compel state corrections officials to transfer him to a different facility because of past brutality by prison guards. I determined that a petition for habeas corpus was the only method by which he could obtain relief, but I dismissed the action for failure to exhaust state remedies. A divided panel of the Second Circuit permitted the suit to proceed, holding that the prisoner could also bring his claim under 42 U.S.C. § 1983 because it challenged the conditions of his confinement

56. *United States v. Bortnovsky*, 879 F.2d 30 (2d Cir. 1989): In this case, the Second Circuit determined that the sentence and probation imposed on defendants for mail fraud exceeded the terms permitted by law. The court remanded for re-sentencing.

57. *Consolidated Gold Fields, PLC v. Minorco, S.A.*, 871 F.2d 252 (2d Cir. 1989), rev'g in part *Consolidated Gold Fields, PLC v. Anglo American Corp. of South Africa Ltd.*, 698 F. Supp. 487 (S.D.N.Y. 1988): A corporation, the target of a hostile tender offer, and its subsidiary moved to enjoin the hostile tender offer under § 16 of the Clayton Act. I issued a preliminary injunction, but denied antitrust standing to the plaintiffs. A divided panel of the Second Circuit held that target companies had standing to seek injunctive relief through demonstration of a threat of "antitrust injury."

58. *Sorlucco v. New York City Police Dept.*, 888 F.2d 4 (2d Cir. 1989), rev'g 780 F. Supp. 202 (S.D.N.Y. 1992): After a jury found that the NYPD terminated a probationary officer on the basis of sex in violation of 42 U.S.C. § 1983, I granted the Department a judgment n.o.v. based on insufficient evidence to conclude that the officer's dismissal was part of a pattern or practice of discrimination. I also dismissed her Title VII claims in a bench trial. Much of the evidence supporting the officer's claims was premised on a study documenting the NYPD's disciplining of forty-seven probationary officers, including only four women. I found the study to be statistically insignificant for purposes of finding a constitutional violation. The Second Circuit disagreed, holding that the study, buttressed by other evidence at trial, was sufficient for a jury to rationally conclude that the Department operated in a discriminatory manner. With respect to the Title VII claims, the court also concluded that I was collaterally estopped from finding no liability.

59. *In re Marine Pollution Service, Inc.*, 857 F.2d 91 (2d Cir. 1988), rev'g 88 B.R. 588 (S.D.N.Y.): In this bankruptcy case, a trustee challenged an arbitrator's determination of the combination of employee seniority lists of two companies in Chapter 11 bankruptcy. The bankruptcy court vacated the arbitrator's decision, holding that the order failed to draw its essence from the contract. I reversed the bankruptcy court, because the award was a proper exercise of the arbitrator's powers under the contract. Upon its review of the award, the Second Circuit agreed with the bankruptcy court and held that the arbitrator's award did not draw its essence from the contract.

APPENDIX D

14e. 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, please provide copies of the opinions.

1. *Anemone v. Metropolitan Transportation Authority*, 410 F. Supp. 2d 255 (S.D.N.Y. 2006).
2. *Padilla ex rel. Newman v. Bush*, 233 F. Supp. 2d 564 (S.D.N.Y. 2002), *rev'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 542 U.S. 426 (2004).
3. *Panas v. Reno*, 114 F. Supp. 2d 283 (S.D.N.Y. 2000).
4. *United States v. De La Paz*, 43 F. Supp. 2d 370 (S.D.N.Y. 1999).
5. *United States v. Heatley*, 41 F. Supp. 2d 284 (S.D.N.Y. 1999).
6. *Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884 (S.D.N.Y. 1998).
7. *Jordan v. Lefevre*, 22 F. Supp. 2d 259 (S.D.N.Y. 1998), *aff'd in part, rev'd in part, and remanded* 206 F.3d 196 (2d Cir. 2000), *on remand*, 2000 WL 1877039 (S.D.N.Y. Dec. 27, 2000), *aff'd*, 293 F.3d 587 (2d Cir. 2002).
8. *Flores v. Demskie*, 11 F. Supp. 2d 299 (S.D.N.Y. 1998), *rev'd and remanded*, 215 F.3d 293 (2d Cir. 2000), *cert. denied sub nom. Keane v. Flores*, 531 U.S. 1029 (2000).
9. *Farrell Lines v. Columbus Cello-Poly Corp.*, 32 F. Supp. 2d 118 (S.D.N.Y. 1997), *aff'd sub nom. Farrell Lines v. Ceres Terminals*, 161 F.3d 115 (2d Cir. 1998).
10. *United States v. Ortiz-Gonzalbo*, 946 F. Supp. 287 (S.D.N.Y. 1996), *aff'd without opinion*, 133 F.3d 908 (2d Cir. 1997).
11. *Atkinson v. B.C.C. Assocs.*, 829 F. Supp. 637 (S.D.N.Y. 1993).
12. *Block v. Marino*, 819 F. Supp. 349 (S.D.N.Y. 1993).
13. *United States v. Walker*, 805 F. Supp. 1112 (S.D.N.Y. 1992), *aff'd*, 7 F.3d 26 (2d Cir. 1993), *cert. denied*, 540 U.S. 1169 (1994).
14. *Glasford v. New York State Dep't of Soc. Serv.*, 787 F. Supp. 384 (S.D.N.Y. 1992).
15. *United States v. Sheth*, 782 F. Supp. 916 (S.D.N.Y. 1992).
16. *Ortiz v. Regan*, 749 F. Supp. 1254 (S.D.N.Y. 1991), *later proceeding*, 769 F. Supp. 570 (S.D.N.Y. 1991), *costs and fees proceeding*, 777 F. Supp. 1185 (S.D.N.Y. 1991), *costs and fees ruling aff'd in part and rev'd in part*, 980 F.2d 138 (2d Cir. 1992).

17. *Paulino v. Connery*, 766 F. Supp. 209 (S.D.N.Y. 1991).
18. *Schurman v. Leonardo*, 768 F. Supp. 993 (S.D.N.Y. 1991).
19. *United States v. Keung*, 761 F. Supp. 250 (S.D.N.Y. 1991), *aff'd*, 948 F.2d 1277 (2d Cir. 1991).
20. *Watson v. Sexton*, 755 F. Supp. 583 (S.D.N.Y. 1991).
21. *United States v. 16 Clinton St.*, 730 F. Supp. 1265 (S.D.N.Y. 1990), *later proceeding*, 785 F. Supp. 1157 (S.D.N.Y. 1992), *aff'd*, 978 F.2d 705 (2d Cir. 1992).
22. *Rivera v. United States*, 728 F. Supp. 250 (S.D.N.Y. 1990), *aff'd in part and vacated in part*, 928 F.2d 592 (2d Cir. 1991).
23. *Weaver v. New York City Employees' Ret. Sys.*, 717 F. Supp. 1039 (S.D.N.Y. 1989).
24. *Fowler v. New York City Dep't of Sanitation*, 704 F. Supp. 1264 (S.D.N.Y. 1989).
25. *United States v. Mendez*, 691 F. Supp. 656 (S.D.N.Y. 1988).

APPENDIX E

14f. 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.

1. *Bao Zhu Zhu v. Gonzales*, 460 F.3d 426 (2d Cir. 2006).
2. *King v. Fox*, 458 F.3d 39 (2d Cir. 2006).
3. *Shah v. Meeker*, 435 F.3d 244 (2d Cir. 2006)
4. *Adams v. Suozzi*, 433 F.3d 220 (2d Cir. 2005): In this contract dispute between Nassau County and its sheriffs' union, the County sought to enforce an arbitration agreement and stay litigation pursuant to the Federal Arbitration Act, 9 U.S.C. § 3 (2000). The district court denied the County's motion. I authored the opinion for the court. First, we held that the district court properly exercised subject matter jurisdiction over the case based on one of the union's federal constitutional claims. Second, we affirmed the district court's denial of the motion because we agreed that the arbitration clause in question was premised on a void contract.
5. *United States v. Miller*, 430 F.3d 93 (2d Cir. 2005)
6. *United States v. Miller*, No. 04-2637, 2005 U.S. App. LEXIS 29315 (2d Cir. Nov. 16, 2005).
7. *United States v. Space Hunters, Inc.*, 429 F.3d 416 (2d Cir. 2005).
8. *Zmijewska v. Gonzales*, 426 F.3d 99 (2d Cir. 2005).
9. *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186 (2d Cir. 2005).
10. *Brown v. Senkowski*, 152 Fed. Appx. 15, 2005 U.S. App. LEXIS 20680 (2d Cir. Sept. 22, 2005).
11. *Palkovic v. Johnson*, 150 Fed. Appx. 35, 2005 U.S. App. LEXIS 20681 (2d Cir. Sept. 22, 2005).
12. *Mignano v. United States*, No. 04-6153, 143 Fed. Appx. 398, 2005 U.S. App. LEXIS 20682 (2d Cir. Sept. 22, 2005).
13. *Ahmad v. Gonzales*, No. 03-40324, 143 Fed. Appx. 393, 2005 U.S. App. LEXIS 20640 (2d Cir. Sept. 21, 2005).
14. *Societe Generale v. U.S. Bank Nat'l Ass'n*, No. 04-4503, 144 Fed. Appx. 191, 2005 U.S. App. LEXIS 20644 (2d Cir. Sept. 21, 2005).

15. *United States v. Tomscha*, No. 04-5873, 150 Fed. Appx. 18, 2005 U.S. App. LEXIS 20648 (2d Cir. Sept. 21, 2005).
16. *Neal v. Peerless Elec.*, No. 04-5592, 149 Fed. Appx. 37, 2005 U.S. App. LEXIS 20656 (2d Cir. Sept. 21, 2005).
17. *Javois-White v. Barnhart*, No. 05-0459, 143 Fed. Appx. 390, 2005 U.S. App. LEXIS 20660 (2d Cir. Sept. 21, 2005).
18. *Sims v. Goord*, No. 05-0597, 151 Fed. Appx. 12, 2005 U.S. App. LEXIS 20661 (2d Cir. Sept. 21, 2005).
19. *King v. Fox*, 418 F.3d 121 (2d Cir. 2005): This case involved a New York attorney-client fee dispute where the client argued that the attorney was collaterally estopped to defend the suit and that their fee agreement was unconscionable. The district court granted summary judgment for the attorney, rejecting the estoppel and unconscionability claims and holding that the client ratified the disputed fee agreement. I wrote the opinion for the court, affirming the district court's ruling on collateral estoppel and certifying the unconscionability issue to the New York Court of Appeals on the ground that New York law was unclear as to whether a client may ratify an attorney fee agreement generally and in cases of fraud or unconscionability in particular.
20. *United States v. Gonzalez*, 138 Fed. Appx. 349, 2005 U.S. App. LEXIS 13369 (2d Cir. June 29, 2005).
21. *Chen v. Bd. of Immigration Appeals*, 138 Fed. Appx. 356, 2005 U.S. App. LEXIS 13413 (2d Cir. June 29, 2005).
22. *Gilford v. City of New York*, 136 Fed. Appx. 390, 2005 U.S. App. LEXIS 11485 (2d Cir. June 15, 2005).
23. *Mohammed-Blaize v. INS*, 133 Fed. Appx. 774, 2005 U.S. App. LEXIS 10258 (2d Cir. June 1, 2005).
24. *Holt v. Home Depot USA, Inc.*, 135 Fed. Appx. 449, 2005 U.S. App. LEXIS 5706 (2d Cir. Apr. 6, 2005).
25. *United States v. Doe*, 128 Fed. Appx. 179, 2005 U.S. App. LEXIS 5707 (2d Cir. Apr. 6, 2005).
26. *United States v. Rivera*, 127 Fed. Appx. 543, 2005 U.S. App. LEXIS 5709 (2d Cir. Apr. 6, 2005).

27. *Rodriguez v. McElroy*, 124 Fed. Appx. 702, 2005 U.S. App. LEXIS 5288 (2d Cir. Apr. 1, 2005).
28. *Hudson v. Imagine Entm't Corp.*, 128 Fed. Appx. 178, 2005 U.S. App. LEXIS 5289 (2d Cir. Apr. 1, 2005).
29. *Yan Ping Xiao v. United States DOJ*, 127 Fed. Appx. 10, 2005 U.S. App. LEXIS 5256 (2d Cir. Mar. 29, 2005).
30. *United States v. Newton*, 369 F.3d 659 (2d Cir. 2004).
31. *Barcia v. Sitkin*, 367 F.3d 87 (2d Cir. 2004).
32. *Zaremba v. GMC*, 360 F.3d 355 (2d Cir. 2004).
33. *PSINet Liquidating L.L.C. v. Bear Stearns & Co.* 357 F.3d 263 (2d Cir. 2004).
34. *United States v. Chue*, 85 Fed. Appx. 799, 2004 U.S. App. LEXIS 902 (2d Cir. Jan. 21, 2004).
35. *United States v. Whab*, 355 F.3d 155 (2d Cir. 2004).
36. *United States v. Toohey*, 85 Fed. Appx. 263, 2004 U.S. App. LEXIS 566 (2d Cir. Jan. 15, 2004).
37. *Fowlkes v. Adamec*, 85 Fed. Appx. 266, 2004 U.S. App. LEXIS 567 (2d Cir. Jan. 15, 2004).
38. *Miller v. Hekimian Labs., Inc.*, 85 Fed. Appx. 266, 2004 U.S. App. LEXIS 568 (2d Cir. Jan. 15, 2004).
39. *United States v. Riaz*, 85 Fed. Appx. 261, 2004 U.S. App. LEXIS 501 (2d Cir. Jan. 14, 2004).
40. *Thabault v. Ashcroft*, 85 Fed. Appx. 257, 2004 U.S. App. LEXIS 503 (2d Cir. Jan. 14, 2004).
41. *Scalise v. Metro. Group Prop. & Cas. Ins. Co.*, 85 Fed. Appx. 255, 2004 U.S. App. LEXIS 504 (2d Cir. Jan. 14, 2004).
42. *Pecor v. ELRAC, Inc.*, 85 Fed. Appx. 259, 2004 U.S. App. LEXIS 505 (2d Cir. Jan. 14, 2004).
43. *United States v. Maloney*, 85 Fed. Appx. 252, 2004 U.S. App. LEXIS 373 (2d Cir. Jan. 13, 2004).

44. *United States v. Datillo*, 85 Fed. Appx. 250, 2004 U.S. App. LEXIS 374 (2d Cir. Jan. 13, 2004).
45. *Brown v. Barnhart*, 85 Fed. Appx. 249, 2004 U.S. App. LEXIS 375 (2d Cir. Jan. 13, 2004).
46. *Yak v. Bank Brussels Lambert*, 252 F.3d 127 (2d Cir. 2001).
47. *Quesada-Mosquera v. United States*, 243 F.3d 68585 (2d Cir. 2001).
48. *Timmons v. Alexion*, 7 Fed. Appx. 4, 2001 U.S. App. LEXIS 4947 (2d Cir. Mar. 23, 2001).
49. *United States v. Nachamie*, 5 Fed. Appx. 95, 2001 U.S. App. LEXIS 4150 (2d Cir. Mar. 19, 2001).
50. *Prima U.S., Inc. v. Panalpina, Inc.*, 223 F.3d 126 (2d Cir. 2000).
51. *Integrated Waste Servs. v. Akzo Nobel Salt, Inc.*, 2000 U.S. App. LEXIS 14619 (2d Cir. Jun. 22, 2000).
52. *Mehlenbacher v. Akzo Nobel Salt, Inc.*, 216 F.3d 291 (2d Cir. 2000).
53. *Rodgers v. Seaward (In re Seaward)*, 2000 U.S. App. LEXIS 12466 (2d Cir. Jun. 6, 2000).
54. *Bobreski v. Ebasco-Rayethon Constructors*, 2000 U.S. App. LEXIS 12469 (2d Cir. Jun. 6, 2000).
55. *Bear U.S.A., Inc. v. Kim*, 2000 U.S. App. LEXIS 12554 (2d Cir. Jun. 6, 2000).
56. *Duran v. Reno*, 197 F.3d 63 (2d Cir. 1999).
57. *Duran v. Reno*, 193 F.3d 82 (2d Cir. 1998).
58. *Argentina v. Emery World Wide Delivery Corp.*, 188 F.3d 86 (2d Cir. 1998).
59. *Andy Warhol Found. for Visual Arts, Inc. v. Hayes (In re Hayes)*, 183 F.3d 162 (2d Cir. 1999).
60. *United States v. An Antique Platter of Gold*, 184 F.3d 131 (2d Cir. 1999).
61. *Argentina v. Emery World Wide Delivery Corp.*, 161 F.3d 108 (2d Cir. 1998).
62. *United States v. King*, 1998 U.S. App. LEXIS 28265 (2d Cir. Nov. 9, 1998).

63. *United States v. Scaria*, 165 F.3d 15 (2d Cir. 1998).
64. *Int'l Jet Mkts. v. Simat, Helliesen & Eichner, Inc.*, 1998 U.S. App. LEXIS 28280 (2d Cir. Nov. 9, 1998).
65. *Kanowitz Fruit & Produce Co. v. United States*, 1998 U.S. App. LEXIS 28025 (2d Cir. Oct. 29, 1998).
66. *United States v. Gonzalez*, 1998 U.S. App. LEXIS 27977 (2d Cir. Oct. 27, 1998).
67. *Zigmund v. Solnit*, 1998 U.S. App. LEXIS 27981 (2d Cir. Oct. 27, 1998).
68. *United States v. Shaiw Tin Jang*, 1998 U.S. App. LEXIS 27147 (2d Cir. Oct. 21, 1998).
69. *United States v. King*, 165 F.3d 15 (2d Cir. 1998).
70. *Hansen v. United States DOJ*, 1998 U.S. App. LEXIS 27569 (2d Cir. Oct. 21, 1998).
71. *Sawyer v. Musumeci*, 1998 U.S. App. LEXIS 27570 (2d Cir. Oct. 21, 1998).
72. *Przygoda v. Hove*, No. 98-6007, 1998 U.S. App. LEXIS 27573 (2d Cir. Oct. 21, 1998).
73. *Tough Traveler v. Outbound Prods.*, No. 98-7002, 1998 U.S. App. LEXIS 27574 (2d Cir. Oct. 21, 1998).
74. *Jafri v. Rubin*, No. 97-6125, 1998 U.S. App. LEXIS 38625 (2d Cir. Oct. 21, 1998).
75. *United States v. 27.09 Acres of Land*, 43 F.3d 769 (2d Cir. 1994).
76. *Moller v. North Shore Univ. Hosp.*, 12 F.3d 13 (2d Cir. 1993).
77. *Brown v. Doe*, 2 F.3d 1236 (2d Cir. 1993).
78. *Atlantic Healthcare Benefits Trust v. Googins*, 2 F.3d 1 (2d Cir. 1993).
79. *Waisome v. Port Auth. of N.Y.*, 999 F.2d 711 (2d Cir. 1993).
80. *United States v. 27.09 Acres of Land*, 1 F.3d 107 (2d Cir. 1993).
81. *McGuire v. Russell Miller, Inc.*, 1 F.3d 1306 (2d Cir. 1993): The parties to this case appealed and cross-appealed a district court judgment awarding defendants \$313,807 in damages, but no attorneys' fees, for their counterclaim arising from misrepresentations made during a merger of two insurance companies. The defendants argued that the judgment was inconsistent with the

jury's special verdict form with respect to damages and attorneys' fees. I wrote the opinion for the court, holding that the jury's responses on the special verdict form may have been inconsistent but that the district court's judgment accounted for those inconsistencies and appeared to be fair and reasonable. Nevertheless, we reversed and remanded the district court's denial of attorneys' fees because the jury's special verdict form indicated that the defendants were entitled to the fees.

82. *In re Bolar Pharm. Co., Sec. Litig.*, 966 F.2d 731 (2d Cir. 1992).

83. *Grondahl v. Merritt & Harris, Inc.*, 964 F.2d 1290 (2d Cir. 1992).

84. *ITT Corp. v. United States*, 963 F.2d 561 (2d Cir. 1992): The appellant in this case, a corporate taxpayer, appealed a district court order in favor of the government disallowing claimed losses arising from the corporation's conversion and surrender of debentures issued by its subsidiaries from 1966 to 1969. I wrote the opinion for the court, holding that the government was collaterally estopped to relitigate the deductibility of the losses because the issue was fully and fairly litigated between the parties in a previous action.

85. *American Lung Ass'n v. Reilly*, 962 F.2d 258 (2d Cir. 1992).

86. *United States v. Alexander*, 962 F.2d 199 (2d Cir. 1992).

87. *United States v. Helmsley*, No. 92-1179, 1992 U.S. App. LEXIS 6846 (2d Cir. Apr. 14, 1992).

88. *Calero v. INS*, 957 F.2d 50 (2d Cir. 1992).

89. *United States v. Gonzalez*, 945 F.2d 525 (2d Cir. 1991).

90. *Bay v. Times Mirror Magazines, Inc.*, 936 F.2d 112 (2d Cir. 1991).

91. *Chabad-Lubavitch of Vermont v. Burlington*, 936 F.2d 109 (2d Cir. 1991).

92. *Zuckerbraun v. General Dynamics Corp.*, 935 F.2d 544 (2d Cir. 1991).

93. *National Foods, Inc. v. Rubin*, 936 F.2d 656 (2d Cir. 1991): This case raised the issue of whether the Eleventh Amendment prohibited a law firm representing a N.Y. State employee in federal court on behalf of the State from moving in that federal court for additional attorneys' fees to be paid by the State. The Eleventh Amendment immunizes states against money judgments in federal court unless the states consent to federal court jurisdiction or Congress has overridden their immunity by statute. I wrote the opinion for the court, holding that the Eleventh Amendment did not bar the law firm's motion in this case because the N.Y. State statute that

authorized representation by private attorneys in federal court expressly permitted that federal court to settle any related disputes on attorneys' fees.

94. *Lopez v. Metro. Life Ins. Co.*, 930 F.2d 157 (2d Cir. 1991): In this employment-discrimination case, an employee, who was black and of Jamaican descent, was discharged from his job at the end of his probationary period because he failed to meet the employer's production quota. The employee filed an action for discrimination, claiming that he could not meet the quota because the employer discriminated against him on the basis of his race and national origin by failing to train him and by otherwise depriving him of opportunities afforded white employees. I authored the opinion for the court, affirming the district court's finding that the employee had failed to establish a prima facie case of discrimination and affirming the dismissal of the case.

95. *Kidder, Peabody & Co. v. Maxus Energy Corp.*, 925 F.2d 556 (2d Cir. 1991).

96. *Arc Elec. Constr. Co. v. Comm'r*, 923 F.2d 1005 (2d Cir. 1991).

97. *Carey v. Crescenzi*, 923 F.2d 18 (2d Cir. 1991).

98. *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*, 920 F.2d 183 (2d Cir. 1990): This matter involved the interpretation of § 362(h) of the Bankruptcy Code, which permits "an individual" injured by a willful violation of an automatic stay to recover actual and punitive damages. I wrote the opinion for the court, holding that the word "individual" in the statute applies by its plain meaning only to natural persons and not to corporate debtors.

99. *United States v. Jones*, 918 F.2d 9 (2d Cir. 1990).

100. *United States v. Long*, 917 F.2d 691 (2d Cir. 1990).

101. *Finnegan v. Fountain*, 915 F.2d 817 (2d Cir. 1990).

102. *Rector, Wardens, & Members of Vestry of St. Bartholomew's Church v. New York*, 914 F.2d 348 (2d Cir. 1990).

103. *United States v. Oshatz*, 912 F.2d 534 (2d Cir. 1990): In this criminal tax fraud case, the majority opinion concluded that it is improper to ask character witnesses hypothetical questions that assume the guilt of the defendant, regardless of whether the witnesses are testifying about the defendant's reputation or are expressing their own opinion about the defendant. The error in the case, however, was deemed harmless. I wrote a separate concurrence to express my view that guilt-assuming questions to character witnesses expressing their *opinions* of the defendant should not be excluded from jury consideration, because, *inter alia*, this type of questioning is

highly relevant to the jury's assessment of the character witness and is not unfairly prejudicial—particularly in light of potential prophylactic measures available to the trial judge.

104. *Kozera v. Westchester-Fairfield Chapter of Nat'l Elec. Contractors Ass'n*, 909 F.2d 48 (2d Cir. 1990).

105. *Wells v. Sullivan*, 907 F.2d 367 (2d Cir. 1990).

106. *In re Sonnox Indus.*, 907 F.2d 1280 (2d Cir. 1990).

107. *Mann v. United States*, 904 F.2d 1 (2d Cir. 1990).

108. *Sommer v. Sullivan*, 898 F.2d 895 (2d Cir. 1990).

109. *Maduakolam v. Columbia Univ.*, 866 F.2d 53 (2d Cir. 1989).

110. *United States v. Rooney*, 866 F.2d 28 (2d Cir. 1989).

111. *Fleming v. New York Univ.*, 865 F.2d 478 (2d Cir. 1989): The appellant in this case, a former student who was handicapped, sued New York University for overcharging him for his dormitory room during his undergraduate and graduate years in violation of § 504 of the Rehabilitation Act of 1973. The district court granted the University summary judgment based on the expiration of the three-year statute of limitations. The district court held that the statute began to run at the appellant's undergraduate graduation and the suit commenced more than three years later. The appellant countered that the statute of limitations began to accrue only when he received the bill listing his unpaid charges for the dormitory. I wrote the opinion for the court, holding that mere notice of past overcharges does not amount to an ongoing violation and that the statute of limitations had run. The ruling also affirmed the district court's finding that the appellant had failed to present a prima facie case of discrimination with respect to his graduate housing in light of the appellant's failure to have applied for such housing.

112. *Eames v. Bowen*, 864 F.2d 251 (2d Cir. 1988).