

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Robert Lloyd Capers

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

United States Attorney for the Eastern District of New York

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.

Office:

United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

Home:

Teaneck, New Jersey

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

1970; Bronx, New York

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Albany Law School  
Albany, New York  
September 1993 - May 1996  
Juris Doctor - May 1996

New York University  
New York, New York  
September 1988 - May 1992  
Bachelor of Arts (Political Science) - May 1992

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

Dates:           October 2003 - Present

Job Titles:     Senior Litigation Counsel, Public Integrity Section, Criminal Division,  
March 2012 - Present  
Detail, Deputy Chief, Narcotic and Dangerous Drug Section, United  
States Department of Justice, Criminal Division,  
September 2011 - March 2012  
Chief, Narcotics Section and International Narcotics Strike Force,  
Criminal Division, October 2009 - March 2012  
Deputy Chief, Narcotics Section, Criminal Division,  
October 2008 - October 2009  
Acting Deputy Chief, General Crimes Section, Criminal Division,  
August 2008 - October 2008  
Assistant United States Attorney, Violent Crimes and Terrorism Section,<sup>1</sup>  
Criminal Division, July 2007 - October 2008  
Assistant United States Attorney, Narcotics Section, Criminal Division,  
February 2005 - July 2007  
Assistant United States Attorney, General Crimes Section, Criminal  
Division, October 2003 - February 2005

Office of the Special Narcotics Prosecutor for the City of New York  
80 Centre Street  
New York, New York 10013

Dates:           September 2000 - September 2003

Job Title:       Assistant District Attorney, Special Investigations Bureau

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<sup>1</sup> This unit is now called the National Security and Cybercrime Section.

New York County District Attorney's Office  
1 Hogan Place  
New York, New York 10013

Dates: September 1996 - September 2000

Job Titles: Assistant District Attorney, Trial Bureau 60 and Domestic Violence  
Bureau  
September 1996 - September 2000

New York County District Attorney's Office  
1 Hogan Place  
New York, New York 10013

Dates: August 1992 - July 1993

Job Titles: Trial Preparation Assistant, Trial Bureau 30

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

- Assistant Attorney General's Exceptional Service Award (for United States v. HSBC Holdings, plc, et al.), United States Department of Justice, January 2014
- United States Department of Homeland Security, Immigration and Customs Enforcement, Director's Award for Meritorious Service (for United States v. HSBC Holdings, plc, et al.), November 2013
- Recognition Award from the United States Secret Service (for United States v. Richard James, et al.), February 2008
- Recognition Award from the United States Department of Homeland Security, Immigration and Customs Enforcement (for United States v. Richard James, et al.), February 2008
- Recognition Award from the United States Postal Inspection Service (for United States v. Richard James, et al.), October 2007

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

- National Black Prosecutors Association
- Sterling Johnson, Jr. Local Chapter, National Black Prosecutors Association, Charter Member

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York State Bar, December 17, 1997 - Present. No membership lapses.

- 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.

United States Court of Appeals, Second Circuit  
August 15, 2006 - Present

United States District Court, Eastern District of New York  
November 21, 2002 - Present

United States District Court, Southern District of New York  
November 19, 2002 - Present

No membership lapses.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alpha Phi Alpha Fraternity, Inc. (National Organization)  
April 1997 - Present

Zeta Zeta Lambda Alumni Chapter, Cambria Heights, New York  
April 1997 - July 2003

Back to Basics Basketball Academy, Bronx, New York, Fourth and Fifth Grade  
Boys Basketball Coach  
February 2010 - August 2013

Dreamz N Beyond Stars ("DNB Stars") Basketball, Bronx New York, Sixth  
Grade Boys Basketball Coach  
September 2013 - August 2014

- b. Indicate whether any of these organizations listed in response to 11(a) above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed in response to Question 11(a) have engaged in discriminatory conduct.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Panelist, Careers in Criminal Law Series - Prosecution Panel, sponsored by the Rutgers-Newark Criminal Law Society and Office of Career Services, held at the Rutgers School of Law-Newark Center for Law and Justice, 123 Washington Street, Newark, New Jersey  
March 31, 2015  
Copy Unavailable

Panelist, How to Become an AUSA, sponsored by the New York City Bar Association Committee for Minorities in the Courts, held at the Association of the Bar of the City of New York, 42 West 44th Street, New York, New York  
January 22, 2015  
Outline Attached

Panelist, Everything You Wanted to Know About Becoming an AUSA, sponsored by the New York City Bar Association Committee for Minorities in the Courts, held at the Association of the Bar of the City of New York, 42 West 44th Street, New York, New York  
April 21, 2014  
Copy Unavailable

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None.

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

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never clerked for a judge.

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

I have never practiced law as a solo practitioner.

- 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.

United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

Dates: October 2003 - Present

Job Titles: Senior Litigation Counsel, Public Integrity Section, Criminal  
Division, March 2012 - Present

Detailer, Deputy Chief, Narcotic and Dangerous Drug Section,  
United States Department of Justice, Criminal Division,  
September 2011 - March 2012  
Chief, Narcotics Section and International Narcotics Strike Force,  
Criminal Division, October 2009 - March 2012  
Deputy Chief, Narcotics Section, Criminal Division,  
October 2008 - October 2009  
Acting Deputy Chief, General Crimes Section, Criminal Division,  
August 2008 - October 2008  
Assistant United States Attorney, Violent Crimes and Terrorism  
Section,<sup>2</sup> Criminal Division, July 2007 - October 2008  
Assistant United States Attorney, Narcotics Section, Criminal  
Division, February 2005 - July 2007  
Assistant United States Attorney, General Crimes Section,  
Criminal Division, October 2003 - February 2005

Office of the Special Narcotics Prosecutor for the City of New York  
80 Centre Street  
New York, New York 10013

Dates: September 2000 - September 2003

Job Title: Assistant District Attorney, Special Investigations Bureau

New York County District Attorney's Office  
1 Hogan Place  
New York, New York 10013

Dates: September 1996 - September 2000

Job Titles: Assistant District Attorney, Trial Bureau 60 and Domestic  
Violence Bureau  
September 1996 - September 2000

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

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<sup>2</sup> This unit is now called the National Security and Cybercrime Section.



b. Describe:

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

As a career prosecutor, the general character of my practice has not changed per se; rather, it has steadily evolved over the course of my career. I have been a prosecutor for the entirety of my nineteen-year career, and as such, have evolved from a junior prosecutor who started out prosecuting low-level quality of life offenses to a seasoned prosecutor with an impressive record of professional accomplishments and diverse experiences.

I began my career at the Manhattan District Attorney's Office (the "DA's Office") in September 1996, where I investigated and prosecuted individuals who committed a range of crimes, beginning with low-level quality of life offenses and other misdemeanors, and later graduated to felony larcenies, robberies, assaults and domestic assaults, and narcotics offenses. During those years, I practiced my litigation skills by conducting numerous suppression hearings, grand jury presentations, and jury trials.

In September 2000, I moved to the Office of the Special Narcotics Prosecutor for New York City ("Special Narcotics"), where I worked in an investigative unit (the Special Investigations Unit or "SIB") and conducted long-term investigations of street-level narcotics organizations and later, international narcotics organizations that were responsible for importing multiple kilogram quantities of narcotics into the United States for distribution in New York City. In that capacity, I learned the nuances of conducting long-term complex investigations and further honed my litigation skills by conducting an extensive grand jury presentation and later, a two-defendant jury trial with over two hundred exhibits, by myself.

In October 2003, I transitioned to the United States Attorney's Office for the Eastern District of New York (EDNY), where I started in the General Crimes Section, investigating and prosecuting individuals who committed violations of the United States Code. My areas of concentration were largely confined to narcotics offenses, immigration offenses, counterfeit currency cases and some fraud-related offenses. While assigned to General Crimes, I tried several narcotics cases to verdict, secured convictions in all of those trials, and wrote several appeals defending those convictions. After approximately fifteen months, I moved to the Narcotics Section, where I was able to further hone my investigative skills and trial skills in larger and more complex cases, including United States v. Rodriguez, 05 CR 153 (DGT); aff'd, 503 F. App'x 72 (2d Cir. 2012) (summary order) (discussed below in response to Question 15), which was

a complex drug-related double murder of two innocent people in a case of mistaken identity. That trial was held in October 2006.

In December 2006, I was temporarily assigned to the Violent Crimes and Terrorism Section<sup>3</sup> to participate in two very complex murder and racketeering trials involving a group of Guyanese nationals that had committed multiple murders in furtherance of a life insurance fraud scheme. Two of the defendants were charged with multiple counts of capital murder and two co-defendants were charged with non-death penalty eligible crimes related to the scheme. The two non-death penalty eligible defendants were severed from the two defendants charged with death-eligible crimes and tried together in a separate trial. That same month, two other AUSAs and I participated in a month long trial, at the conclusion of which both defendants were convicted of all crimes charged in the indictment. United States v. Peter, et al., 02 CR 778 (SJ); aff'd, 322 F.App'x 32 (2d Cir. 2008) (summary order) (discussed below in response to Question 15). Subsequently, both defendants agreed to cooperate with the government and testified against their co-conspirators and family members in the guilt phase and sentencing phase of a six-month long capital murder and racketeering trial. Both of those capital defendants are convicted of capital murder charges and subsequently sentenced to life imprisonment after the jury deadlocked on the issue of the imposition of the death penalty or life imprisonment. United States v. James, et al., 02 CR 773 (SJ); aff'd, 712 F.3d 79 (2d Cir. 2013) (discussed below in response to Question 15).

In late December 2007, I joined a two-AUSA trial team for a complex capital murder trial, scheduled to commence in mid-January 2008, of a defendant who ran a Sunset Park, Brooklyn-based crack cocaine distribution organization and ordered the murders of two narcotics associates in furtherance of that enterprise. That defendant was convicted of charges related to those murders and was sentenced to life imprisonment after the jury deadlocked on the issue of whether or not a sentence of death or life imprisonment was appropriate. United States v. Caraballo, 01 CR 1367 (RJD); aff'd, 585 F.3d 652 (2d Cir. 2009) (discussed below in response to Question 15).

In August 2008, I was promoted to Acting Deputy Chief of the General Crimes Section, where I began to develop superior managerial and mentorship skills. The General Crimes Section was a fast-paced environment where the three supervisors on staff were charged with closely supervising approximately twenty-five new AUSAs in all facets of their development. In October 2008, I was promoted to Deputy Chief of the Narcotics Section and in November 2009, I was promoted to Chief of the Narcotics Section and International Narcotics Strike Force. As the

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<sup>3</sup> That unit is now called the National Security and Cybercrime Section.

Chief, I had oversight over approximately fourteen AUSAs of varying levels of experience, three Deputy Chiefs and nine support staff, all while maintaining my own investigative and trial caseload. Furthermore, as part of my supervisory and case-related responsibilities, I traveled extensively throughout South America and the Caribbean to coordinate complex international narcotics investigations with our federal and international law enforcement partners.

In September 2011, I accepted a detail with the Narcotic and Dangerous Drug Section in the Criminal Division of the United States Department of Justice in Washington, D.C., as the Deputy Chief for Litigation. In that capacity, I supervised fifteen Trial Attorneys and two Assistant Deputy Chiefs and had overall supervision over the Section's General Litigation practice and its Mexico Unit practice. I reported to my Principal Deputy Chief and to the Executive Office of the Criminal Division, and regularly briefed the Assistant Attorney General for the Criminal Division.

In March 2012, I returned to the EDNY and transitioned away from "blue collar" prosecutions and the supervision of these prosecutions to white collar prosecutions. I accepted a position as Senior Litigation Counsel in the Public Integrity Section in the Criminal Division of the EDNY. In my current position, I am charged with investigating and prosecuting the more complex and/or sensitive matters in the Section. Those matters largely involve investigations and prosecutions of public officials and/or entities that have abused the public trust by using their official positions for their own personal gain. I also investigate and prosecute criminal civil rights matters involving members of law enforcement who commit acts of brutality or official misconduct under color of law. Finally, in my current assignment I participate in the EDNY's training modules and provide supplemental supervisory assistance to the Public Integrity Section, the EDNY at large, and the Criminal Division's Executive Office. In this capacity, I utilize all of my skills and experiences to review documents, provide counsel to the supervisors in the Public Integrity Section and in other sections within the EDNY (many of whom I have directly supervised during my time in the EDNY), and second-seat General Crimes AUSAs' pre-trial hearings and jury trials. I also assist in the preparation of other AUSA's witnesses for trial and advise on investigative and trial strategy. Finally, I also continue to litigate complex and high-profile matters for the EDNY.

In sum, over the past nineteen years of my career as a prosecutor, the character of my practice has evolved into one that is well rounded and comprehensive. As discussed above, I have developed superior investigative, trial, leadership and mentorship skills. More importantly, I have had the honor and gratification of devoting my entire legal career to

serving the United States, the People of the State of New York, and the People of the Eastern District of New York.

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

As a career prosecutor, my clients have been the United States and the People of the State of New York.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:

- 1. federal courts - 75%
    - 2. state courts of record - 25%
    - 3. other courts - 0%
    - 4. administrative agencies - 0%

100% of my career has been in litigation, all in criminal matters. While the frequency of my appearances in court has varied over my career, it has been substantial. As discussed above, after joining the DA's Office in September 1996, I almost immediately began handling in-court matters on a daily basis. This included handling calendar calls, arraignments, pre-trial suppression hearings (for misdemeanors and felonies), grand jury presentations, and jury trials. Similarly, after joining the EDNY in 2003, I almost immediately began handling the same type of in-court matters. Moreover, for the first six years of my tenure in the EDNY, I appeared in court almost daily. Since 2009, the frequency with which I appear in court has been reduced to approximately four times a month, with the exception of when I participate in jury trials or second-seat jury trials and/or hearings with junior AUSAs. The trials I currently conduct are complex trials that last at least three weeks. Since 2009, I have averaged one trial per year and a half. Since 2012, I began second-seating newer AUSAs in trials or suppression hearings between two and four times each year. I also spend a considerable amount of time preparing junior AUSA's witnesses for trial by conducting mock direct examinations and/or cross examinations. I also argue appeals before the Second Circuit Court of Appeals on occasion.

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings - 0%
      - 2. criminal proceedings - 100%

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

I have tried fifteen criminal cases to verdict. Ten of those trials were federal criminal matters tried in the United States District Court for the Eastern District of New York.<sup>4</sup> The remaining five were state criminal matters tried in the New York State Supreme Court.<sup>5</sup> I have been:

- Sole counsel for eight criminal trials  
(five state trials and three federal trials)
  - Chief counsel for two federal trials with two other trial partners
  - Associate counsel for five federal trials with two other trial partners
- i. What percentage of these trials were:
1. Jury - 100%
  2. Non-jury - 0%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced in front of the Supreme Court of the United States.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and

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<sup>4</sup> This summary does not include cases tried to verdict where I second-sat a new AUSA but did not actively participate in the trial. There have been at least seven such cases.

<sup>5</sup> This number is an estimate. I have been unable to confirm the number of state criminal cases I have tried to verdict. However, I believe that I have conducted no less than the number of trials stated in this summary.

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) and (2) **United States v. Mallay, et al., 712 F.3d 79 (2d Cir. 2013) (James and Mallay); 322 F.App'x 32 (2d Cir. 2009) (summary order) (Peter)**

Dates of Representation: January 2007 - May 2015

Courts and Judges: United States District Court, Eastern District of New York

*Honorable Sterling Johnson, Jr. (Trial)*

United States Court of Appeals, Second Circuit

*Honorable Jose A. Cabranes*

*Honorable Richard C. Wesley*

*Honorable Debra Ann Livingston*

Co-Counsel: Lawrence P. Ferazani, Jr., Esq. (then EDNY AUSA), Currently Vice President - Labor Litigation  
National Football League  
280 Park Avenue  
New York, New York 10017  
(212) 450-2357

James G. McGovern  
Chief of the Criminal Division, EDNY  
271 Cadman Plaza East  
Brooklyn, New York 11201  
(718) 254-6293

Opposing Counsel: Kenneth J. Kaplan, Esq. (Mallay Trial Counsel)  
Kaplan and Katzberg  
767 Third Avenue, 26<sup>th</sup> Floor  
New York, New York 10017  
(212) 750-3100

Richard Jasper, Esq. (Mallay Death Counsel)  
Law Offices of Richard Jasper  
276 Fifth Avenue, Suite 501  
New York, New York 10001  
(212) 689-3858

Steve Zissou, Esq. (James Trial Counsel)  
Steve Zissou and Associates  
42-40 Bell Boulevard, Suite 302  
Bayside, New York 11361  
(718) 279-4500

Ephraim Savitt, Esq. (James Death Counsel)  
260 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10016  
(212) 679-4470

Charles A. Ross, Esq. (Peter Trial Counsel)  
Charles A. Ross and Associates, LLC  
111 Broadway, Suite 401  
New York, New York 10006  
(212) 616-3030

Robert C. Gottlieb, Esq. (Motillal Trial Counsel)  
Gottlieb and Gordon  
Trinity Building, Suite 701  
New York, New York 10006  
(212) 566-7766

Case Summary: This case was the culmination of a six-year investigation and prosecution that dismantled an international multi-million dollar life insurance scheme orchestrated by Ronald Mallay and Richard James. The scheme insured the lives of members of the Guyanese community, including family members of the defendants and several alcoholic Guyanese immigrants, paid the premiums on those policies for a period of years until the no-contest clauses on those respective policies lapsed, and then murdered the insured individuals to collect the insurance proceeds. As a result of the scheme, at least four individuals were murdered and dozens of others were targeted for murder. At trial, we proved two murders the defendants Mallay and James committed in Guyana and two additional murders they committed in New York. At the penalty phase, the jury deadlocked on the issue of the imposition of the death penalty. Accordingly, in 2008, both defendants were sentenced to life imprisonment with no opportunity for release. The convictions were ultimately affirmed. See United States v. James, et al., 712 F.3d 79 (2d Cir. 2013).

(3) and (4) **United States v. Rodriguez, 503 F.App'x 72 (2d Cir. 2012) (summary order)**

**United States v. Polanco, 510 F.App'x 10 (2d Cir. 2013) (summary order)**

Dates of Representation: January 2006 - May 2015 (Rodriguez)  
October 2007 - May 2015 (Polanco)

Courts and Judges: For Rodriguez:  
United States District Court, Eastern District of  
New York  
*Honorable David G. Trager (Trial) (Deceased)*

United States Court of Appeals, Second Circuit  
*Honorable John M. Walker, Jr.*  
*Honorable Richard C. Wesley*  
*Honorable Peter W. Hall*

For Polanco:  
United States District Court, Eastern District of  
New York  
*Honorable David G. Trager (Trial)(Deceased)*  
*Honorable Frederic Block (Sentencing)*

United States Court of Appeals, Second Circuit  
*Honorable Ralph K. Winter*  
*Honorable Rosemary S. Pooler*  
*Honorable Denny Chin*

Co-Counsel: Licha M. Nyiendo, Esq. (then EDNY  
AUSA) Currently, Senior Cyber Investigator -  
Global Security  
Apple, Incorporated  
1 Infinite Loop  
Cupertino, California 95014  
(408) 974-9587

Opposing Counsel: For Rodriguez:  
Jane Anne Murray, Esq. (Stand-by Trial Counsel)  
Murray Law, LLC  
220 South Sixth Street, Suite 1225  
Minneapolis, Minnesota 55402  
(646) 209-7553



Harry C. Batchelder, Jr., Esq. (Stand-by Sentencing Counsel)  
40 Wall Street, 28<sup>th</sup> Floor  
New York, New York 10005  
(212) 502-0660

Michael A. Young, Esq. (Appellate Counsel)  
165 Christopher Street, Suite 2D  
New York, New York 10014  
(212) 242-4336

For Polanco:

Russell T. Neufeld, Esq. (Trial Counsel)  
99 Hudson Street, 8<sup>th</sup> Floor  
New York, New York 10013  
(646) 613-8359

Richard L. Rosenkrantz, Esq. (Co-Counsel)  
(Deceased)

Kenneth M. Tuccillo, Esq. (Appellate Counsel)  
Post Office Box 576  
Hastings on Hudson, New York 10701  
(914) 439-4843

Case Summary: This series of cases are the culmination of an investigation into a Queens-based cell of a Colombian narcotics trafficking organization that distributed multiple kilograms of cocaine and earned hundreds of thousands of dollars in illicit drug proceeds. The leader of that cell, the defendant German Dario Polanco, was robbed of approximately \$316,000 in drug proceeds from one of his stash houses. Polanco believed that several fellow Colombian nationals had robbed that stash house and ordered his enforcer and his lieutenant, Luis Rodriguez, to kill those individuals. Both the enforcer and Rodriguez agreed to commit the killings and Polanco showed the two men the house in Queens, New York where the suspected robbers lived. The enforcer recruited two shooters to commit the murders with the enforcer acting as the immediate supervisor. Rodriguez, as the lieutenant, agreed to supervise the enforcer and his team of shooters. In September 2000, the enforcer and the shooters set up in a sport utility vehicle ("SUV") outside of the house, intent on murdering the men when they left the house. Rodriguez was positioned nearby in his car and had already driven past the location to make sure that the enforcer and his shooters were properly set up in the SUV to commit the killings. Rodriguez had previously done some surveillance of the house with the enforcer to ensure that the suspected robbers lived at the house. However, in a case of mistaken identity, the shooters shot and killed two males who exited the house, entered into a car that was parked across the street and tried to drive away from the house. One of those males was a 14 year old boy. Those murders remained unsolved until approximately December 2000, when the enforcer was arrested by the Drug Enforcement

Administration (“DEA”) for attempting to sell a kilogram of heroin to a DEA confidential informant. The enforcer (hereinafter, the “CW”) subsequently decided to cooperate with the government and fully implicated himself, Polanco, Rodriguez and others in those murders.

Based in large part on the information provided by the CW, Rodriguez and one of the shooters, Manuel Santos, were charged separately with those murders. Santos proceeded to trial first and was convicted of all charges related to those murders and sentenced to life imprisonment. United States v. Santos, 01 CR 537 (DGT); aff’d, 541 F.3d 63 (2d Cir. 2008), 486 F.App’x 133 (2d Cir. 2012) (summary order).

I entered the case in January 2006, after Santos had been convicted and before Rodriguez proceeded to trial. I was assigned as lead counsel and was partnered with Ms. Nyiendo. November 2006, Rodriguez was convicted of murder charges related to the killing of both victims and was sentenced to life imprisonment without the possibility of release.

Subsequently, I supervised Ms. Nyiendo (as a Deputy Chief in the Narcotics Section) as post-trial briefing was completed in anticipation of sentencing. I reviewed and edited all memoranda that were submitted by the government in aid of sentencing and participated in the sentencing proceedings. Ms. Nyiendo and I handled the appeal, jointly preparing the brief with an Appeals Division attorney, and I argued before the Second Circuit, which affirmed Rodriguez’s conviction. 503 F.App’x. 72 (2d Cir. 2012) (summary order).

Polanco was not charged for his role in the murders until Ms. Nyiendo and I completed the investigation and prosecution of Rodriguez. We charged Polanco for his involvement with those murders. United States v. Polanco, 07 CR 780 (DGT).<sup>6</sup> In 2010, Polanco was convicted of all charges and was sentenced to life imprisonment without the possibility of release. I handled the appeal, again jointly preparing the brief with an Appeals Division attorney, and I argued before the Second Circuit, which affirmed Polanco’s conviction. 510 F.App’x 10 (2d Cir. 2013)(summary order)

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<sup>6</sup> The matter was initially assigned to the Honorable David G. Trager, who handled the matter through the trial and conviction. In early 2011, Judge Trager passed away and the matter was reassigned to the Honorable Frederic Block for sentencing.

- (5) United States v. Caraballo, 585 F.3d 652 (2d Cir. 2009), 352 F.App'x 522 (2d Cir. 2009) (summary order)

Dates of Representation:

December 2007 - May 2015

Courts and Judges:

United States District Court, Eastern District of New York  
*Honorable Raymond J. Dearie (Trial)*

United States Court of Appeals, Second Circuit  
*Honorable Pierre N. Leval*  
*Honorable Reena Raggi*  
*Honorable Debra Ann Livingston*

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Case Summary: This was an investigation and prosecution of a Sunset Park, Brooklyn-based crack cocaine dealer named Gilberto Caraballo who ran a street level crack cocaine distribution organization that distributed multiple kilogram quantities of crack cocaine from approximately 1989 to 2001. In the early 1990s, Caraballo contracted to have a rival crack cocaine dealer killed. Many years later, Caraballo contracted to have a narcotics associate who worked within his organization shot and killed so that Caraballo could continue engaging in a romantic relationship with the associate's wife. In

exchange for committing the murder, Caraballo extended the shooter a line of credit for quantities of crack cocaine, as the shooter was a young street level crack dealer who ran his own crack distribution enterprise. Caraballo and several of his associates were charged with federal capital crimes related to the murders that were committed in furtherance of a continuing criminal enterprise. United States v. Caraballo, et al., 01 CR 1367 (RJD).

I was assigned to the case in late December 2007, approximately three weeks before jury selection and trial were scheduled to commence in the guilt phase of this capital trial. I was the most senior member of the team. However, because I was new to the case, I opted to have AUSA Bitkower, who was formerly the mid-level member of the trial team, move to the position of lead counsel. I delivered the summation, which allowed AUSA Payne, the junior member of the trial team, to deliver the opening statement. I also handled three cooperating witnesses that were central to the prosecution.

Caraballo was convicted of all of the charged crimes. In the penalty phase of the proceedings, I delivered the opening statement. AUSA Payne delivered the summation and AUSA Bitkower delivered the rebuttal. Subsequently, the jury unanimously voted to sentence Caraballo to life imprisonment without the possibility of release.

(6) **United States v. Ogando, 574 F.3d 102 (2d Cir. 2008)**

<u>Dates of Representation:</u>	January 2004 - January 2008
<u>Courts and Judges:</u>	United States District Court, Eastern District of New York <i>Honorable Frederic Block (Trial)</i>  United States Court of Appeals, Second Circuit <i>Honorable Amalya L. Kearse</i> <i>Honorable Guido Calabresi</i> <i>Honorable Robert Sack</i>
<u>Co-Counsel:</u>	Debra Newman (retired AUSA)
<u>Opposing Counsel:</u>	Harry C. Batchelder, Jr., Esq. 40 Wall Street, 28 <sup>th</sup> Floor New York, New York 10005 (212) 502-0660

Case Summary: This was a re-trial of an international narcotics importation case in which an organization based in Amsterdam, Netherlands utilized human couriers to smuggle in thousands of MDMA pills into the United States who taped the pills to their bodies and walked through U.S. Customs when they reached the United States. Ogando was a New York City-based livery cab driver who was responsible for picking up the couriers at the airport once they successfully cleared U.S. Customs, and transporting

them to a safe location where they could turn over the MDMA pills to the distribution arm of the organization. I was assigned to the matter while in General Crimes in approximately January 2004. Jury selection and trial commenced in April 2004 and the defendant was subsequently convicted of all counts. 02 CR 1215 (FB). The Second Circuit reversed the judgment of conviction on sufficiency grounds and remanded to the district court to enter a judgment of acquittal. 547 F.3d 102 (2d Cir. 2008).

As the sole counsel of record on this matter, I was responsible for the entire presentation of this matter. Specifically, I made the opening statement, summation and rebuttal and presented all of the government's witnesses, including two cooperating witnesses (the "CW 1 and CW 2, collectively the "CWs") who were arrested by U.S. Department of Homeland Security Investigations agents after attempting to smuggle hundreds of MDMA pills into the United States for the organization. I also introduced into evidence several recorded telephone calls between CW 2 and the Amsterdam, Netherlands-based source of supply, where they discussed, among other things, that Ogando would pick up CW 2 from John F. Kennedy International Airport after CW 2 successfully cleared U.S. Customs. I submitted all of the pre-trial briefing and requests to charge. I also jointly prepared the brief with an Appeals Division attorney. I did not argue the appeal before the Second Circuit because I was engaged on trial in the Caraballo matter (discussed above).

(7) **United States v. Binning, 231 F.App'x 97 (2d Cir. 2007) (summary order)**

Dates of Representation:

December 2003 - November 2005

Courts and Judges:

United States District Court, Eastern District of  
New York  
*Honorable Nina Gershon (Trial)*

United States Court of Appeals, Second Circuit  
*Honorable Guido Calabresi*  
*Honorable Reena Raggi*  
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Case Summary: This trial involved a human courier who attempted to smuggle into the United States from Georgetown, Guyana, more than one kilogram of cocaine that was secreted inside of his luggage. Binning was ultimately convicted after trial and his conviction was affirmed by the Second Circuit. United States v. Binning, 04 CR 20 (NG); aff'd, 231 F.App'x 97 (2d Cir. 2007) (summary order). At trial, I adopted the trial strategy that I would disprove the majority of Binning's post-arrest statements in my case-in-chief by introducing them through the case agent and then rebutting them through testimony elicited from Binning's sister. Binning's testimony was full of untruths and inconsistencies, all of which were exposed during cross-examination, and he was subsequently convicted of both counts in the indictment. Moreover, at sentencing, the district court assessed Binning a two-level enhancement to his applicable advisory U.S. Sentencing Guidelines range for obstructing justice by committing perjury at trial.

I was again responsible for the entire presentation in this matter. Specifically, I handled all of the pre-trial briefing; made the opening statement, summation and rebuttal; presented all of the government's witnesses; and introduced into evidence all government exhibits. As discussed above, I also cross-examined the defendant. I submitted the request to charge and handled all of the post-trial briefing. Finally, I also handled the appeal, again jointly preparing the brief with an Appeals Division attorney and arguing the appeal before the Second Circuit.

(8) **United States v. Reyes, 185 F.App'x 65 (2d Cir. 2006) (summary order)**

Dates of Representation:

September 2004 - August 2009

Courts and Judges:

United States District Court, Eastern District of  
New York  
*Honorable John Gleeson (Trial)*

United States Court of Appeals, Second Circuit  
*Honorable John M. Walker, Jr.*  
*Honorable Jon O. Newman*  
*Honorable Sonia Sotomayor*

Co-Counsel:

Not Applicable

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Case Summary: The defendant Cecilia Reyes attempted to purchase a kilogram of heroin from a cooperating witness, which he intended to distribute in the New York City area. Reyes was an area drug dealer who purchased kilogram quantities of heroin and cocaine from Puerto Rico-based source of supply who smuggled the narcotics on board commercial airline flights, either in the luggage of unsuspecting passengers or secreted on the person of human couriers, to the New York City area. A Puerto Rico-based undercover Drug Enforcement Administration (“DEA”) task force officer (“UC”) arrested a courier who attempted to smuggle a kilogram of heroin aboard a flight en route to J.F.K. International Airport. The courier (“CW”) agreed to cooperate and identified Reyes as the person who intended to purchase the kilogram of heroin.

The CW flew to New York City in the company of the UC, and made several monitored calls to Reyes. The two men negotiated a price for the kilogram of heroin, assuming that the heroin was of good quality and purity. In furtherance of his attempt to purchase the kilogram of heroin, Reyes agreed to meet with the CW at a parking lot in the Bronx, New York, to accept a “sample” of the heroin to test the sample for purity and quality. Subsequently, Reyes met the CW at the parking lot, accepted what he believed was a sample of heroin, and was arrested by DEA agents. Reyes was convicted of attempting to possess with the intent to distribute one kilogram of heroin, and was sentenced to 121 months’ incarceration.

I was responsible for the entire presentation in this matter. Specifically, I made the opening statement, summation and rebuttal, and presented all of the government’s witnesses, including the CW, the UC, a DEA chemist and a narcotics expert. I also introduced into evidence the narcotics, the “sample” that Reyes accepted from the CW, and several recorded conversations, with corresponding transcripts that were prepared with my supervision, between the CW and Reyes. I handled all of the pre-trial briefing, the request to charge, and post-trial briefing. I also I handled the appeal, again jointly preparing the brief with an Appeals Division attorney, and argued the appeal before the Second Circuit.

(9) **United States v. Hernandez, et al., 279 F.App'x 51 (2d Cir. 2008) (Summary Order)**

Dates of Representation:

January 2005 - May 2005

Courts and Judges:

United States District Court, Eastern District of  
New York

*Honorable John Gleeson (Trial)*

United States Court of Appeals, Second Circuit

*Honorable Roger J. Miner*

*Honorable Joseph M. McLaughlin*

*Honorable Rosemary S. Pooler*

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Case Summary: This trial involved members of an international narcotics trafficking and money laundering organization that smuggled cocaine from the Caribbean into the United States through various ports of entry, including John F. Kennedy International Airport ("J.F.K.") and Newark Liberty International Airport ("Newark Airport"). The organization, led by Benjamin Ramos ("the Ramos Organization"), imported multiple kilogram quantities of cocaine by boat from the Dominican Republic to Puerto Rico, where it was offloaded and hidden in the personal luggage of couriers and sometimes unsuspecting passengers traveling to the United States on commercial airlines. Once the cocaine arrived at either J.F.K. or Newark Airport, the cocaine was smuggled out of the terminals by airline employees and given to Ramos Organization associates. The defendant Jenny Velasco was an airline employee who smuggled some of those shipments of cocaine from the baggage area of Newark Airport and delivered them to other members of the Ramos Organization that waited for her in the airport parking lot. The defendant Sandy Hernandez was a truck driver who transported multiple kilogram loads of cocaine in concealed compartments of his truck from Florida to the New York City area, and made return trips back to Florida with hundreds of thousands of dollars in narcotics proceeds.

Ms. Banar was the attorney of record for the government, as she was the original AUSA who handled the investigation and prosecution. She brought Inspector Leff, a Federal Bureau of Investigation ("FBI") special agent and Special Assistant United States Attorney in the Office's Asset Forfeiture Unit, and me onto the case to conduct the trial, while she supervised the trial team as essentially a second seat.

I was assigned the summation, several cooperating witnesses and law enforcement witnesses. Inspector Leff was assigned the opening statement and the rebuttal. I also was assigned some pre-trial briefing tasks. Together, Inspector Leff and I reviewed hundreds of hours of wiretapped calls and consensually monitored calls, and supervised the translation of the recordings from Spanish to English. We subsequently admitted into evidence several of those recorded conversations with corresponding transcripts of those conversations.

Trial commenced in April 2005 and at the close of the government's case, the court granted Velasco's motion for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. Hernandez was convicted of narcotics conspiracy and money laundering conspiracy charges and was subsequently sentenced to sixty-three months' incarceration.

(10) **People of the State of New York v. Arnold Griggs, et al., Indictment # 2687/2001**

Dates of Representation: April 2001 - July 2003

Court and Judge: New York State Supreme Court, Criminal Term  
*Honorable Arlene Silverman (Trial)*

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Case Summary: This case involved the prosecution of three members of a street-level crack cocaine distribution ring that was responsible for distributing what amounted to thousands of dollars' worth of crack cocaine in and around the Eastchester Houses Apartments in the Northeast Bronx, New York. Arnold Griggs was the leader of the crack cocaine distribution ring. Kenya Belnavis was a supervisor of several street-level dealers that sold crack cocaine for Griggs' organization. Reginald Washington was Griggs' source of supply for crack cocaine. Washington sold Griggs crack cocaine on consignment, or credit, and when Griggs resold the crack cocaine at the street level, he remitted some of those proceeds back to Washington as payment for the crack cocaine.

Both Griggs and Washington pleaded guilty to substantive crack cocaine distribution charges in advance of trial and were sentenced to 1-3 years' imprisonment. Belnavis elected to proceed to trial and after a month-long trial, was convicted of all charges and received a sentence of 1-3 years' imprisonment.

I was responsible for the entire presentation in this matter. Specifically, I made the opening statement and summation, presented all of the People's witnesses, including the UC, several NYPD detectives that conducted surveillance of the Griggs and Belnavis and recovered multiple quantities of Griggs' crack cocaine from individual buyers and from stash locations, an NYPD chemist, and the case detective. I also introduced into my case-in-chief over two hundred pieces of evidence, including: the above-described quantities of crack cocaine; pen register evidence; and multiple recordings and transcripts of wiretapped calls between the UC and Griggs and Belnavis, and between Griggs,

Belnavis and Washington.

- 16. Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I am unable to discuss many of the significant legal activities that I have participated in during my career at the EDNY, as many of these matters are either of a confidential nature and cannot be disclosed, or are ongoing matters where non-disclosure is imperative. However, the activity that I do discuss below is in addition to the cases described above in response to Question 15.

HSBC Bank Secrecy Act Violation Investigation: From 2010 to 2011, I supervised the joint investigation conducted by the EDNY and the Criminal Division of the Department of Justice's Asset Forfeiture and Money Laundering Section ("AFMLS"). In short, this multi-year investigation resulted in the one of the largest prosecutions ever brought under the Bank Secrecy Act and one of the most significant criminal prosecutions of a financial institution in United States history. In December 2012, following that multi-year investigation, HSBC entered into a deferred prosecution agreement with the Department of Justice, which was docketed and filed with the U.S. District Court for the Eastern District of New York. Pursuant to that agreement, HSBC admitted to felony violations of the Bank Secrecy Act, the International Emergency Economic Powers Act, and the Trading with the Enemy Act. These violations arose from extensive failures within HSBC's anti-money laundering and sanctions compliance functions, which allowed the hundreds of millions of dollars in narcotics proceeds and transactions involving sanctioned entities to flow through the U.S. financial system. As a result of this resolution, HSBC agreed to overhaul its global anti-money laundering practices under the supervision of a corporate monitor and agreed to forfeit \$1.25 billion, the largest criminal penalty that at the time was ever paid by a financial institution.

As I stated above, I supervised this investigation for approximately one year when I was the Chief of Narcotics and the International Narcotics Strike Force. During that time, the investigation transitioned from covert status to overt status, at which point I initiated an extensive dialogue with HSBC and its counsel. During that time, I also oversaw HSBC's expansive internal review of its Anti-Money Laundering procedures and protocols. Finally, I also participated in several internal meetings with the EDNY's Executive Staff and with the Criminal Division of the Department of Justice.

- 17. Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have guest lectured on several occasions for an introduction to criminal justice class and a corresponding advanced criminal justice seminar at Saint Francis College in Brooklyn, New York. The courses were taught by Dr. Michael Kaune of the Department of Sociology and Criminal Justice. I have guest lectured on the subject of federal and state criminal practice in October 2013, and in April and November 2014. I did not lecture from a prepared text or from a syllabus.

- 18. Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

None.

- 20. Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See my SF-278, as supplied by the Office of Government Ethics.

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

See attached Net Worth Statement.

**22. Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official.

- 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 will consult with the ethics officials in the Executive Office for United States Attorney, Department of Justice.

- 23. Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As a career prosecutor, I have not represented an individual client or entity on a *pro bono* basis. I have engaged and continue to engage, in other *pro bono* activities, including:

Community Outreach and Coaching: I have participated in EDNY's community outreach efforts, including meeting with and speaking to adolescents from high schools located in the EDNY. I have also coached and mentored school aged boys between the ages of 8 and 13 years old. In addition, since approximately 2009, every Christmas Holiday season, I participate in my church's (Community Baptist Church of Englewood, New Jersey) prison ministry program. Specifically, I deliver Christmas gifts to children who have a parent(s) that are presently incarcerated and unable to provide presents for their children.