

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Alison Julie Nathan

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

United States District Judge for the Southern 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 of the Attorney General of the State of New York  
Solicitor General's Office  
120 Broadway, 25<sup>th</sup> Floor  
New York, New York 10271

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

1972; Philadelphia, Pennsylvania

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

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

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

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

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

2010 – present  
Office of the Attorney General of New York  
120 Broadway, 25<sup>th</sup> Floor  
New York, New York 10271  
Special Counsel to the Solicitor General

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

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

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

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

2002 – 2005  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
Associate

August – November 2004 (on unpaid leave from WilmerHale)  
Kerry-Edwards 2004/Democratic National Committee  
901 15<sup>th</sup> Street, NW  
Suite 600  
Washington, D.C. 20005  
Volunteer Legal Advisor/Associate National Counsel (unpaid)

2001 – 2002

Associate Justice John Paul Stevens  
Supreme Court of the United States  
1 First Street, NE  
Washington, D.C. 20002  
Law Clerk

2000 – 2001

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

Summer 2000

Bar/Bri Bar Preparation  
1500 Broadway  
New York, New York 10036  
Student Representative (part time, while residing in Ithaca, NY)

Summer 2000

Sandra Babcock, Esq.  
Northwestern Law  
375 East Chicago Avenue  
Chicago, Illinois 60611  
Research Assistant (part time, while residing in Ithaca, NY)

Spring 2000

Professor Robert Hillman  
Cornell Law School  
Myron Taylor Hall  
Ithaca, New York 14853  
Teaching Assistant (part-time)

Summer 1999

Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
Summer Associate

Summer 1999

National Women's Law Center  
11 Dupont Circle, NW #800  
Washington, D.C. 20036  
Summer Law Clerk

Summer 1998  
Professor Kathryn Abrams  
Cornell Law School  
Myron Taylor Hall  
Ithaca, New York 14853  
Research Assistant (part-time)

Summer 1998  
Cornell Legal Aid  
Myron Taylor Hall  
Ithaca, New York 14853  
Summer Law Clerk

1995 – 1996  
Thailand Times English Language Daily  
99 Bromrajachonnee Road Taling Chan  
Bangkok, Thailand  
Editor (part-time)

Summer 1995  
Cornell University Hotel School  
Statler Hall  
Ithaca, New York 14850  
Temporary Administrative Assistant (part-time)

1994 – 1995  
Nova English Language School  
Harajuku 'Carillo'; 1-8-9 Jungu-Mae Shibuya-ku  
Tokyo, Japan  
English Instructor (part-time)

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 military. I have not 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.

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

WilmerHale, Pro Bono Award, 2003, 2004, 2005

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

Order of the Coif, Cornell Law School, 2000

Morris P. Glushien Prize, Cornell Law School, 2000

CALI Excellence for the Future Award, 2000

Frazer Prize, 1999

West Publishing Outstanding Scholastic Achievement Award, 1999

West Publishing Corpus Juris Secundum Award, 1999

Franklin S. Wood Memorial Scholarship Fund, 1999

Uncommon Legacy Foundation Scholarship, 1998

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

Quill & Dagger Senior Honor Society, Cornell University, 1994

Dean's List, Cornell University, 1991 – 1994

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

American Bar Association

DC Bar Association (member of the Litigation Committee)

New York City Bar Association

New York State Bar Association

10. **Bar and Court Admission:**

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

New York, 2003

Washington, D.C., 2004

There have been 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.

Supreme Court of the United States, 2006  
United States Court of Appeals for the Second Circuit, 2010  
United States Court of Appeals for the Fourth Circuit, 2003  
United States Court of Appeals for the Ninth Circuit, 2004  
United States District Court for the Southern District of New York, 2003  
United States Court of Appeals for the Armed Forces, 2003  
United States Army Court of Criminal Appeals, 2003  
State of New York, 2003  
District of Columbia, 2004

There have been no lapses in membership.

**11. Memberships:**

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

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

New York Democratic Lawyer's Council; in conjunction with volunteering I did for the Obama campaign, in 2008 I attended several meetings of the New York Democratic Lawyer's Council. I attended one additional fundraiser in 2010.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, neither of the organizations listed above discriminates or formerly discriminated on the basis of race, sex, religion, or national origin

through formal membership requirements or the practical implementation of membership policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I have not issued or provided (nor have others presented on my behalf) testimony, official statements or other communications related, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

- 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.

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

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

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



Supreme Court Preview: OT 2007, panel presentation on death penalty cases on the Supreme Court's 2007-2008 docket, Fordham University School of Law, November 7, 2007. Notes supplied.

The Impact of *Lawrence v. Texas* on Don't Ask, Don't Tell, panel presentation at Georgetown University Law Center Conference, "Don't Ask, Don't Tell: Different Perspectives," April 7, 2005. I have no notes, transcript, or recording. The address of Georgetown Law is 600 New Jersey Avenue NW, Washington, D.C. 20001.

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

Challenging The Military's Criminal Sodomy Prohibition After *Lawrence*, panel presentation at the University of Florida Lambda Legal Alliance GLBT Law and Policy Conference, "The Implications of *Lawrence vs. Texas* on the Military," January 24, 2004. I have no notes, transcript, or recording. The address of the University of Florida Law School is P.O. Box 117620, Gainesville, Florida 32611.

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

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

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

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

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

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

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

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

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

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

Michael Winerip, *In School*, New York Times, Apr. 20, 1994 at B13. Copy supplied.

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

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

I have not held a judicial office.

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

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_%  
bench trials: \_\_\_\_\_% [total 100%]

civil proceedings: \_\_\_\_\_%  
criminal proceedings: \_\_\_\_\_% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. 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 and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

- e. Provide a list of all cases in which certiorari was requested or granted.
  - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;
  - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not held judicial office.

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

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Since September 2010, I have served as Special Counsel to the Solicitor General of New York. I was appointed by New York Attorney General Andrew Cuomo.

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

I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Volunteer Voter Protection Advisor (unpaid), Obama-Biden Campaign for Change; February 2008 – November 2008. I provided volunteer legal advice to the campaign General Counsel on election law and helped to recruit and organize volunteer lawyers during the primaries and general election campaign. I also served on the LGBT issues policy committee.

Obama Administration DOJ Transition Team, volunteer member.

Volunteer Lawyer, Maryland Democratic Party, November 2006.

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

Volunteer Lawyer, Democratic National Committee, November 2002.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to Supreme Court Justice John Paul Stevens from 2001 – 2002 and to Ninth Circuit Court of Appeals Judge Betty B. Fletcher from 2000 – 2001.

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

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2002 – 2005  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, NW  
Washington D.C. 20006  
Associate

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

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

2010 – present  
Office of the Attorney General of New York  
120 Broadway, 25<sup>th</sup> Floor  
New York, NY 10271  
Special Counsel to the Solicitor General

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

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

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

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

In late 2008, I decided to pursue employment as a government lawyer. I was offered and accepted a position in the White House Counsel's Office, where I reviewed legislation, analyzed various legal issues, advised staff members on legal matters, and assisted in the preparation of judicial and executive branch nominees for confirmation hearings. I served in the Counsel's Office until returning with my family to New York in July 2010. At that time, I decided to remain in government service and since September 2010, I have served as Special Counsel to the Solicitor General of New York. In this capacity, I draft briefs and argue cases in the state and federal trial and appellate courts. I also supervise Assistant Solicitors General in their brief and oral argument preparations.

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

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

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

During my time in private practice, approximately 90% of my practice involved litigation. I appeared in court occasionally. In my current position as Special Counsel to the Solicitor General, approximately 95% of my practice involves litigation (including supervision of Assistant Solicitors General in litigation). I appear in court occasionally.

- i. Indicate the percentage of your practice in:

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

- ii. Indicate the percentage of your practice in:

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

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

In private practice, I served as associate counsel on approximately 6 trial court litigation matters that reached judgment or final decision (including based on dispositive motions). One of those matters was an evidentiary hearing/bench trial that was tried to judgment in federal district court.

- i. What percentage of these trials were:

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

I am currently involved in other litigation matters that have not yet reached judgment, including two forthcoming trials in the Southern District of New York. If they proceed to trial, both will be tried before a jury and I am serving as associate counsel on both.

- 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 am a member of the Supreme Court bar. While in private practice at WilmerHale, I was a member of the Supreme Court and Appellate Litigation

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

I served as counsel on the following briefs, which are supplied:

*Cahill v. Alexander*, 10-203, Reply Brief for the Petitioner

*Baze v. Rees*, 07-5439, Brief for the Fordham School of Law Stein Center as Amicus Curiae in Support of Petitioner

*Clark v. Arizona*, 05-5966, Brief Amicus Curiae for the American Psychological Association, the American Psychiatric Association, and the American Academy of Psychiatry and the Law Supporting Petitioner

*Hill v. McDonough*, 05-8794, Brief for Amicus Curiae Darick Walker in Support of Petitioner

*Mayle v. Felix*, 04-563, Brief of Amici Curiae Habeas Law Scholars in Support of Respondent

*Walker v. True*, 05-6942, Petition for Certiorari and Reply filed on behalf of WilmerHale client Darick Walker. The Supreme Court granted, vacated, and remanded for further consideration.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.



1. *Liden v. Devane*, No. 400532/09 (Appellate Division First Department)

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

A First Department panel has not yet been announced. My co-counsel in the Solicitor General's Office is Benjamin Gutman, 120 Broadway, 25<sup>th</sup> Floor, New York, NY 10271, 212-416-8020. The opposing counsel is Robert Newman, The Legal Aid Society, 199 Water Street, New York, NY 10038, 212-577-3354.

2. *Seneca Nation of Indians, et al. v. Paterson* (and multiple related matters in the Northern and Western District of New York and in the Second Circuit)

Multiple Indian Tribes brought suit against New York state officials in federal district courts in the Western and Northern Districts of New York challenging the constitutionality of recent amendments to a New York State tax law relating to the taxation of cigarettes sold by reservation retailers to individuals who are not Tribal members. I am part of a state team of lawyers, led by Solicitor General Barbara Underwood, who are defending the constitutionality of the state tax statute. My role to date has included legal analysis and strategy as well as drafting district court and appellate court pleadings and briefs.

In the Western District of New York, the matters were before Judge Arcara (10-CV-687A; 10-CV-711A; 10-CV-811A) and in the Northern District of New York, the matter was before Judge Hurd (6:10-cv-01071). Judge Arcara denied the Tribes' request for a preliminary injunction, but stayed enforcement of the tax statute pending appeal. Judge Hurd granted the Tribes' motion for a preliminary injunction. All of the matters are now consolidated before the Court of Appeals for the Second Circuit (10-4272; 10-4265; 10-4598) and the cases were recently briefed and argued before Judges Wesley, Chin, and Lohier. The Second Circuit has not yet issued a decision.

At the Solicitor General's Office, I work with the following individuals on this matter: Barbara Underwood, Andrew Bing, and Steven Wu, 120 Broadway, 25<sup>th</sup> Floor, New York, NY 10271, 212-416-8020. Opposing counsel include the following individuals: David DeBruin, Jenner & Block LLP, 1099 New York Avenue, NW, Suite 900, Washington D.C. 20001, 202-639-6000; Riyaz Kanji, Kanji & Katzen, 101 North Main Street, Suite 555, Ann Arbor, MI 48104, 734-769-5400; Carol Heckman, Harter Secrest & Emery LLP, Twelve Fountain Plaza, Suite 400, Buffalo, NY 14202, 716-853-1616.

3. *New York v. Greenberg and Smith*, Index No. 401720/05 (Appellate Division, First Department)

This is an action for civil penalties and injunctive relief under the Martin Act, New York State's securities fraud statute. The lawsuit alleges that the former heads of a major insurance company initiated and structured two sham reinsurance transactions that misled the investing public. Thus far, the trial court has granted New York's summary judgment motion with respect to one of the transactions and denied the defendants' summary judgment motion with respect to the other. The Solicitor General's office is handling the appeals of these interlocutory rulings. I am working on the brief defending the trial court's denial of the defendants' summary judgment motion. The issues in the case center on evidentiary rulings and the summary judgment standard.

My co-counsel in the Attorney General's Office are Richard Dearing, Richard Jackson, and David Ellenhorn, 120 Broadway, 25<sup>th</sup> Floor, New York, NY 10271, 212-416-8020. Opposing counsel includes David Boies, Boies, Schiller & Flexner, LLP, 575 Lexington Avenue - 7<sup>th</sup> Floor, New York, NY 10022, 212-446-2300.

4. *Red Earth LLC v. United States*, 10-3165 (United States Court of Appeals for the Second Circuit)

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

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

My co-counsel are Barbara Underwood and Benjamin Gutman, 120 Broadway, 25<sup>th</sup> Floor, New York, NY 10271, 212-416-8020. Counsels for the United States are Tony West, Beth Brinkmann, Alisa Klein and Michael Abate, Department of Justice, Civil Division, Room 7318, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530. Opposing counsel is Riyaz Kanji, Kanji and Katzen, PLLC, 101 North Main Street, Suite 555, Ann Arbor, MI 48104, 734-769-5400.

5. *Warney v. State of New York*, App. Div. No. CA 08-02611 (Claim No. 114826) (New York Court of Appeals)

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

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

Co-counsel at the Solicitor General's Office is Barbara Underwood, Andrew Bing, and Frank Walsh, 120 Broadway, 25<sup>th</sup> Floor, New York, NY 10271, 212-416-8020. Opposing counsel is Peter Neufeld at Neufeld Scheck & Brustin, LLP, 99 Hudson Street, 8<sup>th</sup> Floor, New York, NY 10013, 212-965-9081.

6. *Hayes v. New York Attorney Grievance Committee*, 10-1587 (United States Court of Appeals for the Second Circuit)

This case involves a First Amendment challenge to one of New York's attorney advertising rules. The rule in issue governs statements by attorneys in which they describe themselves as certified specialists in a particular area of law. The federal district court (Western District of New York) rejected the challenge and granted summary judgment in favor of the State. The matter is now on appeal to the Second Circuit. I am the lead lawyer handling the case and will argue the matter before the Second Circuit.

My co-counsel at the Solicitor General's Office is Nancy Spiegel, Office of the New York State Attorney General, The Capital, Albany, NY, 12224, 518-474-7168. Opposing counsel is J. Michael Hayes, Esq., 69 Delaware Avenue, Suite 1111, Buffalo, NY 14202, 716-852-1111.

7. *Shell Oil Company v. Franco* (multiple litigation matters in the Central District of California):

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

Among the many co-counsel who worked on this case at WilmerHale were David Ogden, Ethan Shenkman, Jennifer O'Connor, and David O'Neil, WilmerHale, 1875 Pennsylvania Avenue, NW, Washington, D.C. 20006, 202-663-6000. Lead U.S. Counsel for the Nicaraguan defendants were Walter J. Lack, Engstrom, Lipscomb & Lack, 10100 Santa Monica Boulevard, 16<sup>th</sup> Floor, Los Angeles, CA 90067, 310-552-3800; and Thomas V. Girardi, Girardi & Keese, 1126 Wilshire Boulevard, Los Angeles, CA 90017, 213-977-0211.

8. *Walker v. True* (multiple litigation matters in the Eastern District of Virginia, before Judge Claude Hilton, the Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States)

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

Among the many co-counsel who worked on this case at WilmerHale were Seth Waxman, David Ogden, Danielle Spinelli, and Jody Kris, WilmerHale, 1875 Pennsylvania Avenue, NW, Washington, D.C. 20006, 202-663-6000. Lead counsel for the Virginia Attorney General's Office during the time I was involved with the matter was Robert Q. Harris, Senior Assistant Attorney General, 900 East Main Street, Richmond, VA 23219, 804-786-2071.

9. *Marcum v. United States*, 02-0944 (Court of Appeals for the Armed Forces) and *Meno v. United States*, ARMY 2000733 (Army Court of Criminal Appeals).

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

Stuart Delery and Josh Goldfoot were the lawyers at WilmerHale with whom I primarily worked, 1875 Pennsylvania Avenue, NW, Washington, D.C. 20006, 202-663-6000. Lead counsel for the defendant included Frank Spinner; 7035 Campus Drive, Suite 904, Colorado Springs, CO 80920 and Colonel Beverly B. Knott. Lead counsel for the United States included Colonel LeEllen Coacher, Air Force Legal Services Agency, United States Air Force, 202-767-1546.

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

Stuart Delery and Josh Goldfoot were the lawyers at WilmerHale with whom I primarily worked, 1875 Pennsylvania Avenue, NW, Washington, D.C. 20006, 202-663-6000. Lead

counsel for the defendant was Captain Fansu Ku, 703-696-2810. Lead counsel for the United States was Captain Abraham Carpio. I have searched for but not been able to find contact information for Captain Carpio.

10. *Broadcom/Disqualification Motion*, Inv. No. 337-TA-543 (U.S. International Trade Commission)

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

At WilmerHale, I worked with Bill Lee and Paul Wolfson, 1875 Pennsylvania Avenue, NW, Washington, D.C. 20006, 202-663-6000. Opposing counsel included Michael Kellogg, Mark Hansen, Reid Feigel, Aaron Panner, and Geoffrey Klineberg, Kellog Huber, Sumner Square, 1615 M Street NW, Suite 400, Washington, D.C. 20036, 202-326-7900.

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

In my current position as Special Counsel to the Solicitor General, I have provided legal advice to the trial lawyers in litigation involving violations of the Martin Act, New York State's civil and criminal security fraud statute. I am also currently assisting in the trial preparation for two matters (both § 1983 litigation brought by prisoners) that are soon scheduled to go to trial in the Southern District of New York. If the matters do proceed to trial, I will participate in all aspects of the trial proceedings.

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

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

I have not performed lobbying activity.

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

Civil Procedure, Fordham School of Law, 2007, 2008. Spring 2008 syllabus supplied.

Constitutional Law Seminar on the Supreme Court and the Death Penalty, Fordham School of Law, 2006, 2007. Fall 2007 syllabus supplied.

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

I have no such income or benefits.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

My partner is a professor in the clinical program at NYU School of Law and is occasionally involved in litigation matters, and I would recuse myself from any matters in which she is involved. Potential conflicts might also arise from my past involvement with the law firm of WilmerHale, with Fordham University, in matters in which I participated while serving as Special Counsel to the Solicitor General and as Associate White House Counsel, and in all other matters in which I have had involvement. With respect to all of these matters, if confirmed I would carefully study the recusal statute, the Code of Conduct for United States Judges, and consult with colleagues in order to determine what recusals would be necessary and appropriate.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will handle all matters involving actual or potential conflicts of interest by carefully studying and applying the Code of Conduct for United States Judges and any other relevant ethical canons or statutory provisions.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

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

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted application materials to Senator Schumer's Judicial Selection Committee on June 2, 2010. I met with Senator Schumer on June 9, 2010, regarding my interest in being considered for a judgeship. I interviewed with Senator Schumer's Judicial Selection Committee on August 30, 2010. I was contacted by Senator Schumer's Judiciary Committee Chief Counsel, Stephanie Martz, on December 15, 2010. Ms. Martz informed me that Senator Schumer had recommended me to the White House for a vacancy on the District Court for the Southern District of New York. I also received a call on December 15, 2010, from the White House Counsel's Office conveying the same information. Since December 17, 2010, I have been in contact with pre-nomination officials at the Department of Justice. On January 31, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 31, 2011, the President submitted my nomination to the Senate.

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

No.



AFFIDAVIT

I, Alison J. Nathan, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/29/2011  
(DATE)

Alison J. Nathan  
(NAME)

Ann P. Zybert  
(NOTARY)

ANN P. ZYBERT  
Notary Public, State of New York  
No. 30-4996219  
Qualified in Nassau County  
Commission Expires ~~May 11, 2011~~ May 11, 2014