

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Denny Chin

I was given a Chinese name at birth, Check Kong Chin, which I stopped using in approximately 1960; for some years, I used Denny Check Chin.

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

United States Circuit Judge for the Second Circuit.

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

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

1954; Hong Kong

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.

August 1975 to May 1978, Fordham University School of Law; J.D., May 1978

September 1971 to June 1975, Princeton University; B.A. *magna cum laude*, June 1975

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.

1994 to Present

United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, New York, NY 10007
United States District Judge

August 1986 to May 2009

Fordham University School of Law
140 West 62nd Street, New York, NY 10023
Adjunct Professor

1990 – 1994

Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway, New York, NY 10036
Partner, August 1991 to August 1994
Counsel, October 1990 to August 1991 (part-time)

1990 – 1991

Denny Chin
1501 Broadway, New York, NY 10036
Self-employed in part-time solo practice, September 1990 to August 1991

1986 – 1990

Campbell, Patrick & Chin
61 Broadway, New York, NY 10006
Partner

1982 – 1986

United States Attorney's Office, Southern District of New York
1 St. Andrew's Plaza, New York, NY 10007
Assistant United States Attorney

1980 – 1982

Davis, Polk & Wardwell
450 Lexington Avenue, New York, NY 10017
Associate

1976 – 1980

Hon. Henry F. Werker, U.S.D.J., S.D.N.Y.
U.S. Courthouse, Foley Square, New York, NY 10007
Law Clerk, September 1978 to August 1980; Intern, May 1976 to August 1976

1977 – 1978

Estroff, Frankel & Waldman
12 East 41st Street, New York, NY
Law Clerk (part-time), October 1977 to June 1978

1977

White & Case

1155 Avenue of Americas, New York, NY 10036

Summer Associate

1974 – 1976

McGraw-Hill Publishing Co.

1221 Avenue of Americas, New York, NY 10036

Research Assistant, market analysis, Summer 1974 and June 1975 to February 1976

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

I did not serve in the U.S. Military.

I registered for selective service in 1972 and was classified 1-H.

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.

Professor of the year, Fordham Law School Public Interest Resource Center (2009)

Commencement Speaker, University of Miami Law School (2009)

Judicial Friends, Lifetime Achievement Award (2007)

Abely Award for Leading Women and Children to Safety, Sanctuary for Families (2006)

Medal of Achievement, Fordham Law School Alumni Association (2006)

Distinguished Service Award, Asian American Justice Center (2005)

Lifetime Achievement Award, NYS Division of Human Rights (2005)

Commencement Speaker, Fordham University School of Law (1999)

Trailblazer Award, National Asian Pacific American Bar Association (1998)

Keynote Speaker, NAPABA National Convention (1996)

J. Edward Lumbar Award, U.S. Attorney's Office, SDNY (1996)

Honorary Doctor of Laws, CUNY Law School (1995)

National Football Foundation Scholar-Athlete Award (1971)

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.

New York City Bar Association

Member of Executive Committee, 2006 to date

New York County Lawyers Association

Federal Bar Council

Federal Bar Council Inn of Court
President-Elect, 2007-2008; President, 2008-2009

Federal Bar Council Public Service Committee

National Asian Pacific American Bar Association

National Asian Pacific American Bar Association Judicial Council
Treasurer, appx. 1997 to date

Asian American Bar Association of New York
President, 1992-1993; Member, Board of Directors, 1992-1994

Asian American Legal Defense and Education Fund

National Employment Lawyers Association, New York Chapter
Member of Board in mid-1980s

Immigration Study Group (headed by Judge Robert Katzmann)

Fordham Law School Alumni Association
Member of Board of Directors, appx. 1996 to date

Fordham Law School Law Review Association
Member of Board of Directors, appx. 1996 to date

Fordham Law School Minority Mentorship Program
Co-Chair, 2005 to date

Fordham Law School Feerick School of Social Justice
Member of Board of Advisers, appx. 2007 to date

American Law Institute

American 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, February 1979

There have been no lapses in membership, although I technically retired from the practice of law once I became a judge in 1994.

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

New York, 2/79

United States District Court for the Southern District of New York, 4/19/79

United States District Court for the Eastern District of New York, 4/79

United States Court of Appeals for the Second Circuit, 7/8/82

Supreme Court of the United States, 1/22/91

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.

I belong or have belonged to a number of cultural organizations, which are listed here; I do not recall the dates of membership:

Brooklyn Museum
Museum of Natural History
Museum of Modern Art
Metropolitan Museum of Art
New York Zoological Society
Hudson River Park Association
Smithsonian Institute
Public Broadcasting Station
New York Roadrunners Club

I am also a member of the Heights Casino, a squash and tennis club in Brooklyn Heights, NY. I have been a member since approximately 1990.

I also belonged to the following organizations and served on their boards in the 1980s through the early 1990s; I don't recall the dates; I resigned from all of them prior to assuming the bench:

Brooklyn Center for Urban Environment, Brooklyn, NY
Care for the Homeless, New York, NY
Hartley House, New York, NY
St. Margaret's House, New York, NY

- 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.

I have never belonged to any organization that discriminates on the basis of race, sex, religion, or national origin, nor would I belong to such an organization.

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.

“Why Race Matters,” New York Law Journal, December 17, 2007

“Access to the Legal Profession for Minorities: Introductory Remarks,” 2 J. Inst. Study of Legal Ethics 49 (1999)

“Moving Beyond McDonnell Douglas: A Simplified Method for Assessing Evidence in Discrimination Cases,” 64 Brooklyn L. Rev. 659 (1998) (co-authored with Jodi Golinsky)

Lawyers Cooperative Practice Guide: Handling Employment Disputes in New York (1996) (co-authored with Sharon P. Stiller and Mindy Novick)

“The Americans with Disabilities Act: The EEOC Regulations,” Proceedings of NYU Annual National Conference on Labor, Chapter 17 (1991)

“Discrimination Against the Handicapped: The Duty of Reasonable Accommodation,” Proceedings of NYU 42nd Annual National Conference on Labor, Chapter 14 (1989)

“Aliens’ Right To Work: State and Federal Discrimination,” 45 Fordham L. Rev. 835 (1977)

“The Newspaper” – I wrote various articles during 1986 – 1987 for this neighborhood publication. I do not have copies of these publications.

- 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.

July 9, 2009. United States Sentencing Commission, Public Hearing on Sentencing Guidelines.

- 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 frequently speak before different bar groups, law student and alumni organizations, law firms and governmental agencies. I have also participated in many legal education panels. I have not maintained a list of all my speaking engagements, but I have searched my files and personal calendars to create the list below. For some, I have no copies of my comments or any recollection, and my calendars only go back to 1999. I have provided copies of whatever speeches I have been able to find.

2009

September 10, 2009. U.S. District Court, Eastern District of New York. I spoke to law clerks, interns, and judges about my career path and the Madoff case.

July 15, 2009. Legal Outreach, New York, NY. Audience of Ninth Graders participating in summer program on the law. I gave informal comments on my work as a judge, my background, and being a lawyer, and I gave advice to help the students prepare for their mock trials.

July 8, 2009. New York County Lawyers Association, New York, NY. Audience of lawyers, summer associates, and summer interns. I spoke on a panel of three judges about appropriate courtroom behavior.

June 30, 2009. Federal Bar Council Public Service Committee, New York, NY. Audience of attorneys and pro bono coordinators. I participated in a panel discussion of pro bono immigration cases and gave informal comments encouraging participation. projects.

June 25, 2009. Davis Polk & Wardwell, New York, NY. Audience of attorneys and summer associates. Presentation organized by the firm's Asian American Affinity Group. I spoke mostly about the importance of diversity.

June 22, 2009. Stuyvesant H.S. Alumni Association, New York, NY. Audience of alumni of Stuyvesant High School. I gave informal comments reminiscing about Stuyvesant.

June 16, 2009. Practicing Law Institute, New York, NY. Audience of lawyers interested in employment law. I spoke on a panel, "A View from the Bench," about employment law.

June 4, 2009. Federal Bar Council Inn of Court, New York, NY. Audience of lawyers and judges, members of the Inn of Court. I gave informal remarks on the completion of my term as president.

May 20, 2009. General Services Administration, New York, NY. Audience of GSA employees. For GSA's celebration of Asian/Pacific Islander Heritage month, I spoke about being a judge, my family history, and the importance of diversity.

May 17, 2009. University of Miami Law School, Miami, FL. Audience of graduating law students and their parents and guests. I gave the commencement address.

May 14, 2009. Federal Executive Board, New York, NY. Audience of federal executive employees and federal agency employees being recognized for their accomplishments. I spoke about public service and my family history at annual event honoring federal employees held on Ellis Island.

May 13, 2009. New York Immigration Coalition, Albany, NY. Audience of immigration service providers. I gave the lunchtime address during the New York Immigration Coalition's 2009 Citizenship Summit. I spoke about my background as an immigrant and the importance of the work of immigration service providers.

April 25, 2009. National Asian Pacific American Bar Association, Northeast Regional Conference, Philadelphia, PA. I participated in a presentation by the Asian American Bar Association on the trials arising from the murder of Vincent Chin in Detroit in the early 1980s.

April 25, 2009. National Asian Pacific American Bar Association, Northeast Regional Conference, Philadelphia, PA. I participated on a panel of four judges giving advice on how to become a judge.

April 8, 2009. Fordham APALSA, New York, NY. Audience of law students and alumni. I was the keynote speaker at the annual event.

March 30, 2009. Fordham Law School, Public Interest Center, New York, NY. Audience of law students and faculty. I received the Center's professor of the year award and I gave informal comments.

March 21, 2009. February 25, 2006. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

March 19, 2009. NYU Labor Institute, New York, NY. Audience of federal judges. I spoke on a panel on class and collective actions at a workshop on employment law for federal judges.

March 11, 2009. Fordham University School of Law, New York, NY. Colloquium convened by Judge Katzmann's Immigration Study Group and the Fordham Law Review. I spoke about the study group and my family history.

March 10, 2009. NYU Law School, New York, NY. Audience of lawyers, law students, and members of the public. I participated in a program presented by the Asian American Bar Association of New York on the Trial of Minoru Yasui.

2008

December 3, 2008. Richards Kibbe & Orbe, LLP, New York, NY. Audience of lawyers. I spoke about life as a judge and gave litigation tips.

November 20, 2008. National Pacific American Bar Association, National Convention, Seattle, WA. Audience of lawyers, judges, and law students. I spoke on a panel on sanctions for discovery abuse.

November 21, 2008. National Pacific American Bar Association, National Convention, Seattle, WA. Audience of lawyers, judges, and law students. I participated in a presentation by the Asian American Bar Association on the trials arising from the murder of Vincent Chin in Detroit in the early 1980s.

November 21, 2008. National Pacific American Bar Association, National Convention, Seattle, WA. Audience of lawyers, judges, and law students. I participated in a panel, "A Conversation with the Federal Judges," with Judges A. Wallace Tashima and Amul Thapar, about our backgrounds, our paths to the bench, litigation advice, and the importance of diversity.

October 24, 2008. Naturalization Ceremony, New York, NY. I gave similar remarks each time I sat as the Part I Judge.

October 21, 2008. Attorney Admissions, New York, NY. I gave similar remarks each time I sat as the Part I Judge.

October 20, 2008. Federal Bar Council First Decade Committee, New York, NY. Audience of lawyers in their first ten years of practice. I gave litigation advice.

October 2, 2008. Fordham Law School, New York, NY. Audience of law students. I spoke on a panel about judicial clerkships and gave advice on applying for clerkships.

October 1, 2008. Fordham Law School, New York, NY. Audience of law students. I spoke at the year-opening reception for the Minority Mentoring Program.

September 11, 2008. General Electric Company, Rye Brook, NY. Audience of GE employees and outside service providers. I spoke on a panel of three federal judges about the importance of diversity.

July 9, 2008. Skadden, Arps, Slate, Meagher & Flom, New York, NY. Audience of lawyers and summer associates. I spoke at the law firm's annual event celebrating its commitment to diversity.

July 2, 2008. New York City Bar Association, New York, NY. I spoke at a meeting of the City Bar's Young Attorneys Committee and gave informal remarks about judging and litigating.

June 25, 2008. New York County Lawyers Association, New York, NY. Audience of lawyers, summer associates, and interns. I spoke on a panel of judges about cross-examination.

June 16, 2008. Practising Law Institute, New York, NY. Audience of lawyers. I spoke on a continuing legal education program on employment law.

June 16, 2008. Princeton University Fellowship Program, New York, NY. I spoke to a group of Princeton college students who were doing public service internships in NYC.

May 19, 2008. New York City Bar Association, New York, NY. I gave informal remarks to the City Bar's Litigation Committee.

May 14, 2008. Federal Bureau of Investigation, New York, NY. I spoke at the FBI's celebration of Asian/Pacific Islander Heritage month.

May 3, 2008. National Asian Pacific American Bar Association Northeast Regional Conference, Norwalk, CT. Audience of lawyers and law students. I participated in a program presented by the Asian American Bar Association of New York on the Trial of Minoru Yasui.

March 18, 2008. New York University School of Law, New York, NY. I spoke about class and collective actions at a workshop on employment law for federal judges.

January 30, 2008. New York State Bar Association, New York, NY. I spoke at the Commercial & Litigation Section on the ethics of witness preparation.

January 28, 2008. Columbia Law School, New York, NY. I spoke on a panel of three judges on judicial clerkships and the application process.

2007

December 6, 2007. Judicial Friends, New York, NY. Audience of judges and lawyers. I received a lifetime achievement award from the Judicial Friends, and I spoke about the importance of diversity on the bench.

November 16, 2007. National Asian Pacific American Bar Association National Convention, Las Vegas, NV. I participated in a program presented by the Asian American Bar Association of New York on the Trial of Minoru Yasui.

November 5, 2007. New York University Law School, New York, NY. I spoke to Professor Stephen Gillers's legal ethics class.

October 13, 2007. Columbia University School of Law, New York, NY. Audience of Columbia Law School alumni and faculty. I presented the Distinguished Achievement Award to Margaret Fung.

October 6, 2007. New York County Lawyers' Association, New York, NY. Audience of experienced state court practitioners who wanted to join the federal Criminal Justice Act panel. I spoke on a panel about the federal sentencing guidelines.

October 3, 2007. Fordham University School of Law, New York, NY. I spoke at the year's opening reception for Fordham's Minority Mentorship Program.

June 13, 2007. Federal Bar Council, New York, NY. I spoke about trying prisoners' rights cases for a pro bono lawyers' training program.

June 6, 2007. United States Attorney's Office, Newark, New Jersey. I spoke at the U.S. Attorney's Office's celebration of Asian Pacific American Heritage Month.

May 24, 2007. Administrative Office of the U.S. Courts, Washington, D.C. I spoke at AO's celebration of Asian Pacific American Heritage Month.

May 9, 2007. New York City Bar Association, New York, NY. Audience of practicing lawyers. I spoke on a continuing legal education panel about employment law.

May 1, 2007. New York State Trial Lawyers Association, New York, NY. I spoke about sexual harassment.

April 28, 2007. National Asian Pacific American Bar Association, Southeast Regional Conference, Miami, Florida. Audience of lawyers and law students. I spoke about my path to the bench and the importance of diversity.

March 26, 2007. Fordham University School of Law, New York, NY. I spoke on a panel at the year-end reception for the Law School's Minority Mentorship Program.

March 15, 2007. New York City Bar Association, New York, NY. Audience was practicing attorneys. I moderated a panel on sentencing post-Booker.

March 15, 2007. New York State Bar Association, New York, NY. I spoke on transitions for lawyers.

March 12, 2007. New York University School of Law, New York, NY. I participated in an employment law workshop for federal judges and spoke on a panel on class and collective actions.

March 7, 2007. Federal Bar Council, New York, NY. I moderated a panel on the role of magistrate judges. I introduced the members of the panel and coordinated the discussion.

March 3, 2007. Harvard Law School, Boston, MA. I spoke at a conference for Asian American law students.

January 27, 2007. University of Pennsylvania School of Law, Philadelphia, PA. I spoke about diversity in the law. The theme of the convention was Rethinking the Role of the Asian-American Lawyer.

January 23, 2007. Wilkie Farr & Gallagher, New York, NY. The topic of my talk was how to be successful in oral argument.

January 18, 2007. New York, NY. I spoke at Karen Lin's induction as a judge of the Housing Part of the Civil Court of the City of New York.

2006

November 28, 2006. New York City Lawyers' Association, New York, NY. I spoke to the Association's Federal Courts Committee.

October 23, 2006. Fordham Law School Film Forum, New York, NY. I provided commentary following a screening of the film "A Civil Action."

October 10, 2006. Fordham Law School, New York, NY. I spoke on a clerkship panel and spoke about judicial clerkships and the application process.

October 4, 2006. Fordham Law School, New York, NY. I gave informal remarks to law students and alumni at the opening reception for the year's Minority Mentorship Program.

September 25, 2006. Davis Polk & Wardwell, New York, NY. The non-profit organization Sanctuary for Families honored me with its Abely Award, and I gave brief remarks talking about my decision in Blondin v. DuBois.

June 28, 2006. Hughes, Hubbard & Reed, New York, NY. I spoke to lawyers and summer associates about good lawyering.

June 21, 2006. New York County Lawyers Association, New York, NY. I spoke to lawyers and summer associates and interns on appropriate courtroom behavior.

May 24, 2006. U.S. Attorney's Office, S.D.N.Y., New York, NY. I spoke to Assistant United States Attorneys and summer interns about judging and federal litigation.

March 4, 2006. Fordham University School of Law Alumni Association, New York, NY. I received the Association's lifetime achievement award and I gave brief remarks.

February 28, 2006. New York City Bar Association, New York, NY. I spoke on the Hague Convention, focusing on child abduction cases.

February 25, 2006. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

February 8, 2006. Reed Smith LLP, New York, NY. I spoke to lawyers at the firm about pro bono work and public service.

January 25, 2006. New York State Bar Association, New York, NY. I spoke on a panel about legal ethics.

2005

November 30, 2005. Columbia Law School, New York, NY. I spoke to Judge Sotomayor's Columbia Law School class, together with Judge Edward Korman, about judging and litigating.

November 16, 2005. Cadwalader, Wickersham & Taft LLP, New York, NY. I spoke about the importance of diversity.

November 10, 2005. NYC Law Department, New York, NY. I spoke at the Law Department's Diversity Reception.

November 9, 2005. New York Law School, New York, NY. I spoke to the Law School's law review students regarding the importance of legal scholarship.

November 3, 2005. Columbia Law School, New York, NY. I spoke on a panel on judicial clerkships and the application process.

October 27, 2005. New York State Division of Human Rights, New York, NY. I gave brief comments upon receiving the State Division's Lifetime Achievement Award.

October 21, 2005. National Asian Pacific American Bar Association National Convention, Chicago, IL. I participated on a panel on cross-examination.

October 6, 2005. Asian American Justice Center, Washington, D.C. I gave brief remarks upon receiving the Justice Center's Distinguished Service Award.

October 5, 2005. Fordham Law School, New York, NY. I gave informal remarks at the year-opening reception for the Law School's Minority Mentorship Program.

September 24, 2005. Minority Law Student Leadership Summit, New York. I spoke to minority law students about the importance of diversity.

September 23, 2005. New York State Bar Association, New York, NY. I spoke on evidence.

August 25, 2005. Fordham Law School, New York, NY. I spoke to an L.L.M. class about federal power and federal jurisdiction.

July 12, 2005. United States Attorney's Office, S.D.N.Y., New York, NY. I spoke on a panel of three judges to Assistant United States Attorneys and summer interns.

June 22, 2005. New York County Lawyers Association, New York, NY. I spoke to lawyers and summer associates and interns about cross-examination.

June 15, 2005. New York County Lawyers Association, New York, NY. The topic of my speech was: How to Handle an Employment Discrimination Case.

May 27, 2005. Princeton University, Princeton, NJ. I spoke on a panel for Princeton Asian-American alumni at reunions.

April 23, 2005. National Asian Pacific Bar Association, Northeast Regional Conference, Boston, MA. I was the lunchtime keynote speaker and I spoke about my cases and the importance of diversity.

April 6, 2005. Fordham Law School, New York, NY. I spoke about the Fordham Minority Membership Program.

March 31, 2005. Fordham University School of Law, New York, NY. This was a conference on intellectual property, and I spoke on a panel about intellectual property litigation.

March 17, 2005. New York University, New York, NY. I spoke at a workshop for federal judges on employment law on evidence.

February 26, 2005. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

2004

November 12, 2004. National Asian Pacific American Bar Association National Convention, Dallas, TX. I participated on a panel giving advice to judges.

November 6, 2004. Federal Bar Council, CT. I participated in a presentation on the trial of Lizzie Borden at the Federal Bar Council Fall Retreat.

October 2004. New York State Bar Association, New York, NY. I spoke about expert witnesses.

October 16, 2004. New York County Lawyers Association, New York, NY. I spoke on a panel on the federal sentencing guidelines.

August 26, 2004. Fordham Law School, New York, NY. I spoke to an L.L.M. class about federal power and federal jurisdiction.

July 14, 2004. United States Attorney's Office, S.D.N.Y., New York, NY. I spoke on a panel of three judges to Assistant United States Attorneys and summer interns.

June 18, 2004. Corporation Counsel's Office, New York, NY. I spoke to summer interns about career paths and public service.

June 8, 2004. Brooklyn, NY. I spoke at the Honorable Kiyoo Matsumoto's swearing-in ceremony.

May 28, 2004. Princeton University, Princeton, NJ. I spoke on a panel with Senators Sarbanes and Frist about statesmanship and public service.

May 7, 2004. National Employment Lawyers Association, New York, NY. I spoke about litigating employment cases.

April 26, 2004. New York City Bar Association, New York, NY. I spoke on a panel about Prof. Thane Rosenbaum's book, "The Myth of Moral Justice."

April 15, 2004. University of Virginia Law School, Charlottesville, VA. I participated in a trial advocacy program.

April 7, 2004. Dewey Ballantine, New York, NY. I spoke about how to be successful at oral argument.

March 11, 2004. New York University, New York, NY. I spoke at a workshop for federal judges on employment law on evidence.

February 28, 2004. Asian American Bar Association of New York, Brooklyn, NY. I spoke to law students about oral advocacy.

2003

August 21, 2003. Fordham University School of Law, New York, NY. I spoke to a class of LLM students about federal court jurisdiction.

July 15, 2003. Fragomen, Del Rey & Bernsen, New York, NY. The topic of my speech was immigration.

July 8, 2003. United States Attorney's Office, S.D.N.Y., New York, NY. I spoke on a panel of three judges to Assistant United States Attorneys and summer interns.

July 1, 2003. Weil, Gotshal & Manges, New York, NY. I spoke about litigating employment cases.

June 25, 2003. New York County Lawyers Association, New York, NY. I spoke to lawyers and summer associates and interns about courtroom behavior.

June 17, 2003. Shearman & Sterling LLP, New York, NY. I spoke to summer associates.

May 8, 2003. American Law Institute, Boston, MA. I spoke at an ALI conference on employment law.

May 3, 2003. Public School 51, New York, NY. I spoke at my old elementary school.

April 1-2, 2003. University of Virginia Law School, Charlottesville, VA. I participated in a trial advocacy program.

March 26, 2003. New York Law School, New York, NY.

March 3, 2003. New York University, New York, NY. I spoke at a workshop for federal judges on employment law on evidence.

March 1, 2003. Fordham University School of Law Alumni Luncheon, New York, NY. I spoke about life on the bench and how things have changed at the law school and in the profession.

March 1, 2003. Harvard Law School, Cambridge, MA. Conference on Law and Public Policy. I spoke about activism in the Asian-American community.

February 20, 2003. Hughes Hubbard & Reed, New York, NY. The topic of my speech was: Litigating Tough Cases.

February 10, 2003. Association of the Bar of the City of New York, New York, NY. I spoke on a panel on the First Amendment and commercial speech.

January 24, 2003. Columbia University School of Law, New York, NY. I presented the Medal of Excellence to Judith P. Vladeck.

2002

November 15, 2002. Equal Employment Opportunity Commission. The subject of my speech was: Corporate and Commercial Speech.

October 23, 2002. Norman Thomas High School, New York, NY. I spoke to two high school classes about the bill of rights, the constitution, and the law.

October 22, 2002. Federal Bar Council, New York, NY. I spoke mostly about the importance of public service.

September 26, 2002. Rutgers Law School, Newark, NJ. I spoke about diversity and Asian Americans in the law.

August 23, 2002. CUNY School of Law, New York, NY. I spoke to first-year students visiting the Southern District of New York.

August 22, 2002. Fordham Law School, New York, NY. I was the guest-lecturer for an LLM class. I spoke about federal jurisdiction.

August 16, 2002. Connecticut Asian Pacific American Bar Association, CT. I spoke about Asian Americans in the law and on the bench.

June 25, 2002. New York County Lawyers Association, New York, NY. I spoke at the Association's "Lunch with a Judge" program.

May 26-28, 2002. Federal Judicial Center National Workshop for District Judges, New Orleans, LA. I spoke on a panel.

May 23, 2002. Seyfarth Shaw LLP, New York, NY. I spoke about employment law.

April 16, 2002. Columbia Law School, New York, NY.

April 5, 2002. Vladeck, Waldman, Elias & Engelhard, New York, NY. I spoke to lawyers about litigation.

March 14, 2002. New York University Law School, New York, NY. I spoke on employment law at a workshop for federal judges.

February 25, 2002. Asian American Legal Defense and Education Fund, New York, NY. At AALDEF's annual dinner, I introduced Fred Korematsu.

2001

November 27, 2001. Gibson, Dunn & Crutcher, New York, NY. I spoke about litigating tough cases.

August 29, 2001. Equal Employment Opportunity Commission, Atlantic City, NJ. I spoke about practicing employment law in the private sector and federal sector litigation.

August 25, 2001. Fordham Law School, New York, NY. I spoke to an LLM class about federal court jurisdiction.

June 20, 2001. New York County Lawyers Association, New York, NY. I spoke to summer associates and interns about appropriate courtroom behavior.

May 31, 2001. Metropolitan Correction Center, New York, NY. I spoke at an event celebrating Asian Pacific American Heritage Month.

May 24, 2001. New York Supreme Court, New York, NY. I spoke at an event sponsored by the Anti-Bias Committee of the New York County Supreme Court in celebration of Asian Pacific American Heritage Month.

April 23, 2001. Weil Gotshal & Manges, New York, NY. I spoke to the firm's attorneys as part of its Pro Bono Awards event.

April 5, 2001. St. John's University School of Law, Queens, NY. I spoke at an event organized by the Black, Asian, and Latino Law Students Alumni Association.

April 3, 2001. New York City Technical Institute, Brooklyn, NY. I spoke to community college students studying to be paralegals.

March 31, 2001. Asian American Bar Association, Brooklyn, NY. I spoke to law students about oral advocacy.

March 19, 2001. New York University Law School, New York, NY. I spoke to federal judges about employment law at a workshop for federal judges.

March 1, 2001. Fordham Law School, New York, NY. I spoke at a conference on derivatives.

February 15-18, 2001. American Bar Association, Orlando, FL. I participated in a conference for the Corporate Counsel Committee meeting of the ABA's litigation section.

January 26, 2001. Pace Law School, White Plains, NY. I spoke to an audience of law students for a program organized by Asian-American law students.

2000

December 20, 2000. Chinese Bankers' Association, New York, NY. I spoke to an audience of bankers about politics, the media, and the courts.

November 15, 2000. AFL-CIO, Lawyers Coordinating Committee, New York, NY. I spoke on discovery and sanctions.

September 21, 2000. Patent Conference, New York, NY. I spoke at a conference for patent lawyers.

July 18, 2000. United States Attorney's Office, S.D.N.Y., New York, NY. I gave advice on courtroom behavior.

July 10, 2000. American Bar Association, New York, NY. I spoke on a panel on expert witnesses for the Litigation Section.

June 21, 2000. Proskauer Rose, New York, NY. I gave litigation tips.

June 8, 2000. National Employment Lawyers Association, New York, NY. I spoke at a reception held by NELA at the Courthouse.

June 7, 2000. New York County Lawyers Association, New York, NY. I spoke at the Association's lunch with a judge program.

May 23, 2000. Hartley House, New York, NY. I spoke at an awards function.

April 5, 2000. Indo-American Lawyers Association. I spoke at the Association's dinner.

March 24, 2000. Temple Law School, Philadelphia, PA. I spoke to law students from various Northeast law schools about my path to the bench.

March 15, 2000. New York City Bar Association, New York, NY. I spoke on a panel on employment law.

February 12, 2000. Massachusetts Institute of Technology, New York, NY. I spoke at an alumni dinner in New York.

1999

December 9, 1999. Glasser Legal Works, New York, NY. I spoke at a conference on class actions.

November 17, 1999. Columbia Law School, New York, NY. I spoke on criminal law and access to the courts.

October 6, 1999. Legal Aid Society, New York, NY.

September 8, 1999. New York County Lawyers Association, New York, NY. I spoke on an ethics panel.

June 30, 1999. New York County Lawyers Association, New York, NY. I spoke at the Association's "Lunch with a Judge" Program.

June 23, 1999. American Bar Association, New York, NY. I spoke on a panel.

June 1999. Metropolitan Detention Center, New York, NY. I spoke about Asian Pacific American Heritage Month.

May 23, 1999. Fordham University School of Law, New York, NY. I gave the commencement address.

April 14-16, 1999. Attorney General's Civil Trial Advocacy Program, Columbia, SC. I participated in DOJ's civil trial advocacy program.

April 5, 1999. New York University School of Law, New York, NY. I spoke on a panel.

March 22, 1999. Network for Women's Services, New York, NY.

March 13, 1999. National Employment Lawyers Association, Atlanta, GA. I spoke on gender discrimination issues at NELA's national convention.

March 3, 1999. United Jewish Association, New York, NY. I spoke about the administration of justice.

February 4, 1999. New York County Lawyers Association, New York, NY.

February 22-26, 1999. Federal Bar Council, Hawaii, HI. I attended the Federal Bar Council's winter bench and bar retreat and participated on a panel.

January 30, 1999. New York Management Attorneys Conference, New York, NY. I spoke to management-side employment attorneys and human resources personnel about litigating employment cases.

1998

May 7-10, 1998. New York State Bar Association, Charleston, SC. I spoke at a conference on employment law for the trial lawyers section.

April 5, 1998. Hofstra University School of Law, NY. The topic of my talk was "Legal Ethics: Access to Justice."

1997

November 1997. National Pacific American Bar Association National Convention, Los Angeles, CA. I spoke on a panel.

September 1997. Asian American Bar Association of Virginia, Vienna, VA. I spoke at a Bar Association dinner.

April 18, 1997. Brooklyn Law School, Brooklyn, NY. I spoke to a group of law students.

March 1997. American Bar Association, Orlando, FL. I spoke on employment law at a labor and employment section conference.

March 1997. New York State Bar Association, New York, NY. I spoke to the Federal Courts Committee.

1996

December 6, 1996. National Employment Lawyer's Association, New York, NY. I spoke about employment law.

November 16, 1996. National Asian Pacific American Bar Association Convention, Denver, CO. I gave the keynote address at the NAPABA annual national convention.

October 1996. New York City Lawyers Association, New York, NY. I spoke to the Federal Courts Committee.

September 10, 1996. Institute of Business Law, New York, NY. I spoke mainly about employment law.

May 9, 1996. Department of Justice, Washington, DC. I spoke as part of celebration of Asian Pacific American Heritage Month.

1995

November 29, 1995. Hughes, Hubbard & Reed, New York, NY. I spoke to the firm's attorneys about effective advocacy.

October 27, 1995. Equal Employment Opportunity Commission, New York, NY. I spoke to EEOC attorneys about employment cases and the importance of civil rights.

September 11, 1995. Practicing Law Institute, New York, NY. I spoke to an audience of lawyers about effective advocacy.

May 11, 1995. Coalition of Korean-American Voters, New York, NY. I spoke about diversity.

- 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.

I gave an interview to the Public Radio International program Studio 360 about my activities with the Federal Bar Council presenting reenactments of historical trials, particularly our reenactment of the Julius and Ethel Rosenberg trial. The piece was broadcast June 19, 2009; it can be heard at <http://www.studio360.org/episodes/2009/06/1.9>.

I was interviewed for a documentary, "The First Amendment Project: Fox v. Franken," which aired on Court TV in 2004. The film was about the case brought by the Fox News Network against Al Franken for using the phrase "Fair and Balanced" in the title of his book, "The Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right." The film is publicly available on DVD.

Articles:

Deborah Pines, "U.S. Judge Chin Claims Roots in Southern District," New York Law Journal (1995).

Molly Gordy, "Pain of Racist 'Toons Wall St. Broker Files Bias Suit," Newsday (1994).

Molly Gordy, "Fed Nominee Denny Chin New Guy on the Bench," Newsday (1994).

Diana Jean Schemo, "Refugees Blocked From Getting Legal Help," N.Y. Times (1993).

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.

On August 10, 1994, after Senate confirmation, I was appointed by President Clinton to be United States District Judge for the Southern District of New York. This court is a Federal trial court with jurisdiction over both criminal and civil matters.

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

To date, I have presided over approximately 190 trials. All together I have presided over 4700 civil cases and 665 criminal cases.

- i. Of these, approximately what percent were:

jury trials? 90%; bench trials 10% [total 100%]

civil proceedings? 67% (of trials); criminal proceedings? 33% (of trials)
[total 100%]

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

As a District Court judge, I have issued approximately 1,553 opinions (as of October 23, 2009).

I have also authored an additional nine opinions while sitting by designation on the Second Circuit

See the attached listing for all opinions I have written.

- 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).

I have selected five criminal cases and five civil cases. Within each group, they are listed in approximately reverse chronological order.

Criminal

1. United States v. Bernard L. Madoff

In December 2008, Madoff was arrested for securities fraud and related crimes. The case drew world-wide attention, as it involved what many described as the largest Ponzi scheme in history, with losses estimated as high as \$50 billion. On March 12, 2009, Madoff pled guilty to all eleven counts of the information. I denied his motion to continue bail pending sentencing and remanded him. Madoff appealed the bail decision, and the Second Circuit affirmed on March 20, 2009. See *United States v. Madoff*, 316 Fed. Appx. 58 (2d Cir. 2009). On June 29, 2009, I sentenced Madoff to 150 years in prison. He has not appealed.

I issued one opinion, *United States v. Madoff*, 626 F. Supp. 2d 420 (S.D.N.Y. 2009).

For the Government: AUSA Lisa Baroni, (212) 637-2405, and
AUSA Marc Litt, (212) 637-2295.

For Madoff: Ira Lee Sorkin, Dickstein Shapiro LLP,
(212) 277-6576.

2. United States v. Bashir Noorzai

Noorzai, an Afghan warlord who was the head of a million-person tribe in Afghanistan, was charged with conspiring to import heroin into the United States and distributing and possessing with the intent to distribute heroin. The evidence showed that Noorzai worked with and provided support to the Taliban. I presided over the two-week trial in September 2008, at the conclusion of which the jury returned a guilty verdict on both counts. On April 30, 2009, I sentenced Noorzai to life in prison. He has appealed.

For the Government: AUSA Anirudh Bansal, (212) 637-2516.

For Noorzai: Ivan Stephan Fisher, (212) 517-5000.

3. United States v. David Chalmers et al.

In April 2005, the defendants were charged with engaging in a scheme to defraud the United Nations Oil-for-Food Program and the people of Iraq by paying secret and illegal surcharges to the Government of Iraq for the right to participate in the Oil-for-Food Program, thereby obtaining the

ability to purchase oil from Iraq when they otherwise would have been prohibited by law from doing so. Four indictments were filed in the case, charging six individual defendants and several corporate defendants.

I presided over two trials: defendant Tong Sun Park (a Korean businessman) in June and July 2006 and defendant Oscar S. Wyatt (a prominent Texas oil man) in September and October 2007. Park was convicted by the jury. I sentenced him initially to 60 months in prison, but later reduced the sentence, following his post-sentencing cooperation, to 37 months. In a separate trial, Wyatt pled guilty as the Government was about to complete the presentation of its evidence. I sentenced Wyatt to 1 year and 1 day in prison.

Numerous other defendants in the case pled guilty and were sentenced.

I issued the following opinions in the case: *United States v. Tongsun Park*, 2009 U.S. Dist. LEXIS 50059 (S.D.N.Y. June 1, 2009); *United States v. Chalmers*, 2007 U.S. Dist. LEXIS 13640 (S.D.N.Y. Feb. 27, 2007); *United States v. Chalmers*, 2007 U.S. Dist. LEXIS 13232 (S.D.N.Y. Feb. 26, 2007); *United States v. Chalmers*, 2007 U.S. Dist. LEXIS 14318 (S.D.N.Y. Feb. 23, 2007); *United States v. Chalmers*, 474 F. Supp. 2d 555 (S.D.N.Y. 2007); *United States v. Chalmers*, 2006 U.S. Dist. LEXIS 22107 (S.D.N.Y. Apr. 18, 2006); and *United States v. Chalmers*, 410 F. Supp. 2d 278 (S.D.N.Y. 2006).

For the Government: AUSA Edward O'Callaghan (now at Nixon Peabody), (212) 940-3754, AUSA Stephen Miller, and AUSA Michael Farbiarz, (212) 637-1587.

For Wyatt: Gerald Lawrence Shargel, Law Offices of Gerald L. Shargel, (212) 446-2323.

For Park: Michael Kim, Kobre & Kim, (212) 488-1200

For Chalmers: Andrew Weissmann, Jenner & Block LLP, (212)-891-1650; Stephen Ascher, Jenner & Block LLP, (212) 891-1670; Paul Shechtman, Stillman, Friedman & Shechtman, P.C., (212) 223-0200; and Michael J. Gilbert, Dechert, LLP, (212) 698-3886.

For Vincent: Robert S. Litt, Arnold & Porter, LLP, (202) 942-6380.

For Irving: Lawrence S. Lustberg, Gibbons, P.C., (973) 596-4731.

For Dionissiev: David M. Howard, Dechert, LLP, (212)-698-3500.

4. United States v. Maisonet et al.

This case charged twenty-three defendants -- including the organization's attorney -- with operating a significant heroin enterprise in the Bronx. The charges included murder, racketeering, gun violations, and narcotics trafficking.

Nineteen defendants pled guilty, including Francisco Maisonet (sentenced to 45 years), Jose Maisonet (40 years), Angel Flores (30 years), Alberto Aviles (25 years), Darcel Nelson (20 Years), Guillermo Negron, Jr. (20 years), and Pat Stiso (the attorney who pled guilty to money laundering, sentenced to 87 months).

I conducted three trials in the case, of four defendants. All four were convicted: (1) Miguel Rodriguez, Jr., and Guillermo Negron, Sr. were sentenced to life imprisonment; (2) Kerry Clark was sentenced to 360 months; and (3) Edwin Rivera, who slashed one of the cooperating witnesses, was sentenced to 188 months.

I issued the following decisions in the case: *United States v. Clark*, 2008 U.S. Dist. LEXIS 47591 (S.D.N.Y. June 12, 2008); *United States v. Fernandez*, 2006 U.S. Dist. LEXIS 22958 (S.D.N.Y. Apr. 14, 2006); *United States v. Maisonet*, 2005 U.S. Dist. LEXIS 35638 (S.D.N.Y. Dec. 22, 2005); *Negron v. United States*, 2005 U.S. Dist. LEXIS 9134 (S.D.N.Y. May 13, 2005); *Munoz v. United States*, 2003 U.S. Dist. LEXIS 19354 (S.D.N.Y. Oct. 28, 2003); *Maisonet v. United States*, 2003 U.S. Dist. LEXIS 18704 (S.D.N.Y. Oct. 20, 2003); *United States v. Maisonet*, 2003 U.S. Dist. LEXIS 11781 (S.D.N.Y. July 9, 2003); *Negron v. United States*, 2002 U.S. Dist. LEXIS 16591 (S.D.N.Y. Sept. 3, 2002); *Fernandez v. United States*, 2002 U.S. Dist. LEXIS 15540 (S.D.N.Y. Aug. 20, 2002); *Negron v. United States*, 2002 U.S. Dist. LEXIS 6921 (S.D.N.Y. Apr. 17, 2002); *Nelson v. United States*, 2001 U.S. Dist. LEXIS 20518 (S.D.N.Y. Dec. 11, 2001); *Ferrer v. United States*, 2001 U.S. Dist. LEXIS 15644 (S.D.N.Y. Oct. 2, 2001); *Nelson v. United States*, 2001 U.S. Dist. LEXIS 9760 (S.D.N.Y. July 12, 2001); *Stiso v. U.S.*, 2001 U.S. Dist. LEXIS 6937 (S.D.N.Y. May 29, 2001); *Nelson v. United States*, 2001 U.S. Dist. LEXIS 6280 (S.D.N.Y. May 14, 2001); *Negron v. United States*, 2001 U.S. Dist. LEXIS 4885 (S.D.N.Y. Apr. 19, 2001); *Fernandez v. United States*, 2001 U.S. Dist. LEXIS 3260 (S.D.N.Y. Mar. 26, 2001); *Negron v. United*

States, 2001 U.S. Dist. LEXIS 3261 (S.D.N.Y. Mar. 26, 2001); United States v. Nelson, 1999 U.S. Dist. LEXIS 4444 (S.D.N.Y. Apr. 6, 1999); United States v. Maisonet, 1998 U.S. Dist. LEXIS 9696 (S.D.N.Y. June 30, 1998); and United States v. Stiso, 1998 U.S. Dist. LEXIS 7642 (S.D.N.Y. May 21, 1998).

Where the defendants appealed, the Second Circuit affirmed. United States v. Maisonet, 45 Fed. Appx. 74 (2d Cir. 2002); United States v. Rodriguez, 2000 U.S. App. LEXIS 11015 (2d Cir. May 17, 2000); and United States v. Rodriguez, 213 F.3d 627 (2d Cir. 2000).

For the Government: AUSA (now S.D.N.Y. Judge) Richard Sullivan, (212) 805-0491 and AUSA John Hillebrecht, (212) 637-2262.

For Miguel Rodriguez: Alan S. Futerfas, (212) 684-8400

For Darcel Nelson: Ruth Marjorie Liebesman, (212) 804-5740.

For Stiso: Benjamin Brafman, (212) 750-7800.

For Clark: Manuel A. Sanchez, Jr., (718) 892-4471.

For Guillermo Negron, Sr.: Lawrence D. Gerzog, (212) 486-3003.

For Guillermo Negron, Jr.: Daniel Nobel, (212) 219-2870.

For Rivera: John H. Jacobs (contact information unavailable).

5. United States v. Banks et al.

This case involved the Reyes heroin organization, a criminal enterprise that operated in the Bronx. The indictment charged seven defendants with, among other things, conspiracy to commit burglary, conspiracy to commit murder-for-hire, and murder-for-hire. Four defendants pled guilty. I sentenced Robert Banks to 372 months imprisonment and Diego Mojica to 210 months imprisonment. I presided over two trials in this case. The first was a three-week trial, at the end of which a jury convicted defendants Jaime Gomez and Thomas Marmolejas of eight counts of murder, conspiracy, and drug-related offenses. I sentenced Gomez to life plus 10 years imprisonment and Marmolejos to life plus 120 years imprisonment. I also presided over a six-day trial, at the end of which defendant Johnny Martinez was convicted of murder. I sentenced him to a term of imprisonment of life plus 120 months.

I issued the following opinions in the case: *United States v. Gomez*, 2009 WL 2330734 (S.D.N.Y. July 30, 2009); *United States v. Banks*, 2006 U.S. Dist. LEXIS 74914 (S.D.N.Y. Oct. 13, 2006); *Marmolejas v. United States*, 2006 U.S. Dist. LEXIS 66999 (S.D.N.Y. Sept. 15, 2006); *United States v. Gomez*, 210 F. Supp. 2d 465 (S.D.N.Y. 2002); and *United States v. Banks*, 150 F. Supp. 2d 548 (S.D.N.Y. 2001).

At Gomez's trial, I held that Gomez was bound by the terms of his proffer agreement. In an opinion I wrote, 210 F. Supp 2d 465, I explained my reasoning for holding that if Gomez took a position at trial that was inconsistent with statements he had made during proffer sessions, he would open the door, permitting the Government to offer the inconsistent prior proffer statements. Gomez argued that proffer statements could be used only to impeach him if he took the stand and testified contrary to his proffer, relying on *United States v. Duffy*, 133 F.Supp.2d 213 (E.D.N.Y. 2001). The Second Circuit subsequently reversed *Duffy*, explicitly citing and relying on my reasoning in the Gomez decision. See *United States v. Velez*, 354 F.3d 190, 195 (2d Cir. 2004).

The convictions of Gomez and Marmolejas were affirmed by the Second Circuit. *United States v. Marmolejas*, 112 Fed. Appx. 779 (2d Cir. 2004), cert. denied, 546 U.S. 868 (2005).

Martinez's conviction was also affirmed by the Second Circuit. *United States v. Banks*, 464 F.3d 184 (2d Cir. 2006), cert. denied, 128 S. Ct. 332 (2007).

For the Government: AUSA (now S.D.N.Y. Judge) Richard Sullivan, (212) 805-0491 and AUSA (now Bracewell & Guiliani partner) Marc L. Mukasey, (212) 508-6134.

For Gomez: Lynne F. Stewart (contact information unavailable), Sabrina P. Shroff, Federal Defenders of New York, (212) 417-8700.

For Marmolejas: Valerie S. Amsterdam (contact information unavailable)

For Martinez: Bobbi C. Sternheim, (212) 697-4090.

Civil

1. In re Bank of America Corporation Securities, Derivative & ERISA Litigation

These are thirty-two pending class actions relating to the 2008 merger of Bank of America Corporation with Merrill Lynch & Co., Inc. and public disclosures made in connection with the transaction. Plaintiffs allege violations of the Securities Exchange Act of 1934, breach of fiduciary duty, and violations of ERISA, and allege improprieties based on, among other things, the failure of Bank of America officers to disclose Merrill Lynch's true financial condition prior to the vote on the merger and the payment of purportedly excessive bonuses to certain Merrill Lynch employees.

The cases have been designated as Multi-District Litigation cases and I have been assigned to be the MDL judge.

I consolidated the securities, derivative, and ERISA actions for pre-trial purposes and appointed lead plaintiff and lead counsel for each group. In re Bank of America Corp. Sec., Derivative & ERISA Litigation, --- F.Supp.2d ----, 2009 WL 1875764 (S.D.N.Y. June 30, 2009).

For the plaintiffs: Sean M. Handler, Barroway Topaz Kessler Meltzer & Check LLP, (610) 667-7706; Donald R. Hall, Jr., Frederic Scott Fox, Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP, (212) 687-1980; Gerald H. Silk, Salvatore J. Graziano, Noam Mandel, Bernstein, Litowitz, Berger & Grossman LLP, (212) 554-1400; Jonathan K. Levine, Girard Gibbs, (212) 867-1721; Jay W. Eisenhofer, Grant & Eisenhofer, P.A., (646) 722-8500; Lewis Kahn, Albert M. Myers, Kevin Oufnac, Michael Swick, Kahn Swick & Foti LLC, (504) 455-1400; Maya Saxena, Saxena White P.A., (561) 394-3399; Robert I. Harwood, Harwood Feffer LLP, (212) 935-7400; Lee Squitieri, Squitieri & Fearon LLP, (212) 421-6492; and Steve W. Berman, Hagens Berman Stobol Shapiro LLP, (206) 623-7292.

For the defendants: Peter C. Hein, Eric M. Roth, Andrew Houston, Jonathan E. Goldin, Keola Robert Whittaker, Wachtell, Lipton, Rosen & Katz,

(212) 403-1000; Lawrence Portnoy, Charles S. Duggan, Douglas K. Yatter, Davis Polk & Wardwell, (212) 450-4000; Adam S. Hakki, Shearman & Stearling, (212) 848-4000.

2. Wright v. Stern

This was a class action case brought by employees of the New York City Department of Parks and Recreation who claimed that the Parks Department discriminated against them on the basis of race, color, and national origin, and then retaliated against any employees who attempted to oppose the discriminatory practices. The United States also brought suit against the City based on the same alleged acts of discrimination and retaliation. The United States sought only injunctive relief, and its case was settled based on a consent decree. The plaintiffs sought additional injunctive relief as well as damages. I granted a motion for class certification and certified a class consisting of some 3,500 employees or former employees. See *Wright v. Stern*, 2003 U.S. Dist. LEXIS 11589 (S.D.N.Y. July 9, 2003). I later denied in part and granted in part defendants' motion for summary judgment, concluding that there was abundant evidence in the record – including statistical evidence – from which a reasonable jury could find that the Parks Department had discriminated against its employees. See *Wright v. Stern*, 450 F. Supp. 2d 335 (S.D.N.Y. 2006). I conducted a number of settlement conferences which resulted in the parties' reaching a settlement that included substantial equitable relief as well as \$12 million in compensation to class members and \$9 million in attorneys' fees and costs.

For the plaintiffs: Cynthia Rollings, Beldock, Levine & Hoffman, L.L.P., (212) 490-0400; Jody Lynn Yetzer, Beldock, Levine & Hoffman, L.L.P., (212) 490-0400; Matthew Colangelo, NAACP Legal Defense & Educational Fund, Inc., (212) 965-2268; Steven F. Goldman, Goldman & Goldman (contact information unavailable); Lewis M. Steel, (212) 245-1000.

For the City Defendants: Barbara Butler (contact information unavailable); Kathleen Marie Comfrey (212) 788-7970.

For the United States: AUSA Lisa Zornberg, (212) 637-2800, and Ramon Reyes (now Magistrate Judge, EDNY), (718) 613-2120.

3. Ingles et al. v. City of New York et al.

This was a prisoners' civil rights case in which inmates in the New York City correctional system alleged that they were subjected to a pattern and practice of excessive force by uniformed employees of the New York City Department of Correction ("DOC") in violation of the Eighth and Fourteenth Amendments to the United States Constitution and the laws and Constitution of the State of New York. The prisoners alleged that DOC's officials at twelve New York City correctional institutions violated prisoners' constitutional rights as a matter of course. I certified a class in the case. See *Ingles v. City of New York*, 2003 U.S. Dist. LEXIS 2453 (S.D.N.Y. Feb. 18, 2003). In an effort to settle case, I conducted eighteen settlement conferences between June 2005 and February 2006. The final settlement agreement, which I approved, not only provided for millions of dollars in monetary relief and attorneys' fees and costs for the plaintiffs but also extensive and far-reaching equitable relief and reforms, including requiring DOC to place hundreds of cameras in certain locations in different facilities.

In addition to this opinion, I issued the following opinions in the case: *Ingles v. Toro*, 438 F. Supp. 2d 203 (S.D.N.Y. 2006); *Ingles v. City of New York*, 2005 U.S. Dist. LEXIS 11100 (S.D.N.Y. June 3, 2005); and *Ingles v. City of New York*, 2004 U.S. Dist. LEXIS 21783 (S.D.N.Y. Oct. 7, 2004).

For the plaintiffs:

John Boston, Jonathan Chasan, Mary Lynne Werlwas, and Madeline DeLone, The Legal Aid Society, Prisoners' Rights Project, (212) 577-3300; Penny Shane, Sullivan & Cromwell, (212) 558-4000; Jonathan Abady, Emery Celli Brinckerhoff & Abady, (212) 763-5000

For the DOC:

Arthur Larkin, New York City Law Department, (212) 788-1599

4. Million Youth March v. Safir et al.

I granted a preliminary injunction sought by the plaintiff, Million Youth March, Inc., ordering the City of New York to grant it a permit for a march and rally in Harlem. The City had declined to grant the permit primarily because of offensive statements the principal of the plaintiff had made at a previous rally. I concluded that the City could not, consistent with the First Amendment, withhold a permit. See *Million Youth March, Inc. v. Safir*, 63 F. Supp. 2d 381 (S.D.N.Y. 1999). On appeal, the Second Circuit affirmed by summary order. The case received extensive media

coverage. An excerpt from my opinion was selected by the New York Times as its quote of the day. See N.Y. Times, Sept. 1, 1999, at A1 (“At least as frightening as the rhetoric of Mr. Muhammad is the possibility of a society where the right to speak publicly can be denied on the basis of administrative whim, personal dislike, or disapproval of anticipated content.”).

For Million Youth March, Inc.: Jomo Sanga Thomas (contact information unavailable); Malik Z. Shabazz (contact information unavailable); and Roger Spencer Wareham ((contact information unavailable).

For the Government: Robin Binder, New York City Law Department, (212) 788-0818.

5. Doe v. Pataki

The plaintiffs in this case challenged the constitutionality of New York’s “Megan’s Law” as applied to individuals who committed crimes before the law took effect. I held that the registration provisions of the law did not violate the Constitution but that the notification provisions constituted punishment after-the-fact, in violation of the Ex Post Facto Clause of the Constitution. See *Doe v. Pataki*, 940 F. Supp. 603 (S.D.N.Y. 1996). The Second Circuit affirmed in part and reversed in part, concluding that the provisions did not constitute punishment. 120 F.3d 1263 (2d Cir. 1997). In later proceedings, plaintiffs also brought a Due Process challenge, and I held that certain aspects of the statute violated the Due Process Clause of the Constitution. See *Doe v. Pataki*, 3 F. Supp. 2d 456 (S.D.N.Y. 1998). The State did not appeal, and the case eventually settled as the statute was amended to address the Due Process concerns. Subsequent litigation ensued over the interpretation of the consent decree.

In addition to the opinion cited above, I issued the following opinions in the case: *Doe v. Pataki*, 439 F. Supp. 2d 324 (S.D.N.Y. 2006), and *Doe v. Pataki*, 427 F. Supp. 2d 398 (S.D.N.Y. 2006), vacated, 120 F.3d 1263 (2d Cir. 1997 (2-1 decision)); and *Doe v. Pataki*, 919 F. Supp. 691 (S.D.N.Y. 1996).

For plaintiffs: Thomas M. O'Brien, The Legal Aid Society, (212) 577-3551.

For the Government: Christine E. Morrison, New York Attorney General’s Office, (212) 416-8660.

- 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.

I include here two opinions I wrote sitting by designation in the Second Circuit and eight opinions I filed in the District Court. Within each group, they are listed in reverse chronological order. I have not included here decisions issued in the cases listed in response to Question 13(c).

Second Circuit

1. Capobianco v. City of New York, 422 F.3d 47 (2d Cir. 2005) (holding that night blindness was a disability for purposes of Americans with Disabilities Act).

For plaintiff-appellant: Daniel F. De Vita, (516) 622-7575.

For defendants-appellees: Peter Rahbar, now of Hearst Corporation, (212) 649-2015; Kristin M. Helmers, NYC Law Department, (212) 788-0303 (on the brief).

2. Stratton v. Dep't for the Aging for City of New York, 132 F.3d 869 (2d Cir. 1997) (affirming judgment in favor of plaintiff in age discrimination case).

For plaintiff-appellee: Jeffrey C. Slade; Andrew D. Herz; Mark J. Stratton, contact information not available.

For defendants-appellants: Jane L. Gordon, Barry P. Schwartz, NYC Law Department, (212) 788-0303.

District Court

3. United States v. Levy, 594 F. Supp. 2d 427 (S.D.N.Y. 2009) (following conviction of defendant by jury for production and distribution of child pornography, denying motion for judgment of acquittal and discussing evidentiary issues in child pornography cases; defendant thereafter sentenced to 30 years imprisonment).

For the Government: AUSA Harry Chernoff, (212) 637-2481, AUSA Adam Hickey, (212) 637-1039.

For defendant: Ira London, (212) 683-8000.

4. Conradt v. NBC Universal, Inc., 536 F. Supp. 2d 380 (S.D.N.Y. 2008) (denying in part and granting in part motion to dismiss claims brought by estate of prosecutor who committed suicide as he was about to be arrested for soliciting a minor in connection with filming for NBC television show "To Catch A Predator"; case thereafter settled).

For plaintiff: Bruce Baron, Baron Associates P.C., (718) 934-6501.

For defendant: Lee Levine, Amanda M. Leith, Levine Sullivan Koch & Schulz LLP, (212) 850-6100; Hilary Lane, Susan Weiner, NBC Universal, Inc., (212) 664-2806.

5. United States v. Finnerty, 474 F. Supp. 2d 530 (S.D.N.Y. 2007) (setting aside jury verdict and granting judgment of acquittal in criminal cases against New York Stock Exchange trader), aff'd, 533 F.3d 143 (2d Cir. 2008).

For the Government: AUSA Lauren Goldberg, (212) 637-1040, AUSA Anirudh Bansal, (212) 637-2516.

For defendant: Frederick P. Hafetz, Tracy E. Sivitz, Hafetz & Necheles, (212) 997-7595.

6. Lippe v. Bairnco Corp., 288 B.R. 678 (S.D.N.Y. 2003) (granting Daubert motion in complex fraudulent conveyances case), aff'd, 99 Fed. Appx. 274 (2d Cir. 2004).

For plaintiffs: Stanley J. Levy, Levy Phillips & Konigsberg, LLP, (212) 605-6200; Brian T. FitzPatrick, current contact information not available; David R. Gross, Geoffrey Gaulkin, James H. Gianninoto, Saiber Schlesinger Satz & Goldstein, LLC, (212) 461-2323; Kathleen Marchetti, City of Newark Law Department, (973) 733-3880.

For defendants: John H. Hall, Steven Klugman, Jeremy Feigelson, Jennifer R. Cowan, Debevoise & Plimpton, (212) 909-6000; Jeffrey I. Lang, Quinn Emanuel, (212) 849-7000; Caroline H. Luckenbach, current contact information not available; Irwin J. Sugarman, current contact information not available, Michael S. Chernis, current contact information not

available, Charles F. Rysavy, K&L Gates
LLP, (973) 848-4053; Alissa Pyrich,
McCarter & English, LLP, (212) 609-6800.

7. Morales v. Portuondo, 154 F. Supp. 2d 706 (S.D.N.Y. 2001) (granting habeas petition and ordering release of defendant who had been incarcerated for some twelve years after priest came forward to disclose confession by real murderer, who had since died, who absolved defendant).

For petitioner: Randa D. Maher, (516) 487-7460; Jeffrey Pittell, (516) 829-2299.

For respondent: Joseph N. Ferdenzi, Cheryl D. Harris, Allen P.W. Karen, Bronx County District Attorney's Office, (718) 590-2000.

8. In re Grand Jury Subpoenas dated March 9, 2001, 179 F. Supp. 2d 270 (S.D.N.Y. 2001) (in connection with grand jury investigation into President Clinton's granting of pardon to fugitive Marc Rich, holding that lawyers acted as lobbyists and not as attorneys and therefore their communications were not protected by attorney-client privilege or work-product doctrine).

For the Government: AUSA Evan T. Barr, now of Steptoe & Johnson LLP, (212) 506-3900; AUSA Jonathan N. Halpern, now of Bracewell & Giuliani LLP, (212) 508-6100.

For Marc Rich: Laurence A. Urgenson, Kirkland & Ellis, (202) 879-5000.

For Respondents: Audrey Strauss, Fried Frank Harris Shriver & Jacobson, (212) 859-8000; John S. Siffert, Lankler Siffert & Wohl LLP, (212) 921-8399; Peter Chavkin, now of Mintz Levin Cohn Ferris Glovsky & Popeo PC, (212) 935-3000; Frederick P. Hafetz, Hafetz & Necheles, (212) 997-7595; David Ellenhorn, current contact information not available; Jonathan Lupkin, now of Flemming Zulack Williamson Zauderer LLP, (212) 412-9500.

9. Application of Blondin v. Dubois, 78 F. Supp. 2d 283 (S.D.N.Y. 2000) (denying petition under the Hague Convention for the return of two children to France, applying "grave risk" of psychological or physical

harm exception; this decision essentially set the standard for invoking the grave risk exception and has been followed in other cases), *aff'd*, 238 F.3d 153 (2d Cir. 2001).

For petitioner: Valerie S. Wolfman, (212) 752-3380;
Sanford Hausler, Cox Padmore Skolnik &
Shakarchy LLP, (866) 716-3813.

For respondent: Leonard F. Joy, now of Federal Defenders
of New York, (212) 417-8700.

For the Government: AUSA Wendy H. Schwartz, now of Reed
Smith, (212) 521-5400.

10. Macdraw, Inc. v. CIT Group Equipment Financing, Inc., 994 F. Supp. 447 (S.D.N.Y. 1997) (imposing sanctions on two attorneys for questioning my impartiality based on my race), *aff'd*, 138 F.3d 33 (2d Cir. 1998), cert. denied, In re Klayman, 525 U.S. 874 (1998).

For respondents: Ramsey Clark, Lawrence W. Schilling,
(212) 475-3232.

For plaintiff: Larry Klayman, now of Klayman Law Firm,
(305) 579-3455; Paul J. Orfanedes, now of
Judicial Watch, (202) 646-5172.

For defendants: Susan G. Rosenthal, current contact
information not available; Jeffrey H.
Weinberger, current contact information not
available.

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

I have presided over two cases that have been reviewed by the Supreme Court.

The first was Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205 (2000), reversing 165 F.3d 120 (2d Cir. 1998), affirming in part and reversing in part 969 F. Supp. 895 (S.D.N.Y. 1997).

In the second case, the Supreme Court granted certiorari in Bank of China, New York Branch v. NBM LLC, 545 U.S. 1138 (2005), then dismissed the writ in 546 U.S. 1026 (2005), as the case was rendered moot when I tried the case a second time and the second jury returned a verdict substantially similar to the first verdict. The case was on appeal from two decisions of the Second Circuit: 359 F.3d 171 (2d Cir. 2004), vacating and remanding 2002 WL 31027551 (S.D.N.Y.

Sept. 11, 2002), and 89 Fed. Appx. 751 (2d Cir. 2004). On remand, I issued 2004 WL 1907308 (Aug. 26, 2004), affirmed 243 Fed. Appx. 652 (2d Cir. 2007).

To my knowledge, certiorari has not been directly sought from one of my decisions. I have not kept a comprehensive list of cases in which certiorari was requested from a decision of the Second Circuit reviewing my cases or decisions. Certiorari has undoubtedly been sought in criminal cases over which I presided, but, to my knowledge, it has never been granted. I am aware that the Supreme Court has denied certiorari in, inter alia:

Twentieth Century Fox Film Corp. v. Cablevision Sys. Corp., 478 F. Supp. 2d 607 (S.D.N.Y. 2007), reversed in part and vacated in part Cartoon Network LP, LLLP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008), certiorari denied Cable News Network, Inc. v. CSC Holdings, Inc., -- S. Ct. -- 2009 WL 1835220 (June 29, 2009);

Korsinsky v. U.S. Environmental Protection Agency, 2005 WL 1423345 (S.D.N.Y. Jun 16, 2005), affirmed 192 Fed.Appx. 42 (2d Cir. 2006), certiorari denied 549 U.S. 1181 (2007);

In re Sunbeam Corp., 2004 WL 136941 (S.D.N.Y. Jan. 27, 2004), affirmed 178 Fed. Appx. 73 (2d Cir. 2006), certiorari denied Robinson v. Sunbeam Corp., 549 U.S. 946 (2006);

In re Merchants & Mfrs, Inc., 1999 WL 4929 (S.D.N.Y. Jan. 5, 1999), affirmed 198 F.3d 235 (2d Cir.), certiorari denied Feldman v. Skadden, Arps, Slate, Meagher & Flom, 530 U.S. 1214 (2000);

Macdraw, Inc. v. CIT Group Equipment Financing, Inc., 994 F. Supp. 447 (S.D.N.Y. 1997), affirmed 138 F.3d 33 (2d Cir. 1998), certiorari denied In re Klayman, 525 U.S. 874 (1998);

Rocanova v. United States, 955 F. Supp. 27 (S.D.N.Y. 1996), affirmed 109 F.3d 127 (2d Cir. 1997), certiorari denied 522 U.S. 821 (1997);

United States v. Regan, 897 F. Supp. 748 (S.D.N.Y. 1995), affirmed 103 F.3d 1072 (2d Cir. 1997), certiorari denied 521 U.S. 1106 (1997).

- 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.

I have been reversed in whole or in part approximately 41 times:

1. Hevner v. Vill. E. Towers, Inc., 293 Fed. Appx. 56 (2d Cir. 2008), vacating my dismissal of a *pro se* plaintiff's case for failure to prosecute under Federal Rule of Civil Procedure 41(b).
2. Cartoon Network LP, LLLP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008), reversing and vacating 478 F. Supp. 2d 607 (S.D.N.Y. 2007). I granted summary judgment to plaintiffs in a complex copyright case involving digital video recorders, and the Second Circuit reversed. The Supreme Court recently denied cert.
3. L-3 Communs. Corp. v. OSI Sys., 283 Fed. Appx. 830 (2d Cir. 2008), reversing 2005 U.S. Dist. LEXIS 4935 (S.D.N.Y. March 28, 2005). I granted partial summary judgment to the defendant, concluding as a matter of law that the plaintiff owed the defendant a fiduciary duty. The case was thereafter reassigned to another judge, who tried the case. On appeal following a verdict in favor of defendant, the Second Circuit reversed, holding that I had erred in concluding as a matter of law that plaintiff owed a fiduciary duty to defendant.
4. In re M/V DG Harmony, 518 F.3d 106 (2d Cir. 2008), affirming in part, reversing in part, and vacating in part, 394 F. Supp. 2d 649 (S.D.N.Y. 2005). The Second Circuit substantially affirmed my decision in this highly complex, non-jury admiralty case, but remanded for consideration of one issue.
5. Grace v. Corbis-Syigma, 487 F.3d 113 (2d Cir. 2007), vacating and remanding 403 F. Supp. 2d 337 (S.D.N.Y. 2005). The Second Circuit remanded for me to recalculate the damages I had awarded to the plaintiff following a bench trial.
6. Doe v. Pataki, 481 F.3d 69 (2d Cir. 2007), vacating, 2-1, 439 F. Supp. 2d 324 (S.D.N.Y. 2006) and 427 F. Supp. 2d 398 (S.D.N.Y. 2006). The Second Circuit disagreed with my interpretation of a stipulation of settlement regarding New York's Sex Offender Registration Act.
7. Williams v. New York City Hous. Auth., Local 237, 211 Fed. Appx. 22 (2d Cir. 2006), reversing 2006 U.S. Dist. LEXIS 3580 (S.D.N.Y. Jan. 31, 2006). The Second Circuit held that I misapplied the res judicata effect of an earlier ruling.
8. Paese v. Hartford Life & Accident Ins. Co., 449 F.3d 435 (2d Cir. 2006), affirming in part and vacating in part 2004 U.S. Dist. LEXIS 6040 (S.D.N.Y. Apr. 8, 2004). The Second Circuit affirmed my award to the plaintiff after a bench trial, but vacated the amount of damages.
9. United States v. Temple, 447 F.3d 130 (2d Cir. 2006), reversing 342 F. Supp. 2d 233 (S.D.N.Y. 2004). Following the defendant's conviction by a jury, I granted her motion for a judgment of acquittal as to one of the counts, but denied it and her motion for a new trial as to the other count. The Second Circuit reversed both decisions.

10. Consol. Edison Co. of N.Y., Inc. v. UGI Utils., Inc., 423 F.3d 90 (2d Cir. 2005), reversing 310 F. Supp. 2d 592 (S.D.N.Y. 2004). I granted summary judgment to the defendant in this case brought under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The Second Circuit reversed.
11. Wiggins v. United States, 138 Fed. Appx. 369 (2d Cir. 2005). The Second Circuit vacated my denial of the plaintiff's motion for early termination of supervised release, and remanded for me to consider more thoroughly the statutory factors.
12. Rubens v. Mason, 387 F.3d 183 (2d Cir. 2004), affirming in part, vacating in part, and remanding in part 2003 U.S. Dist. LEXIS 17200 (S.D.N.Y. Sept. 30, 2003). The Second Circuit reversed on the ground that I should not have considered a certain affidavit on summary judgment as it was, in the Second Circuit's view, inadmissible.
13. McMahon v. Hodges, 382 F.3d 284 (2d Cir. 2004), reversing 225 F. Supp. 2d 357, 359 (S.D.N.Y. 2002). I had granted the petitioner's writ of habeas corpus, and the Second Circuit reversed.
14. PenneCom B.V. v. Merrill Lynch & Co., 372 F.3d 488 (2d Cir. 2004), reversing 2003 U.S. Dist. LEXIS 11229 (S.D.N.Y. June 30, 2003). I had granted the defendants' motion to dismiss on the basis of collateral estoppel. The Second Circuit reversed, holding that the dismissal was premature.
15. United States v. Leung, 360 F.3d 62 (2d Cir. 2004). The Second Circuit substantially affirmed but vacated the sentence and remanded for me to consider whether the defendant was entitled to a reduction for acceptance of responsibility, and whether a grouping analysis was warranted.
16. Bank of China v. NBM LLC, 359 F.3d 171 (2d Cir. 2004), vacating and remanding 2002 U.S. Dist. LEXIS 16979 (S.D.N.Y. Sept. 10, 2002). The Second Circuit reversed because it concluded that an instruction I had given the jury in this civil RICO case was erroneous. The Supreme Court granted certiorari to consider the Second Circuit's decision, but while the cert petition was pending, I re-tried the case. The second jury returned a substantially similar verdict and the cert petition was thus withdrawn as moot.
17. United States v. Rizzo, 349 F.3d 94 (2d Cir. 2003). The Second Circuit remanded for me to resentence the defendant without a sentencing enhancement I had applied on the ground that the enhancement was not sufficiently supported by the evidence.
18. Storey v. Cello Holdings, L.L.C., 347 F.3d 370 (2d Cir. 2003), vacating and remanding 182 F. Supp. 2d 355 (S.D.N.Y. 2002). I granted plaintiffs' motion for

summary judgment and sanctions in this trademark case, and the Second Circuit vacated and remanded.

19. ACE Capital Re Overseas Ltd. v. Cent. United Life Ins. Co., 307 F.3d 24 (2d Cir. 2002), vacating and remanding 2001 U.S. Dist. LEXIS 18447 (S.D.N.Y. Nov. 9, 2001). I had granted the plaintiff's motion to stay arbitration. The Second Circuit vacated and remanded with instructions to compel arbitration.

20. Harris Trust & Sav. Bank v. John Hancock Mut. Life Ins. Co., 302 F.3d 18 (2d Cir. 2002), affirming in part, reversing in part, vacating in part, and remanding 122 F. Supp. 2d 444 (S.D.N.Y. 2000). After a bench trial, I awarded plaintiff \$84.88 million in this ERISA case. The Second Circuit vacated most of my findings and conclusions.

21. Excimer Assocs. v. LCA Vision, Inc., 292 F.3d 134 (2d Cir. 2002), vacating and remanding 197 F.R.D. 90 (S.D.N.Y. 2000). The Second Circuit vacated my conclusion that one of the parties lacked standing to assert a claim.

22. Phifer v. City of New York, 289 F.3d 49 (2d Cir. 2002), affirming in part, reversing in part, and remanding 1999 U.S. Dist. LEXIS 14436 (S.D.N.Y. Sept. 16, 1999) and 2001 U.S. Dist. LEXIS 11 (S.D.N.Y. Jan. 3, 2001). I had dismissed the plaintiff's civil rights case for lack of subject matter jurisdiction. The Second Circuit affirmed part of my decision, but reversed other parts, concluding that I had subject matter jurisdiction over some of the conduct underlying the plaintiff's complaint.

23. Revson v. Cinque & Cinque, P.C., 221 F.3d 59 (2d Cir. 2000) and 221 F.3d 71 (2d Cir. 2000), affirming in part and reversing in part 70 F. Supp. 2d 415 (S.D.N.Y. 1999). After a jury trial, I dismissed the plaintiff's claims for a declaratory judgment and monetary relief against the defendant law firm, and ordered the plaintiff to pay the law firm \$732,370 for the value of the legal services rendered. The Second Circuit affirmed in part, vacated in part, and remanded for a new trial. The Second Circuit also reversed my imposition of sanctions on plaintiff's counsel.

24. Celle v. Filipino Reporter Enters., 209 F.3d 163 (2d Cir. 2000), affirming in part and reversing in part the jury's verdict in this libel case.

25. Flamm v. Am. Ass'n of Univ. Women, 201 F.3d 144, 147 (2d Cir. 2000), reversing and remanding 28 F. Supp. 2d 185 (S.D.N.Y. 1998). In this libel case, I had granted the defendants' motion to dismiss the plaintiff's libel case on the ground that the challenged statement could not reasonably be construed as a statement of fact, and the Second Circuit reversed.

26. Levinson v. Cello Music & Film Sys., 1999 U.S. App. LEXIS 26871 (2d Cir. Oct. 22, 1999). The Second Circuit vacated a preliminary injunction I had

granted, on the ground that the plaintiff had failed to demonstrate irreparable harm.

27. Schlaifer Nance & Co. v. Estate of Warhol, 194 F.3d 323 (2d Cir. 1999), reversing 7 F. Supp. 2d 364 (S.D.N.Y. 1998). I granted the defendant's motion for sanctions against the plaintiffs, and the Second Circuit reversed.

28. Blondin v. Dubois, 189 F.3d 240 (2d Cir. 1999), vacating and remanding 19 F. Supp. 2d 123 (S.D.N.Y. 1998). The case involved the Hague Convention on the Civil Aspects of International Child Abduction. I was later affirmed on my post-remand decision. 238 F.3d 153 (2d Cir. 2001)

29. United States v. Morales, 185 F.3d 74 (2d Cir. 1999), affirming in part, reversing in part, vacating in part, and remanding 974 F. Supp. 315 (S.D.N.Y. 1997). The Second Circuit vacated in part the defendants' convictions, following a jury trial, on the ground that the convictions for racketeering were not supported by the evidence.

30. Selletti v. Carey, 173 F.3d 104 (2d Cir. 1999), affirming in part, vacating in part, and remanding 173 F.R.D. 96 (S.D.N.Y. 1997), 174 F.R.D. 311 (S.D.N.Y. 1997), and 177 F.R.D. 189 (S.D.N.Y. 1998). The Second Circuit vacated my decision to dismiss the plaintiff's case on the ground that he would be unable to comply with an order of sanctions I had imposed.

31. United States v. Avila-Ramirez, 170 F.3d 277 (2d Cir. 1999), vacating a sentence I had imposed on the ground that it violated the ex post facto clause.

32. United States v. Castillo, 1999 U.S. App. LEXIS 2646 (2d Cir. Feb. 19, 1999), vacating and remanding a sentence due to a clerical error in the amount of the special assessment.

33. Samara Bros. v. Wal-Mart Stores, 165 F.3d 120 (2d Cir. 1998), 2-1, affirming in part, reversing in part, and remanding 969 F. Supp. 895 (S.D.N.Y. 1997). I had denied the defendant's motion for judgment as a matter of law following a jury trial in this intellectual property case. The Second Circuit reversed, 2-1. The Supreme Court subsequently reversed the Second Circuit. 529 U.S. 205 (2000).

34. Mount Vernon Fire Ins. Co. v. Congregation Kehilath Yakov, 1998 U.S. App. LEXIS 12946 (2d Cir. May 29, 1998), vacating and remanding my grant of summary judgment to plaintiff in this insurance case.

35. Marfia v. T.C. Ziraat Bankasi, 147 F.3d 83 (2d Cir. 1998), affirming in part, vacating in part, and remanding 968 F. Supp. 152 (S.D.N.Y. 1997). The Second Circuit only vacated that portion of my decision relating to prejudgment interest.

36. Beaman v. Coombe, 1998 U.S. App. LEXIS 12610 (2d Cir. May 13, 1998), affirming in part, vacating in part, and remanding 1997 U.S. Dist. LEXIS 13079

(S.D.N.Y. Aug. 27, 1997). I granted the defendant's motion to dismiss the complaint, and the Second Circuit substantially affirmed but reversed as to one of the claims.

37. Moore v. National Pension Fund, 1997 U.S. App. LEXIS 26305 (2d Cir. Sept. 22, 1997), affirming in part and reversing in part 1997 U.S. Dist. LEXIS 4291 (S.D.N.Y. April 7, 1997). I granted the defendants' motion to dismiss in this ERISA case. The Second Circuit substantially affirmed but vacated and remanded as to one of the claims.

38. LoPresti v. Terwilliger, 126 F.3d 34 (2d Cir. 1997). The Second Circuit affirmed in part and reversed in part my judgment following a bench trial in this ERISA case.

39. Doe v. Pataki, 120 F.3d 1263 (2d Cir. 1997), affirming in part, reversing in part, and remanding 940 F. Supp. 603 (S.D.N.Y. 1996). This case involved the interpretation of New York's Sex Offender Registration Act. I held that enforcement of one of its provisions violated the ex post facto clause of the Constitution, and the Second Circuit

40. O'Brien v. Alexander, 101 F.3d 1479 (2d Cir. 1996), affirming in part, reversing in part, and remanding 898 F. Supp. 162 (S.D.N.Y. 1995). I had dismissed plaintiff's complaint and imposed sanctions. The Second Circuit affirmed my dismissal of the complaint but reversed in part on the imposition of sanctions.

41. United States ex rel. Evergreen Pipeline Constr. Co. v. Merritt Meridian Constr. Corp., 95 F.3d 153 (2d Cir. 1996), affirming in part, reversing in part, and remanding 890 F. Supp. 1213 (S.D.N.Y. 1995). Following a jury trial in this construction case, I denied the defendant's motion for judgment as a matter of law. I had also dismissed two of the plaintiff's claims. The Second Circuit reversed parts of those decisions.

I cannot recall any instance in which the Second Circuit affirmed a decision of mine with significant criticism of my rulings.

- 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.

Nearly all of my decisions that address a significant issue and/or resolve a dispositive motion are decided by issuance of a memorandum decision or a published opinion. All memorandum decisions and opinions are published electronically on Westlaw and Lexis. A very small number of substantive decisions are decided by brief order or via oral opinions issued from the bench. My decisions on scheduling, deadlines, discovery disputes, and other matters are

generally resolved by unpublished order. These orders, however, are docketed and publicly accessible through the court's Electronic Case Filing system.

- 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.

Henry v. Ashcroft, 175 F.Supp.2d 688 (S.D.N.Y. 2001).

Morales v. Portuondo, 154 F.Supp.2d 706 (S.D.N.Y. 2001).

World Wrestling Federation Entertainment, Inc. v. Bozell, 142 F.Supp.2d 514 (S.D.N.Y. 2001).

Million Youth March, Inc. v. Safir, 63 F. Supp. 2d 381 (S.D.N.Y. 1999), affirmed by summary order.

Doe v. Pataki, 3 F. Supp. 2d 456 (S.D.N.Y. 1998).

Doe v. Pataki, 940 F. Supp. 603 (S.D.N.Y. 1996), aff'd in part and rev'd in part, 120 F.3d 1263 (2d Cir. 1997).

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

I have sat by designation in the Second Circuit many times, including in the following cases:

U.S. v. Carreto, 2009 WL 3200754 (2d Cir. October 8, 2009)

In re Halpin, 566 F.3d 286 (2d Cir. 2009)

U.S. v. Kopp, 562 F.3d 141 (2d Cir. 2009)

U.S. v. Minaya, 2009 WL 909663 (2d Cir. April 1, 2009)

Rubin Squared, Inc. v. Cambrex Corp., 2009 WL 765008 (2d Cir. March 25, 2009)

Bikman v. Fisher, 316 Fed.Appx. 13 (2d Cir. 2009)

Napolitano v. Saltzman, 315 Fed.Appx. 351 (2d Cir. 2009)

Olson v. New York, 315 Fed.Appx. 361 (2d Cir. 2009)

U.S. v. Martinez, 313 Fed.Appx. 412 (2d Cir. 2009)

Consolie v. Wal-Mart Stores, Inc., 2009 WL 579422 (2d Cir. March 4, 2009)

Frankel v. Cole, 313 Fed.Appx. 418 (2d Cir. 2009)

Orix Financial Services v. Kielbasa, 2009 WL 579468 (2d Cir. March 4, 2009)

Fernicola v. Toyota Motor Corp., 313 Fed.Appx. 408 (2d Cir. 2009)

Industrial Risk Insurers v. Port Authority of New York and New Jersey, 296 Fed.Appx. 169 (2d Cir. 2008)

Pinkney v. EMI Music Pub., Inc., 296 Fed.Appx. 186 (2d Cir. 2008)
 Hattem v. Schwarzenegger, 449 F.3d 423 (2d Cir. 2006)
 Alliance Bernstein Inv. Research and Management, Inc. v. Schaffran, 445 F.3d 121 (2d Cir. 2006)
 Davis v. Herbert, 170 Fed.Appx. 763 (2d Cir. 2006)
 Joseph v. Worldwide Flight Services, Inc., 170 Fed.Appx. 771 (2d Cir. 2006)
 Vermont Country Foods, Inc. v. So-Pak-Co., Inc., 170 Fed.Appx. 756 (2d Cir. 2006)
 U.S. v. Edouard, 170 Fed.Appx. 769 (2d Cir. 2006)
 Dong v. Bureau of Citizenship and Immigration Services, 171 Fed.Appx. 373 (2d Cir. 2006)
 U.S. v. Knauss, 170 Fed.Appx. 772 (2d Cir. 2006)
 G. Simons & Co. S.A. v. United Transport Associates, Ltd., 170 Fed.Appx. 770 (2d Cir. 2006)
 Lake v. Greiner, 169 Fed.Appx. 606 (2d Cir. 2006)
 Maron v. County of Albany, 166 Fed.Appx. 540 (2d Cir. 2006)
 Jian Ren Huang v. Gonzales, 166 Fed.Appx. 576 (2d Cir. 2006)
 Capobianco v. City of New York, 422 F.3d 47 (2d Cir. 2005)
 U.S. v. Lake, 419 F.3d 111 (2d Cir. 2005)
 Dhoumo v. Board of Immigration Appeals, 416 F.3d 172 (2d Cir. 2005)
 Sheng v. U.S. Dept. of Justice, 139 Fed.Appx. 353 (2d Cir. 2005)
 Wiggins v. U.S., 138 Fed.Appx. 369 (2d Cir. 2005)
 U.S. v. Barresi, 138 Fed.Appx. 378 (2d Cir. 2005)
 Hossain v. Gonzales, 137 Fed.Appx. 421 (2d Cir. 2005)
 Gao v. U.S. Dept. of Justice, 136 Fed.Appx. 445 (2d Cir. 2005)
 Hassan v. U.S. Dept. of Veterans Affairs, 137 Fed.Appx. 418 (2d Cir. 2005)
 Singh v. Board of Immigration Appeals, 136 Fed.Appx. 440 (2d Cir. 2005)
 Luna v. Pico, 356 F.3d 481 (2d Cir. 2004)
 Silvels v. New York, 81 Fed.Appx. 361 (2d Cir. 2003)
 U.S. v. Baez, 349 F.3d 90 (2d Cir. 2003)
 U.S. v. Porges, 80 Fed.Appx. 130 (2d Cir. 2003)
 Partsinevelos v. Tropical Machines, Inc., 78 Fed.Appx. 782 (2d Cir. 2003)
 Fernandez v. Artuz, 82 Fed.Appx. 48 (2d Cir. 2003)
 Norton-Griffiths v. Charter One Bank, 20 Fed.Appx. 64 (2d Cir. 2001)
 U.S. v. Chavez, 267 F.3d 76 (2d Cir. 2001)
 U.S. v. Learner, 20 Fed.Appx. 18 (2d Cir. 2001)
 Hizbullahankhamon v. Walker, 255 F.3d 65 (2d Cir. 2001)
 Gorman-Bakos v. Cornell Co-op Extension of Schenectady County, 252 F.3d 545 (2d Cir. 2001)
 In re Ishihara Chemical Co., 251 F.3d 120 (2d Cir. 2001)
 U.S. v. Gregory, 245 F.3d 160 (2d Cir. 2001)
 Rodriguez v. Greenfield, 7 Fed.Appx. 42 (2d Cir. 2001)
 Turnage v. Tarzia, 7 Fed.Appx. 27 (2d Cir. 2001)
 U.S. v. Miller, 7 Fed.Appx. 59 (2d Cir. 2001)
 Woodford v. Community Action Agency of Greene County, Inc., 239 F.3d 517 (2d Cir. 2001)

U.S. v. Morales, 239 F.3d 113 (2d Cir. 2000)
Lawson v. City of Ansonia, 234 F.3d 1262 (2d Cir. 2000)
Librera v. Librera, 234 F.3d 1262 (2d Cir. 2000)
Adjustrite Systems, Inc. v. GAB Business Services, Inc., 145 F.3d 543 (2d Cir. 1998)
Muller on Behalf of Muller v. Committee on Special Educ. of East Islip Union Free School Dist., 145 F.3d 95 (2d Cir. 1998)
LeBlanc-Sternberg v. Fletcher, 143 F.3d 748 (2d Cir. 1998)
LeBlanc-Sternberg v. Fletcher, 143 F.3d 765 (2d Cir. 1998)
U.S. v. Paredes-Batista, 140 F.3d 367 (2d Cir. 1998)
L.B. Foster Co. v. America Piles, Inc., 138 F.3d 81 (2d Cir. 1998)
U.S. v. Avellino, 136 F.3d 249 (2d Cir. 1998)
Bavaro v. Pataki, 130 F.3d 46 (2d Cir. 1997)
U.S. v. Keith, 133 F.3d 908 (2d Cir. 1997)
Oblin Homes, Inc. v. Village of Dobbs Ferry, 133 F.3d 907 (2d Cir. 1997)
Stratton v. Department for the Aging for City of New York, 132 F.3d 869 (2d Cir. 1997)
Glendora v. Tele-Communications, Inc., 129 F.3d 113 (2d Cir. 1997)
Glendora v. Marshall, 129 F.3d 113 (2d Cir. 1997)
Brown v. Metro-North Commuter R.R., 129 F.3d 113 (2d Cir. 1997)
Computer Associates Intern., Inc. v. Altai, Inc., 126 F.3d 365 (2d Cir. 1997)
Ching Sheng Fishery Co., Ltd. v. U.S., 124 F.3d 152 (2d Cir. 1997)
Beller & Keller v. Tyler, 120 F.3d 21 (2d Cir. 1997)
U.S. v. Grisanti, 116 F.3d 984 (2d Cir. 1997)
Shumway v. United Parcel Service, Inc., 118 F.3d 60 (2d Cir. 1997)
Hynes v. Drake, 111 F.3d 283 (2d Cir. 1997)
Coggins v. 297 Lenox Realty Co., 108 F.3d 1369 (2d Cir. 1997)
U.S. v. Ko, 108 F.3d 1370 (2d Cir. 1997)
U.S. v. Ige, 108 F.3d 1370 (2d Cir. 1997)
Gordon v. Board of Educ. for City of New York, 108 F.3d 1369 (2d Cir. 1997)
Phillips v. Kidder Peabody & Co., Inc., 108 F.3d 1370 (2d Cir. 1997)

I have written nine opinions (all majority opinions) when sitting by designation in the Second Circuit:

U.S. v. Carreto, 2009 WL 3200754 (2d Cir. October 8, 2009)
Alliance Bernstein Inv. Research & Mgt., Inc. v. Schaffran, 445 F.3d 121 (2d Cir. 2006)
Capobianco v. City of New York, 422 F.3d 47 (2d Cir. 2005)
Luna v. Pico, 356 F.3d 481 (2d Cir. 2004)
In re Ishihara Chemical Co., 251 F.3d 120 (2d Cir. 2001)
U.S. v. Gregory, 245 F.3d 160 (2d Cir. 2001)
Adjustrite Systems, Inc. v. GAB Business Services, Inc., 145 F.3d 543 (2d Cir. 1998)
Muller on Behalf of Muller v. Committee on Special Educ. of East Islip Union Free School Dist., 145 F.3d 95 (2d Cir. 1998)

Stratton v. Department for the Aging for City of New York, 132 F.3d 869 (2d. Cir. 1997)

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 routinely recused myself from cases where my wife's law firm, Cadwalader, Wickersham & Taft, has appeared. I have not kept a list of these cases.

For my first ten years on the bench, I recused myself from cases involving my former law firm, Vladeck, Waldman, Elias & Engelhard. In the last five years, I would disclose my former relationship and recuse myself if there was any objection to my hearing the case. In only one case was recusal requested on this basis, and I recused myself. I do not recall the name of the case.

In *Macdraw v. CIT*, discussed above, counsel for the losing party questioned my fairness based on my race. I imposed sanctions and the Second Circuit affirmed. The Supreme Court denied a petition for certiorari.

In another case, the name of which I do not recall, a lawyer moved for my recusal on the basis that I was "too hard" on him after I criticized him after he admitted that he had failed to research a legal proposition that he had gotten wrong. I denied the motion, ruling from the bench. The case settled, and there was no appeal.

In *McNamara v. Tourneau*, a pro se plaintiff in an employment discrimination case moved for my recusal twice on the grounds that I was biased against him. I denied the motions. See *McNamara v. Tourneau, Inc.*, 496 F. Supp. 2d 366, 374

(S.D.N.Y. 2007); *McNamara v. Tourneau, Inc.*, 464 F. Supp. 2d 232, 235 n.4 (S.D.N.Y. 2006). My decisions were affirmed. 2009 WL 1674408 (2d Cir. June 16, 2009).

In *Bank of China v. NBM LLC*, 89 Fed. Appx. 751 (2d Cir. 2004), on appeal from a judgment of some \$106 million entered against them following a jury trial, defendants-appellants argued that I should have recused myself because I had once met one of the defendants at a function. The Second Circuit rejected the argument because no motion had been made for my recusal before me and because there was no basis for recusal. The case was remanded on other grounds, and on remand the defendants moved for my recusal on the same basis. I denied the motion. The Second Circuit affirmed. *Bank of China, New York Branch v. Bank of China, Hong Kong Branch*, 243 Fed. Appx. 652 (2d Cir. 2007).

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.

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.

My only role in any political campaign is as follows: In mid-1989, I participated in organizing a fundraiser in Chinatown in New York City for Rudolph Giuliani, the Republican-Liberal candidate for Mayor. I had served under Mr. Giuliani in the U.S. Attorney's office. I had no title, and my participation was limited to serving on the banquet committee and introducing the candidate at the banquet.

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 U.S. District Judge Henry F. Werker in the Southern District of New York from September 1978 to August 1980.

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

From September 1990 until August 1991, I had an arrangement with Vladeck, Waldman, Elias & Engelhard whereby I worked for the firm approximately twenty hours a week, for which I was paid a salary and provided with an office and administrative support. At the same time, I maintained my own independent practice as well; in August 1991, I joined the firm full-time as a partner and merged my practice into the firm's practice.

- 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.

1980 – 1982

Davis, Polk & Wardwell
450 Lexington Avenue, New York, NY 10017
Associate

1982 – 1986

United States Attorney's Office, Southern District of New York
1 St. Andrew's Plaza, New York, NY 10007
Assistant United States Attorney

1986 – 1990

Campbell, Patrick & Chin
61 Broadway, New York, NY 10006
Partner

1990 – 1994

Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway, New York, NY 10036
Partner, August 1991 to August 1994
Counsel, October 1990 to August 1991 (part-time)

- 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 an arbitrator or mediator.

b. Describe:

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

I have not had a law practice since 1994, when I took the bench; from April 1986 until August 1994, at Campbell, Patrick & Chin, in my own practice, and at Vladeck Waldman, I had a general litigation practice, specializing for much of that time in employment law and commercial litigation; prior to April 1986, I served as an Assistant United States Attorney in the Civil Division in the Southern District of New York, representing the United States, federal agencies, and federal employees; at Davis Polk from 1980 to 1982, I was a young associate engaged in the work of a typical third and fourth-year associate at a large corporate law firm.

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

At Vladeck Waldman I specialized in labor and employment law and represented unions and employees.

At Campbell, Patrick & Chin, I specialized in employment law and commercial litigation and typically represented individuals and small companies.

At the U.S. Attorney's Office, I represented the United States, numerous federal agencies, and, on occasion, an individual federal employee (in Bivens cases).

At Davis Polk, I did not have my own clients, but assisted in the firm's representation of large corporations and some individuals.

- 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.

From November 1982 on, my practice was 98% litigation and I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|--------------------|
| 1. federal courts: | 95% |
| 2. state courts of record: | 4% |
| 3. other courts: | 1% arbitral forums |
| 4. administrative agencies: | |

ii. Indicate the percentage of your practice in:

1. civil proceedings: 99%
2. criminal proceedings: 1%

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.

Approximately 19; in 80% I was chief counsel; in 5% I was sole counsel; in 15% I was associate counsel.

i. What percentage of these trials were:

1. jury: 10%
2. non-jury: 90%

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.

In 1993, I assisted in the writing of an amicus brief for a consortium of civil rights groups, including the Asian American Legal Defense and Education Fund, in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

I never argued in the Supreme Court of the United States.

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.

The ten matters are listed in reverse chronological order:

1. Criado v. ITT Corp., 8 I.E.R. 1267 (S.D.N.Y. 1993)

Dates of representation: from approximately mid-1992 to end of 1993

This was a whistleblower case brought by a former pilot of ITT Corp. who was fired after he raised certain safety and ethics concerns. After a five-day trial, the jury returned a verdict of \$250,000 in Criado's favor, finding that ITT had expressly limited its otherwise at-will right to discharge Criado. I was lead counsel; at trial, I presented the direct testimony of the plaintiff; examined several other witnesses; and presented the summation to the jury. The case was significant because the employment at will doctrine in New York State has been extremely strong, and this was one of the first employee handbook cases in New York resulting in a verdict for the employee. The case was tried in May 1993, in the United States District Court for the Southern District of New York, before Hon. Louis J. Freeh. Judge Freeh's decision denying ITT's motion to set aside the verdict is reported at 8 I.E.R. 1267 (S.D.N.Y. 1993). Thereafter the case was settled.

Co-counsel: John A. Beranbaum, Esq. presently at Beranbaum Menken Ben-Asher & Bierman LLP 80 Pine Street, 32nd Floor, New York, NY 10005, (212) 509-1616.

Opposing Counsel: Thomas G. Rohback, Esq., presently at Axinn, Veltrop & Harkrider LLP, 90 State House Square, 9th Floor, Hartford, CT 06103-3704, (860) 275-8100.

2. In Re Maxwell Newspapers, Inc. d/b/a Daily News, 146 B.R. 920 (Bankr. Ct. S.D.N.Y.), rev'd, 149 B.R. (S.D.N.Y.), rev'd, 981 F.2d 85 (2d Cir. 1992).

Dates of representation: fall of 1992 to early 1993.

In this bankruptcy case, we represented New York Typographical Union No. 6, whose members had lifetime employment guarantees that the purchaser of the Daily News refused to honor. The debtor moved to reject the lifetime guarantees under Section 1113 of the Bankruptcy Code. A three-day trial on the motion was held in the United States Bankruptcy Court for the Southern District Court of New York (Hon. Tina L. Brozman), and I presented the direct and re-direct examinations of our main witness, the president of the union. The Bankruptcy Court granted the debtor's motion and rejected the lifetime guarantees. 146 B.R. 920 (Bankr. Ct. S.D.N.Y. 1992). On appeal, the United States District Court for the Southern District of New York (Hon. Thomas McKenna) reversed. 149 B.R. (S.D.N.Y. 1992). The debtor then appealed to the United States Court of Appeals for the Second Circuit, which reversed the District Court and affirmed the Bankruptcy Court, although it required the debtor to keep open the last offer that it had made during negotiations. 981 F. 2d 85 (2d Cir. 1992). Thereafter, the

matter was settled. While I played a substantial role in writing the appeals briefs, I did not argue the appeals. The case was significant because it was a high-profile case involving the Daily News and important issues of law under Section 1113 of the Bankruptcy Code.

Co-counsel: Daniel Engelstein, Esq., presently at Levy, Ratner & Behroozi, P.C., 80 8th Avenue, 8th Floor, New York, NY 10011.

James Wasserman, Esq., Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, New York, NY 10036, (212) 403-7300.

Opposing counsel: Willis J. Goldsmith, Esq., Jones, Day, Reavis & Pogue, 599 Lexington Avenue, New York, NY 10022, (212) 326-3939.

Howard Seife, Esq., presently at Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, (212) 408-5361.

3. Malarkey v. Texaco Inc., 794 F. Supp. 1237 (S.D.N.Y. 1992), aff'd, 983 F. 2d 1204 (2d Cir. 1993).

Dates of representation: summer 1990 to early 1993.

This was an eight-day jury trial in an age discrimination and retaliation case in the United States District Court for the Southern District of New York. We represented the plaintiff, Catherine Malarkey, a secretary/administrative assistant at Texaco who had been denied promotions. I presented the direct examination of the plaintiff, cross-examined approximately eight witnesses, and did the summation. The jury returned a verdict in plaintiff's favor on her retaliation claims of \$65,000, which was doubled because of the jury's finding of willfulness to \$130,000. The District Court (Mukasey, J.) awarded substantial equitable relief to plaintiff, and awarded attorney's fees and costs to my firm of \$267,607. The case was significant because plaintiff was able to prevail after some ten years of difficult and hard-fought litigation (she was represented by other lawyers in eight of those years), in a case that was, in the District Court's words, "defended by Texaco to the last ditch and occasionally beyond." 794 F. Supp. 1237, 1247 (S.D.N.Y. 1992), aff'd, 983 F. 2d 1204 (2d Cir. 1993). See also 794 F. Supp. 1248, 1251 (S.D.N.Y. 1992) (referring to Texaco's "dilatatory, 'scorched earth' tactics" and Texaco's "disproportionate tenacity... aimed less at this plaintiff than at others who might be tempted to pursue a similar course," i.e., redress for illegal discrimination).

Co-counsel: Ellen Harnick, Esq., presently at Center for Responsible Lending, 302 West Main Street, Durham, NC 27701, (919) 313-8500.

Opposing counsel: Paul M. Brown, Esq., formerly at Whitman & Ransom; current address and telephone number unknown.

4. Ezold v. Wolf, Block Schorr & Solis-Cohen, 758 F. Supp. 303 (E.D. Pa. 1991), rev'd on other grounds, 983 F. 2d 509 (3d Cir. 1992), cert. denied, 114 S. Ct. 88 (1993).

Dates of representation: I was involved in Vladeck, Waldman's representation of plaintiff from late 1990 to 1992.

This was a highly-publicized Title VII case brought by a woman who was passed over for partnership at a major Philadelphia law firm. I participated in the case on the issue of relief after the plaintiff had prevailed at trial. The United States District Court for the Eastern District of Pennsylvania (Kelly, J.) held that the plaintiff was entitled to post-resignation relief even though she was not constructively discharged. The ruling was important because the majority of courts had held that, in the absence of a constructive discharge, an employee who voluntarily leaves a job is not entitled to post-resignation relief. I did the first draft of the brief on the relief issues. I also participated, to a limited extent, in the writing of the appeals briefs. On appeal, the United States Court of Appeals for the Third Circuit reversed on the merits, therefore not reaching the issue of relief. The Supreme Court denied certiorari.

Co-counsel: Debra L. Raskin, Esq., Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, Suite 800, New York, NY 10036 (212) 403-7300.

Opposing counsel: Marc Dichter, Esq., Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, PA 19103, (215) 963-5291.

5. Ramseur v. Chase Manhattan Bank, N.A., 865 F. 2d 460 (2d Cir. 1989).

Dates of representation: 1989 to 1990.

In this case, I represented on appeal the plaintiff-appellant, a black woman who had been harassed in her job as an accountant at Chase Manhattan Bank. Eventually, she was fired. Represented by another attorney, she brought an employment discrimination case in the United State District Court for the Southern District of New York. The District Court (Keenan, J.) granted summary judgment dismissing the complaint. With her prior attorney, she appealed.

Approximately a month before oral argument, her prior attorney was suspended from practice by the Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York. I took over the appeal, wrote a reply brief, and argued the appeal. The United States Court of Appeals for the Second Circuit reversed, holding that summary judgment should not have been granted. The Court's opinion (by Kearse, J.) discussing the use of summary judgment in employment discrimination cases had been cited many times in other decisions. 865 F. 2d 460 (2d Cir. 1989). Shortly after the reversal, the case was settled.

Opposing counsel: Jeanne C. Miller, Esq., presently at The Resolution Experts, 620 Eighth Avenue, 34th Floor, New York, NY 10018, (212) 751-2700.

6. Dixon v. Heckler, 785 F. 2d 1102 (2d Cir. 1986), vacated, Bowen v. Dixon, 482 U.S. 922 (1987).

Dates of representation: I was involved in the case from approximately 1985 to 1986.

This was an appeal by the United States from the granting of a preliminary injunction by the United States District Court for the Southern District of New York (Lasker, J.) to the plaintiffs in a class action involving Social Security benefits. I had primary responsibility for writing the briefs for the Government, and I argued the appeal. The United States Court of Appeals for the Second Circuit affirmed. 785 F. 2d 1102 (2d Cir. 1986), vacated, Bowen v. Dixon, 482 U.S. 922 (1987). The case was significant because it was a class action involving important issues of public concern.

Co-counsel: Jane Booth, Esq., presently General Counsel of Columbia University, (212) 854-0286.

Opposing counsel: Nancy Morawetz, Esq., presently Professor of Clinical Law, New York University School of Law 245 Sullivan Street, 619, New York, NY 10012, (212) 998-6451.

7. Manufacturing Hanover Trust Co. v. United States, 775 F. 2d 459 (2d. Cir. 1985).

Dates of representation: approximately 1984 through 1985.

This was a tax case involving the constitutionality of the use of male-female (as opposed to uni-sex) mortality tables for purposes of computing estate taxes. The United States District Court for the Southern District of New York (Steward, J.) held that the use of the tables was unconstitutional. I took over the case for the United States for the appeal. I wrote the briefs and presented oral argument. The United States Court of Appeals for the Second Circuit reversed, holding that the

use of the gender-based mortality tables did not violate the Constitution. 775 F. 2d 459 (2d Cir. 1985). The case was significant because it raised important issues regarding gender-based classifications.

Opposing counsel: Robert E. Crotty, Esq., Kelley, Drye & Warren
101 Park Avenue, New York, NY 1017, (212) 808-7847.

8. Alan Guttmacher Institute v. McPherson, 616 F. Supp. 195 (S.D.N.Y. 1985), modified, 805 F. 2d 1088 (2d Cir. 1986). See also 597 F. Supp. 1530 (S.D.N.Y. 1984).

Dates of representation: approximately 1983 to 1986.

This was a sensitive case brought by the American Civil Liberties Union on behalf of the Alan Guttmacher Institute, a population planning group that had lost a federal grant from the Agency for International Development because the Institute published two articles that Agency personnel believed were pro-abortion. I represented the Government throughout the proceedings in the District Court (Haight, J.). Initially, we were able to get some of the claims dismissed. Eventually, the Agency agreed to reconsider its funding decision, but the Institute wanted to litigate. The Agency made an unconditional offer to reconsider the grant application, and we moved to dismiss on grounds of mootness, arguing that the Institute could do no better than what we had unconditionally offered even if it went to trial and prevailed. The District Court agreed, entered judgment requiring the Agency to reconsider the application, and otherwise dismissed for mootness. The Second Circuit essentially affirmed, with certain modifications of the judgment. (I was not involved in the appeal because, by that time, I had left the Government to return to private practice). 616 F. Supp. 195 (S.D.N.Y. 1985), modified, 805 F. 2d 1088 (2d Cir. 1986). See also 597 F. Supp. 1530 (S.D.N.Y. 1984)

Opposing counsel: Suzanne M. Lynn, Esq., formerly of the ACLU;
current address and telephone number unknown.

9. United States v. Gangel (S.D.N.Y.)

Dates of representation: approximately 1984 to 1985.

This was a tax-shelter case filed in 1985 in the United States District Court for the Southern District of New York in which I represented the United States in a civil suit against two individuals and three companies arising from abusive tax shelters. The case was settled almost immediately after the complaint was filed. The defendants agreed to a consent degree that provided for, among other things, \$420,000 in civil penalties. At the time, this was the second largest amount of fines imposed in any case under the tax shelter statute.

Opposing counsel: Peter W. Schmidt, Esq., contact information unavailable.

10. Mastic Development Corp. v. United States Postal Service 82 Civ. 2659 (S.D.N.Y.) (Gagliardi, J.)

Dates of representation: approximately 1982 through 1984.

This was a real estate contract case arising out of an agreement by the Postal Service to sell a New York City block to Mastic Development Corp., which was owned by the Milstein Family. There was a four-day bench trial in June 1983 in the United States District Court for the Southern District of New York in which I examined witnesses and presented the summation. Another Assistant United States Attorney and I represented the Postal Service. The District Court ruled in favor of the Postal Service. Mastic Development appealed to the United States Court of Appeals for the Second Circuit, and I wrote the brief and presented oral argument on behalf of the Government in late 1983. The Second Circuit affirmed by memorandum order. The case was significant because it involved a valuable New York City block in midtown Manhattan.

Opposing counsel: Charles G. Moerdler, Esq., Bryan Cogan, Esq. Stroock & Stroock & Lavan 7 Hanover Square, New York, NY 10004, (212) 806-5400.

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.)

During my years in practice, I engaged in a wide range of legal activities, including settling numerous cases and participating in certain investigations while at the U.S. Attorney's Office. I have not engaged in lobbying activities although I was active in certain bar associations, including the Asian American Bar Association of New York

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.

I taught Legal Writing and Research at Fordham Law School from 1986 to 2009, taking only one year off (1994-1995). This was the introductory legal writing course for first-year students. One year I taught advanced legal writing to third-year students.

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

None.

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

I have no commitments or agreements, but I am likely to teach again at Fordham Law School. I will not be teaching in the 2009-2010 academic year.

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 wife Kathy Hirata Chin is a partner at the law firm Cadwalader, Wickersham & Taft, New York, NY. I will recuse myself from any case in which the firm appears. No other family members or other persons, parties, categories of litigation, or financial arrangements are likely to present conflicts.

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

If any circumstance is brought to my attention that presents a potential conflict of interest, I will determine whether I should recuse myself and I will if I should. In all cases, I will follow the Code of Conduct for United States Judges.

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 practice, I spent extensive time on pro bono work. At Davis Polk, I defended not-for-profits in two cases where they had been sued and I brought four housing discrimination cases, working with the Open Housing Center. Thereafter, when in private practice, I did extensive pro bono work for the Asian American Legal Defense and Education Fund, from conducting an investigation in a housing discrimination case to writing an amicus brief in a Title VII case to writing an amicus brief on the right of defendants in criminal cases to translations from English into their native languages.

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 did not solicit the nomination. At various points, both before and after the presidential election, I was asked by different groups if I would object to their presenting my name to the Administration for a Circuit Court position. I said I would not object. These groups included the National Asian Pacific American Bar Association, the Asian American Justice Center, the AFL-CIO, and the National Employment Lawyers Association. I did not have any communications with the White House or the Department of Justice until I received a telephone call from the Office of Legal Policy of the Department of Justice on July 14, 2009 advising me that the White House had submitted my name for vetting. I had subsequent communications with staff from the Department of Justice regarding the nomination paperwork. I was interviewed by representatives of the Department of Justice and White House Counsel's Office on September 1, 2009. My nomination was submitted to the United States Senate on October 6, 2009.

- 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.