

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Jesse Matthew Furman

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

United States District Judge for the Southern District of New York

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

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

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

1972; New York, New York

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

1995 – 1998, Yale Law School; J.D., 1998

1994 – 1995, Oxford University (Henry Fellow); no degree awarded

1990 – 1994, Harvard University; B.A. (*summa cum laude*), 1994

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

2009 – Present

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Deputy Chief Appellate Attorney

2007 – 2009

United States Department of Justice
Office of the Attorney General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Counselor to the Attorney General

2004 – 2007

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Assistant United States Attorney

2003 – 2004

Wiggin & Dana LLP
450 Lexington Avenue, Suite 3800
New York, New York 10017
Associate

2002 – 2003

Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
Law Clerk to the Honorable David H. Souter

2000 – 2002

Wiggin & Dana LLP
265 Church Street
New Haven, Connecticut 06508
Associate

1999 – 2000

United States Court of Appeals for the Second Circuit
141 Church Street
New Haven, Connecticut 06510
Law Clerk to the Honorable José A. Cabranes

1998 – 1999
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Law Clerk to the Honorable Michael B. Mukasey

Summer 1997
Jenner & Block
1099 New York Avenue, N.W.
Washington, D.C. 20001
Summer Associate

Summer 1996
United States Attorney's Office for the Eastern District of New York
147 Pierrepont Street
Brooklyn, New York 11201
Summer Intern

Other Affiliations:

2008 – Present
Goddard Riverside Community Center
593 Columbus Avenue
New York, New York 10024
Member, Board of Directors (uncompensated)

2005 – Present
MF Est L.P.
810 Seventh Avenue, 10th Floor
New York, New York 10019
Limited Partner

1999 – Present
MF Est LLC
810 Seventh Avenue, 10th Floor
New York, New York 10019
Non-Managing Member

1999 – Present
RHO Capital Partners 1999 L.P.
152 West 57th Street
New York, New York 10019
Limited Partner

1999 – 2009
American Securities Partners II L.P.
299 Park Avenue, 34th Floor
New York, New York 10171
Limited Partner

2000 – 2008
The Furman Foundation, Inc.
151 East 83rd Street
New York, New York 10028
Treasurer (uncompensated)

2004 – 2008
Jay Furman Partners
810 Seventh Avenue, 10th Floor
New York, New York 10019
Limited Partner

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

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

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

Member, The American Law Institute (elected 2009)
International Narcotic Enforcement Officers Association
International Award of Honor (2007)
Executive Editor, *Yale Law Journal* (1997 – 1998)
Articles Editor, *Yale Law and Policy Review* (1996 – 1997)
First in Politics M.Phil. Qualifying Examination, Oxford University (1995)
Henry Fellowship (one-year fellowship to Oxford University) (1994 – 1995)
Phi Beta Kappa (1994)
Thomas Temple Hoopes Prize (for top Harvard College thesis) (1994)
Alexis de Tocqueville Prize (for top thesis in Social Studies) (1994)
Philo Sherman Bennett Prize (for top thesis on government) (1994)
USA Today All-USA Academic First Team (1994)
Harvard Institute of Politics Political Journalism Awards (1990 and 1991)

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

American Bar Association (2000 – Present)
Member, Criminal Justice Section
Co-Chair, Prosecution Function Committee (2010 – Present)
The American Law Institute (2009 – Present)
Member, Members Consultative Group, Model Penal Code: Sentencing
Federal Bar Council (2007 – Present)
New York State Bar Association (1999 – Present)
Member, Criminal Justice Section (2007 – 2010)

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, 1999

There have been no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for the Second Circuit, 2005
United States District Court for the District of Connecticut, 2001
United States District Court for the Southern District of New York, 2000

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.

American Constitution Society (2009 – Present)
Member, Executive Committee, N.Y. Lawyer Chapter (2010 – Present)
Goddard Riverside Community Center (2008 – Present)
Member, Board of Directors
The Furman Foundation, Inc. (2000 – 2008)
Treasurer

The Harvard Club of New York (1994 – 1996)

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

To the best of my knowledge, none of these organizations discriminates 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.

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.

Note, *Political Illiberalism: The Paradox of Disenfranchisement and the Ambivalences of Rawlsian Justice*, 106 Yale Law Journal 1157 (1997). Copy supplied.

Letter to the Editor, *Judging by the Cover, and What's Inside*, The New York Times, June 27, 1993. Copy supplied.

Broken Records, The New Republic, August 31, 1992. Copy supplied.

The Speech Thing, The New Republic, August 17/24, 1992 [re-printed in multiple outlets]. Copy supplied.

With Steven Emerson, Response to Letters to the Editor, The New Republic, December 23/30, 1991. Copy supplied.

With Steven Emerson, *The Conspiracy That Wasn't*, The New Republic, November 18, 1991. Copy supplied.

Breaking the Codes, The New Republic, July 8, 1991. Copy supplied.

Bang, Bang, You're Dead! The NRA Supplied the Lead!, The Harvard Perspective, June 1991. Copy supplied.

Up the Volga Without a Paddle, The Harvard Perspective, May 1991. Copy supplied.

A Legacy of Discrimination, The Harvard Perspective, Dec. 1990. Copy supplied.

The Missile Crisis, The Concord Review, Fall 1989.

During college, I authored several other articles in *The Harvard Perspective* in addition to those listed above, but I have been unable to locate copies.

- 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.

J. Gerald Hebert, Donald B. Verrilli, Jr., Paul M. Smith, Sam Hirsch, and Heather Gerken, *The Realists' Guide to Redistricting: Avoiding the Legal Pitfalls* (1997) (assisted in researching and drafting as a summer associate at Jenner & Block). Copy supplied.

- 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.

May 12, 2010: I signed a joint letter from Yale Law School alumni to Senators Patrick Leahy and Jeff Sessions in support of Goodwin Liu's nomination to the United States Court of Appeals for the Ninth Circuit. Copy supplied.

September 19, 2007: I signed a joint letter from former law clerks to the Honorable Michael B. Mukasey to Senators Harry Reid, Mitch McConnell, Patrick Leahy, and Arlen Specter in support of the nomination of Michael B. Mukasey to be Attorney General of the United States. Copy supplied.

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

June 3, 2011: My wife and I spoke to our son's elementary school class about the law. I have no notes, transcript, or recording.

May 12, 2011: I served as master of ceremonies and delivered remarks at a Special Ceremonial Session of the United States District Court for the District of Connecticut on the occasion of the unveiling of a portrait of the Honorable José A. Cabranes. Prepared remarks supplied.

April 14, 2011: I served as a judge for a mock jury trial conducted as part of a trial advocacy class at New York Law School taught by my colleague, David Raskin. The trial concerned a hypothetical murder-for-hire case. I have no notes, transcript, or recording. The mock trial was conducted at New York Law School, 185 West Broadway, New York, New York 10013.

March 4, 2011: Training session for the Criminal Division of the United States Attorney's Office for the Southern District of New York on the law and practice relating to indictments. I have presentation materials, but they are privileged. The address of the U.S. Attorney's Office is One St. Andrew's Plaza, New York, New York 10007.

March 3, 2011: I served on a five-judge panel at the American Bar Association Law Student Division National Appellate Advocacy Competition moot court. The argument concerned a hypothetical case involving a First Amendment challenge to restriction on commercial advertising. I have no notes, transcript, or recording. The ABA is located at 321 North Clark Street, Chicago, Illinois 60654.

October 19, 2010: I participated in a roundtable discussion on the law of entrapment organized by the Center on Law and Security at New York University Law School. It was an informal discussion involving government officials (including another Assistant United States Attorney, from the Eastern District of New York), defense attorneys, and academics about issues relating to entrapment. I have no notes, transcript or recording. The Center is located at Wilf Hall, 139 Macdougall Street, Fourth Floor, New York, New York 10012.

In 2009 and 2010, I conducted training sessions for the General Crimes Unit of the Criminal Division of the United States Attorney's Office for the Southern District of New York on the law and practice relating to criminal discovery. The presentation was videoed by the United States Attorney's Office and I have presentation materials, but these items are privileged. The address of the U.S. Attorney's Office is One St. Andrew's Plaza, New York, New York 10007.

February 3, 2010: I served on a three-judge panel at the New York City Bar's Annual National Moot Court Competition. The argument concerned a hypothetical criminal case in which the defendant, a juvenile at the time of the crime, challenged the denial of her motion to change venue based on negative

pretrial publicity and her sentence of life imprisonment. I have no notes, transcript, or recording. The New York City Bar is located at 42 West 44th Street, New York, New York 10036.

November 12, 2009: I participated in a panel, along with the Honorable Cathy Seibel, United States District Judge for the Southern District of New York, and Guy Petrillo, of Petrillo Klein LLP, in a Judicial Externship Program class at Columbia Law School conducted by my former colleague, Paul Radvany, and Mel Cantor, Esq. I spoke extemporaneously about the role of a federal prosecutor in the criminal justice system. I have no notes, transcript, or recording. Columbia Law School is located at 435 West 116th Street, New York, New York 10027.

In or about 2006, I served as a judge for a moot court oral argument in the first-year Lawyering class at New York University Law School. The oral argument concerned a hypothetical case involving the Indian Child Welfare Act. I have no notes, transcript, or recording. NYU Law School is located at 40 Washington Square Park South, New York, New York 10012.

November 10, 2003: I delivered remarks at a Special Ceremonial Session of the United States District Court for the District of Connecticut for the Investiture of Mark R. Kravitz as a United States District Judge. Transcript supplied.

December 6, 1993: I participated in a panel at Harvard University's Institute of Politics titled "What Is Radcliffe's Relationship to Harvard?" A video of the panel discussion is available at <http://www.iop.harvard.edu/content/advancedsearch?SearchText=furman>. Press coverage also supplied.

In addition to the foregoing, I recall participating in various panels during college and law school on subjects such as extracurricular life at Harvard College, joining *The Yale Law Journal*, and applying for judicial clerkships. I neither recall the specific dates of these appearances nor have any materials relating to them.

- 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.

Alumni Notes, Wiggin & Dana LLP, Autumn 2010. Copy supplied.

Thomas Scheffey, *Construing the Establishment Clause*, The Connecticut Law Tribune, June 25, 2001. Copy supplied.

Jonathan A. Lewin, *Seniors Play and Delay*, The Harvard Crimson, Feb. 19, 1994. Copy supplied.

Pat Ordovensky, *1994 Best and Brightest/Brilliant, Bold and Benevolent*, USA Today, Feb. 4, 1994. Copy supplied.

Stephanie P. Wexler, *'Inside Edge' Goes Monthly*, The Harvard Crimson, Oct. 19, 1993. Copy supplied.

Elie G. Kaunfer, *Tutors to Retract Threats of Libel*, The Harvard Crimson, Oct. 13, 1993. Copy supplied.

Nan Zheng, *Alcohol Policy Poses Threat to Students' Social Life*, The Harvard Crimson, Sept. 20, 1993. Copy supplied.

John A. Cloud, *From 'Poon to Perspective, the Two Sides of a Paradox*, The Harvard Crimson, June 10, 1993. Copy supplied.

Tara H. Arden-Smith, *New Student Center Designed to Foster Sense of Community*, The Harvard Crimson, June 10, 1993. Copy supplied.

Mary Louise Kelly, *Clinton Joins Galas*, The Harvard Crimson, Jan. 21, 1993. Copy supplied.

Marion B. Gammill, *New Center May Change Student Life*, The Harvard Crimson, Sept. 28, 1992. Copy supplied.

November 6, 1991: I was interviewed on the Peter Meade Show, on WBZ Boston radio, regarding Steven Emerson's and my article, "The Conspiracy That Wasn't," which appeared in the November 18, 1991 issue of *The New Republic*. Audio recording supplied.

Maggie S. Tucker, *Radical Journal Intends to Shock*, The Harvard Crimson, Feb. 4, 1991. Copy supplied.

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

I have never held a judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:

jury trials: _____ %
bench trials: _____ % [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have never been a judge.

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.

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have never held an office in, or rendered a service to, a political party or election committee. I have never held a position or played a role in a political campaign.

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 the following three judges:

The Honorable Michael B. Mukasey
United States District Court for the Southern District of New York
1998 – 1999

The Honorable José A. Cabranes
United States Court of Appeals for the Second Circuit
1999 – 2000

The Honorable David H. Souter
Supreme Court of the United States
2002 – 2003

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

I have not practiced law alone.

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

2000 – 2002
Wiggin & Dana LLP
265 Church Street
New Haven, Connecticut 06508
Associate

2003 – 2004
Wiggin & Dana LLP
450 Lexington Avenue, Suite 3800
New York, New York 10017
Associate

2004 – 2007
United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Assistant United States Attorney

2007 – 2009
United States Department of Justice
Office of the Attorney General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Counselor to the Attorney General

2009 – Present

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Deputy Chief Appellate Attorney

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

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

b. Describe:

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

From 2000 to 2002, and again from 2003 to 2004, I worked as a litigation associate at Wiggin & Dana LLP, which is headquartered in New Haven, Connecticut. I was a member of the White-Collar Defense, Investigations and Corporate Compliance Practice and the Appellate Litigation Practice Groups. My work involved a mix of civil appellate litigation (in both state and federal courts), white collar criminal defense, and internal investigations.

From 2004 to 2007, I was a federal prosecutor in the United States Attorney's Office for the Southern District of New York. From 2004 to 2005, as a member of the General Crimes Unit, I prosecuted a wide range of offenses, including firearms offenses, immigration offenses, child pornography offenses, fraud offenses, and narcotics offenses. In 2006, as a member of the Narcotics Unit, I prosecuted narcotics and money-laundering offenses. From 2006 to 2007, as a member of the International Narcotics Trafficking Unit, I prosecuted large-scale international narcotics-trafficking and money-laundering organizations.

From December 2007 to January 2009, I took a detail from the United States Attorney's Office to be Counselor to Attorney General Michael B. Mukasey in the Department of Justice. In that position, I was involved in advising the Attorney General on a range of matters, including some areas of criminal law, civil rights, drug enforcement, immigration, and border security. Among other things, I assisted in preparing the Attorney General for his oral argument before the Supreme Court of the United States and for his testimony before the Senate and House Judiciary Committees; for much of my tenure, I was also responsible for supervising the drafting of Attorney General speeches and immigration orders and opinions.

In February 2009, I returned to the United States Attorney's Office for the Southern District of New York, where I have served as Deputy Chief Appellate Attorney. In that position, I am primarily involved in conducting and supervising litigation before the United States Court of Appeals for the Second Circuit and advising colleagues on legal issues in trials and other litigation before the District Court. I have spent a substantial portion of my time in that position working and advising on national security and terrorism matters. I have also continued to handle or supervise several matters in District Court, including two matters that culminated in jury trials.

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

At Wiggin & Dana LLP (2000 to 2002 and 2003 to 2004), I specialized in civil appellate litigation and white collar criminal defense. On the appellate side, I handled cases ranging from the First Amendment to school desegregation to copyright to town beach public access to unfair trade practices, and represented clients as diverse as the Attorney General of Canada, MP3.com, the Anti-Defamation League, and the Zoning Board of the City of Stamford, Connecticut. Working primarily with Mark R. Kravitz, now a United States District Judge in the District of Connecticut, I was involved in litigation before both federal and state courts, including the United States Supreme Court, the United States Court of Appeals for the Second Circuit, the Connecticut Supreme Court, the New Hampshire Supreme Court, and the Appellate Division of the New York Supreme Court. On the criminal defense side, I worked primarily with David B. Fein, now United States Attorney for the District of Connecticut, representing companies and individuals in connection with grand jury investigations, including a subject in the Bridgeport corruption investigation, and assisting in internal corporate investigations.

As an Assistant United States Attorney (2004 to 2007 and 2009 to the present), I have represented the United States in criminal prosecutions and habeas corpus litigation. I have handled both trials and appeals.

As Counselor to the Attorney General (2007 to 2009), I advised the Attorney General in his official capacity on a range of matters, including some areas of criminal law, civil rights, drug enforcement, immigration, and border security.

- 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.

Aside from the period of time in which I served as Counselor to the Attorney General (which involved a substantial amount of work relating to litigation, albeit at a far remove from the litigation itself), all of my practice has been in litigation. During the time I have served as an Assistant United States Attorney, I have appeared in court frequently, although the frequency has decreased since I became Deputy Chief Appellate Attorney in February 2009 (and my appearances since that time have been primarily before the United States Court of Appeals for the Second Circuit). During the time I worked as a litigation associate at Wiggin & Dana LLP, I appeared in court only occasionally (and never in a speaking role) for appellate arguments.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 90% |
| 2. state courts of record: | 10% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 20% |
| 2. criminal proceedings: | 80% |

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

I have tried nine cases to verdict in the United States District Court. In each case, I tried the case with a partner or partners as co-counsel. I have also handled up to a dozen hearings, including suppression hearings and sentencing hearings, each of which has involved the examination and cross-examination of witnesses and the introduction of physical evidence. In two hearings, I appeared primarily in a supervisory capacity with a relatively junior Assistant United States Attorney; I was sole counsel in the other hearings.

i. What percentage of these trials were:

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

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

While at Wiggin & Dana, I was the primary drafter of an *amicus* brief submitted on behalf of the Anti-Defamation League and other organizations in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). (My name did not appear on

the brief because my application for a Supreme Court clerkship was pending at the time and I was advised to omit any mention of my involvement as a result.) I was also a primary drafter of the petition for writ of *certiorari* and reply in *Manning v. School Board of Hillsborough County*, No. 00-1871. Copies supplied.

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 following list is roughly in chronological order:

1. *Attorney General of Canada v. R.J. Reynolds Tobacco Holdings, Inc.*, 268 F.3d 103 (2d Cir. 2001). United States Court of Appeals for the Second Circuit: Guido Calabresi and Robert A. Katzmann, Circuit Judges; Lewis A. Kaplan, District Judge.

This case involved an appeal by Canada from dismissal of its civil suit under the Racketeer Influenced and Corrupt Organizations (RICO) Act against R.J. Reynolds Tobacco Holdings and others to recover revenue lost as a result of an alleged conspiracy to smuggle cigarettes into Canada for sale on the black market. The District Court had held that Canada's suit was barred by the common law "revenue rule," which holds that the courts of one sovereign will not enforce the tax judgments or claims of another sovereign. Although not counsel of record, I assisted in drafting and editing Canada's briefs on appeal while working as an associate at Wiggin & Dana with Mark R. Kravitz, now a United States District Judge for the District of Connecticut, and I participated in mootng Philip Beck of Bartlit Beck for the argument. On October 12, 2001, the Second Circuit affirmed the District Court's dismissal of the suit over a dissent by Judge Calabresi.

Co-Counsel (partial list):

The Honorable Mark R. Kravitz (then at Wiggin & Dana LLP)
United States District Court
141 Church Street
New Haven, CT 06510
(203) 773-2022

Philip Beck, Esq.
Bartlit Beck Herman Palenchar & Scott LLP
Courthouse Place
54 West Hubbard Street, Suite 300
Chicago, IL 60654
(312) 494-4400

Opposing Counsel:

The Honorable Jeffrey S. Sutton (then at Jones, Day, Reavis & Pogue)
United States Court of Appeals for the Sixth Circuit
Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202
(513) 564-7000

2. *United States v. Hertular*, 04 Cr. 009 (NRB); 562 F.3d 433 (2d Cir. 2009). United States District Court for the Southern District of New York: District Judge Naomi Reice Buchwald; United States Court of Appeals for the Second Circuit: Chester J. Straub and Reena Raggi, Circuit Judges; and William K. Sessions III, District Judge.

In this case, the defendant, having been extradited from Belize, was convicted of conspiring to import and to distribute over six tons of cocaine from Belize and of obstructing justice by threatening to kill two Drug Enforcement Administration agents. From February 21, 2006, to March 1, 2006, I tried the case before a jury with then-AUSA Anirudh Bansal. Among other things, I gave the Government's principal summation and examined roughly half the witnesses. Following conviction on all four counts, the defendant was sentenced principally to 400 months' imprisonment. I drafted a substantial portion of the Government's 78-page brief on appeal; AUSA Bansal drafted the remaining parts; and the brief was edited by AUSA Katherine Polk Failla. AUSA Bansal argued the appeal while I was serving as Counselor to the Attorney General in Washington, D.C. On April 6, 2009, the Second Circuit vacated one of the four counts – a misdemeanor conviction for forcibly impeding or intimidating a federal officer – for insufficient evidence, but affirmed the rest of the defendant's conviction; the Court remanded for resentencing. On December 29, 2009, Judge Buchwald resentenced the defendant to the same 400-month term of imprisonment. I handled the resentencing along with AUSA Bansal and I am now handling the defendant's appeal.

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3. *United States v. Maduka and Ibiam*, 06 Cr. 921 (SHS); Nos. 08-1961-cr(L), 08-3055-cr(Con), 2009 WL 1737510 (2d Cir. June 19, 2009). United States District Court for the Southern District of New York: District Judge Sidney H. Stein; United States Court of Appeals for the Second Circuit: Guido Calabresi, Robert A. Katzmann, Circuit Judges; and Richard K. Eaton, Court of International Trade Judge.

In this case, the defendants were convicted of conspiring to import and to distribute heroin following what was apparently the first controlled delivery in the United States of heroin from Afghanistan. The charges stemmed from an undercover investigation in Afghanistan in which an informant working for the Drug Enforcement Administration received almost 20 kilograms of heroin for delivery to the United States and England. Maduka and Ibiam were identified through wiretaps and other evidence as the intended recipients of the heroin in the United States. I indicted the case and, along with AUSA Jocelyn Strauber, tried it before a jury from June 4, 2007, to June 13, 2007. Among other things, I gave the Government's opening statement and rebuttal summation; examined

roughly half the witnesses; and largely drafted the Government's motion papers before and during trial. Following convictions on both counts, Maduka was sentenced to 240 months' imprisonment and Ibiam was sentenced to 121 months' imprisonment. I wrote the vast majority of the Government's 80-page brief on appeal, which addressed, among other things, an unsettled issue regarding the *mens rea* requirements in drug conspiracy cases; AUSA Strauber assisted in drafting the brief, which was edited by AUSA Katherine Polk Failla. I argued the appeal, and the Second Circuit affirmed in all respects by summary order on June 19, 2009. (The Second Circuit later issued a precedential opinion adopting our arguments on the *mens rea* issue in *United States v. Andino*, 627 F.3d 41 (2d Cir. 2010), another case I argued that is discussed below.) Earlier this year, each defendant filed a habeas petition challenging his conviction or sentence, and I represented the Government in responding. In May 2011, the District Court denied each petition and neither defendant has sought to appeal. In 2007, I was awarded the International Narcotic Enforcement Officers Association International Award of Honor for my work on the case.

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4. *In re New York Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401 (2d Cir. 2009). United States Court of Appeals for the Second Circuit: Ralph K. Winter, José A. Cabranes, and Peter W. Hall, Circuit Judges.

This case involved an affirmative Government appeal from an order of the Honorable Jed S. Rakoff, United States District Judge, granting an application by the New York Times Company for disclosure of the wiretap applications and orders in the federal investigation of the Emperors Club VIP, the investigation that led to the resignation of New York Governor Eliot Spitzer. Judge Rakoff had ordered disclosure of the applications and orders under the common law and First Amendment rights of access to judicial documents. On August 20, 2009, the Second Circuit reversed, adopting the Government's argument that disclosure was prohibited under the statute governing wiretaps. I was the principal drafter of the Government's briefs before the Court of Appeals. Then-AUSA Daniel L. Stein, who had handled the litigation before Judge Rakoff, assisted in drafting the briefs and argued the appeal.

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5. *United States v. Awad et al.*, 598 F.3d 76 (2d Cir. 2010); 369 Fed. Appx. 242, 2010 WL 827294 (2d Cir. Mar. 11, 2010). United States Court of Appeals for the Second Circuit: John M. Walker, Guido Calabresi, and Richard C. Wesley, Circuit Judges.

This case involved an appeal by seven defendants and a Government cross-appeal from judgments convicting the defendants, following two separate jury trials, of conspiracy to import and to distribute cathinone, a chemical ingredient of the khat plant that is listed as

a Schedule I controlled substance. The defendants (among 44 charged in the original indictment) raised almost 20 issues on appeal, including a number of novel questions relating to the propriety of a forfeiture money judgment where a defendant lacks assets at the time of sentencing and the *scienter* required for conviction in khat cases (because khat itself is not a controlled substance). In its cross-appeal, the Government contended that Judge Cote had erred in concluding that the sentences imposed on three defendants were limited by the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). I drafted significant portions of the Government's 223-page initial brief, as well as the reply brief and a five-page letter brief (regarding the forfeiture issue), and I edited all of those briefs in their entirety. AUSAs Daniel L. Stein and Anjan Sahni, who represented the Government before the District Court, assisted in drafting the briefs and argued the appeal on October 21, 2009. On March 11, 2010, the Second Circuit ruled in favor of the Government in all respects, affirming the defendants' convictions in their entirety; rejecting all of the defendants' challenges to their sentences; and vacating three defendants' sentences and remanding for resentencing for the reasons argued by the Government in its cross-appeal. The Court addressed the forfeiture issue in a published opinion and disposed of the other issues by summary order.

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6. *United States v. Ghailani*, 98 Cr. 1023 (LAK), 11-320 (2d Cir.). There are numerous reported decisions in the case, of which the most relevant include: 751 F. Supp. 2d 502 (S.D.N.Y. 2010) (denying motion to dismiss indictment on due process grounds); 751 F. Supp. 2d 515 (S.D.N.Y. 2010) (denying motion to dismiss indictment on speedy trial grounds); 743 F. Supp. 2d 242 (S.D.N.Y. 2010) (ordering a hearing on motion to suppress testimony of a Government witness); 743 F. Supp. 2d 261 (S.D.N.Y. 2010) (granting motion to suppress testimony of a Government witness); — F. Supp. 2d —, 2011 WL 181757 (S.D.N.Y. Jan. 21, 2011) (denying post-trial motion for judgment of acquittal or new trial). United States District Court for the Southern District of New York; District Judge Lewis A. Kaplan; United States Court of Appeals for the Second Circuit: Appeal pending.

This case involved the prosecution of a former detainee at the Guantanamo Bay Naval Base for his participation in the 1998 bombings of the United States embassies in Kenya and Tanzania, which resulted in the deaths of 224 people. The defendant was transferred from Guantanamo Bay to the Southern District of New York on June 9, 2009. After substantial pretrial litigation, including motions to dismiss the indictment on both due process and speedy trial grounds, the case was tried before a jury in October and November 2010, resulting in the defendant's conviction on one count of conspiracy to destroy buildings and property of the United States, resulting in death, and his acquittal on the remaining counts. I was assigned to the case as an appellate specialist and was

heavily involved in handling the pretrial litigation, including the defendant's motions to dismiss and his motion to suppress evidence derived from his interrogations while in the custody of the Central Intelligence Agency. I was not involved directly in the trial, but I provided legal advice to the trial team on various issues during the trial and in the litigation between the verdict and sentencing. The defendant was sentenced to life imprisonment on January 24, 2011. He has filed a notice of appeal.

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7. *United States v. Andino*, 627 F.3d 41 (2d Cir. 2010). United States Court of Appeals for the Second Circuit: Guido Calabresi, Amalya L. Kearse, and Richard C. Wesley, Circuit Judges.

This appeal presented the question of whether, in a drug conspiracy case, the Government is required to prove that the defendant knew or could have reasonably foreseen the drug type and weight involved in the offense — an issue of significance given the large number of drug conspiracy prosecutions in the Second Circuit. In a 2005 decision that appeared to conflict with its prior precedent, the Second Circuit had created some confusion about the issue. Although I was not involved in the trial, I was the principal

drafter of the Government's 54-page brief on appeal, and I argued the case before the Second Circuit on October 14, 2010. In the brief and at oral argument, I contended that, under the Controlled Substances Act, the Government is required to prove only that a defendant knowingly agreed to distribute some controlled substance and that, at least where a defendant was directly involved in a transaction, the Government is not required to prove that he or she knew or could have reasonably foreseen the drug type or quantity involved in the transaction. (I had made the same argument before the Second Circuit in 2009 in *United States v. Maduka & Ibiam*, discussed above. In that case, the Court had ruled in our favor, but in a non-precedential summary order.) On December 3, 2010, the Second Circuit adopted that argument and affirmed the defendant's conviction. Judge Calabresi authored the unanimous opinion.

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8. *United States v. Balkany*, 10 Cr. 411 (DLC) (S.D.N.Y), 11-756 (2d Cir.). United States District Court for the Southern District of New York: District Judge Denise L. Cote; United States Court of Appeals for the Second Circuit: Appeal pending.

In this case, the defendant, a prominent Orthodox rabbi, was convicted of wire fraud, extortion, blackmail, and false statements in connection with a scheme to extort \$4 million from the hedge fund SAC Capital Advisors and its principal, Steven A. Cohen. From November 1, 2010, to November 10, 2010, I tried the case before a jury with co-counsel, AUSA Marc P. Berger. Among other things, I gave the Government's opening statement and rebuttal summation; examined roughly half the witnesses, including the two principal witnesses; and largely drafted the Government's motion papers before and during trial. Following conviction on all four counts, the defendant was sentenced principally to 48 months' imprisonment on February 18, 2011. The case is now on appeal, and AUSA Berger and I continue to represent the Government.

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9. *United States v. Al Kassir et al.*, Docket Nos. 09-1051-cr(L), 09-1057-cr(CON), 09-3972-cr(CON) (2d Cir.). United States Court of Appeals for the Second Circuit: Dennis Jacobs and Peter W. Hall, Circuit Judges; and Shira A. Scheindlin, District Judge.

This case, currently pending, involves the prosecution of a notorious international arms trafficker and his associates for various offenses, including conspiracies to murder United States nationals, officers, and employees; conspiracy to acquire and use an anti-aircraft missile system; and conspiracy to provide material support to a designated foreign terrorist organization. The case arose from a sting operation in which confidential informants, posing as representatives of the Fuerzas Armadas Revolucionarias de Colombia (or "FARC"), a designated foreign terrorist organization and the world's largest supplier of cocaine, negotiated to purchase various weapons, including surface-to-air missiles, from the defendants. The defendants, who were convicted at trials in 2008 and 2009, received sentences ranging from 300 to 360 months' imprisonment. They have raised various arguments on appeal, including challenges to their convictions on the grounds that the Government's involvement in the offense violated their rights under the Due Process Clause; that applying American law to their conduct abroad violates the Due

Process Clause; and that the District Court erred in excluding certain classified evidence. I drafted significant portions of the Government's 97-page unclassified brief and a classified supplemental brief, both filed on November 30, 2010, and I edited both of these briefs in their entirety. Deputy United States Attorney Boyd M. Johnson III and AUSA Brendan McGuire, who represented the Government before the District Court, assisted in drafting the briefs and argued the appeal on February 7, 2011. A decision is pending.

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10. *United States v. Noorzai*, 09-1954-cr, 2011 WL 1938525 (2d Cir. May 23, 2011).
United States Court of Appeals for the Second Circuit: Ralph K. Winter, Rosemary S. Pooler, and Barrington D. Parker, Circuit Judges.

This case involved the prosecution of an Afghan tribal leader, former mujahedeen warlord, and high-level Taliban associate for conspiracies to import and distribute heroin in the United States. The defendant was convicted at trial in 2008 and sentenced to life imprisonment. He raised several arguments on appeal, including a challenge to the admissibility of statements he made during an 11-day interrogation after he was allegedly lured to the United States by a promise of safe passage to and from Afghanistan. I drafted significant portions of the Government's 55-page brief, and I edited the brief in its entirety. AUSA Anjan Sahni and Associate Deputy Attorney General David O'Neil, the latter of whom represented the Government before the District Court (when he was an Assistant United States Attorney), assisted in drafting the briefs, and AUSA Sahni argued the case before the Second Circuit. On May 23, 2011, the Second Circuit affirmed in all respects by summary order.

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

In 2009, I participated in a team of Assistant United States Attorneys from the Southern District of New York and the Eastern District of Virginia assigned to assess the feasibility of prosecuting Khalid Sheikh Mohammed and four other detainees at the Guantanamo Bay Naval Station allegedly involved in the terrorist attacks of September 11, 2001, in an Article III criminal court. I was principally involved in identifying and evaluating various legal issues that would be confronted in an Article III prosecution. After the Attorney General's announcement on November 13, 2009 that the case would be transferred to the Southern District of New York for prosecution, I was assigned to the prosecution team, with primary responsibility for identifying and addressing legal issues before and during trial. In that capacity, I assisted in drafting the 10-count, 80-page indictment returned by a grand jury in the Southern District of New York on December 14, 2009, and prepared memoranda on various legal issues that we expected to confront in the prosecution. Beginning in early 2010, when the Administration announced that it was reassessing the choice of forum and venue for prosecution of the case, our efforts became more limited, although I periodically engaged in an analysis of legal issues

relating to the sealed indictment. I was also involved in the process leading up to the dismissal and unsealing of the indictment on April 4, 2011.

In the last two years at the United States Attorney's Office, I have been involved in a variety of other national security matters not yet involving litigation, with an emphasis on the analysis of complex legal issues. As Deputy Chief Appellate Attorney, I am also frequently consulted on legal issues or asked to assist in drafting briefs or other pleadings in investigations and trials conducted by other Assistant United States Attorneys, including, most recently, *United States v. Rajaratnam* (the Galleon insider trading case); *United States v. Bonventre et al.* (the prosecution of former employees of Bernard L. Madoff Securities); *United States v. Shahzad* (the Times Square bomber case); *United States v. Cromitie et al.* (the Riverdale synagogue bombing plot trial); *United States v. Chapman et al.* (the Russian spies case); *United States v. Siddiqui* (the prosecution of a Pakistani neuroscientist with ties to al Qaeda for attempted murder of American military personnel); and *United States v. Kerik* (the prosecution of the former New York City Police Department Commissioner).

In 2006 and 2007, I was involved in or led a number of significant investigations, including one resulting in the indictment of a major international drug trafficker designated by the Department of Justice as a Consolidated Priority Organization Target (CPOT).

As Counselor to the Attorney General, I was involved in advising the Attorney General on a range of legal matters, including some areas of criminal law, civil rights, drug enforcement, immigration, and border security. Among other things, I assisted in preparing the Attorney General for his oral argument before the Supreme Court of the United States and for his testimony before the Senate and House Judiciary Committees; for much of my tenure, I was also responsible for supervising the drafting of Attorney General speeches and immigration orders and opinions.

While at Wiggin & Dana LLP, I participated in a few significant legal matters that did not progress to litigation. Most significant among them, I worked with Mark R. Kravitz, now a United States District Judge in the District of Connecticut, on preparations for an appeal to the Second Circuit from District Judge Jed S. Rakoff's ruling in *UMG Recordings, Inc. v. MP3.com*, No. 00 Civ. 472 (JSR), holding MP3.com liable for copyright infringement based on its digital library system and imposing damages of up to \$118 million. The case settled before we perfected an appeal, although not before I had drafted substantial portions of a brief. In addition, I worked with David B. Fein, now United States Attorney for the District of Connecticut, on several significant criminal matters, including one case in which we represented a subject in the federal investigation of corruption in the City of Bridgeport, Connecticut.

I have not performed any lobbying activities.

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 have not taught any courses.

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.

Upon retirement, I will receive payments from the Federal Employees Retirement System. Otherwise, I do not expect any deferred income or future benefits.

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

Although I currently have no commitments to pursue outside employment, I have been invited by Columbia Law School to co-teach (with AUSA David Raskin) a class titled "National Security Investigations and Prosecutions," in Fall 2011.

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.

As a general matter, I would handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

At a minimum, I would recuse myself from any criminal case that I worked on or supervised as an Assistant United States Attorney. For the most part, such cases should be easily identified; for a period of time, however, I would also seek confirmation from the Assistant United States Attorneys involved in any criminal case that I had not been consulted or otherwise involved in the case while serving as an Assistant United States Attorney. With respect to any other case in which the United States Attorney's Office was involved, I would look for guidance to the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

My wife is on the faculty of Columbia Law School. A filing in federal court involving Columbia University will be rare and easily identifiable. In the event of such a filing, I would look for guidance to the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

My father has occasionally been involved in litigation in the United States District Court for the Southern District of New York, either as a party or (through RD Management Corporation, of which he is a principal) as a crime victim or creditor in a retail tenant bankruptcy proceeding. A filing in federal court involving my father or RD Management Corporation will be rare and easily identifiable. In the event of such a filing, I would recuse myself.

I do not believe other family members are likely, either in the capacity of a party or counsel, to have cases in federal court.

Beyond criminal cases, I cannot think of any category of litigation that, by its nature, would present a conflict-of-interest issue for me. Of course, I would recuse myself from any case in which a credible claim of financial interest on my part or my family's part could be made.

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

If confirmed, I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. Further, upon becoming aware of a situation that any party or observer might conceivably identify as a potential conflict of interest, I would alert parties to the issue in question and offer them the opportunity to express their views, including the opportunity to brief any recusal or conflict-of-interest issue. In addition, I would, as appropriate, consult my judicial colleagues on these issues.

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

servicing the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a litigation associate at Wiggin & Dana LLP, I performed a substantial amount of pro bono work. Among other things, in 2001, I was the principal drafter of an *amicus* brief submitted on behalf of the Anti-Defamation League and other organizations in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). (My name did not appear on the brief because my application for a Supreme Court clerkship was pending at the time and I was advised to omit any mention of my involvement as a result.) I was also a primary drafter of the petition for writ of *certiorari* and reply in *Manning v. School Board of Hillsborough County*, No. 00-1871, a school desegregation case in which I worked with the NAACP Legal Defense Fund. During my career in public service at the United States Attorney’s Office, I have not performed pro bono legal work per se, but I have done a substantial amount of volunteer and community work, including at the Goddard Riverside Community Center (where I am an unpaid director) and at my children’s elementary school.

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.

In September 2009, I contacted a member of Senator Charles E. Schumer’s Judicial Screening Committee and requested a questionnaire for Senator Schumer’s Screening Committee. After receiving the questionnaire, I submitted it to the Screening Committee on October 13, 2009. I was contacted by an assistant to a member of the Screening Committee on November 10, 2009, and interviewed with the Screening Committee on November 19, 2009.

I did not have any communications with anyone from the White House, the Justice Department, or Senator Schumer’s office about this process in 2010. On February 2, 2011, I spoke with the Deputy White House Counsel about the process. I was contacted by a member of Senator Schumer’s staff on February 10, 2011, and interviewed with Senator Schumer the next day. On March 9, 2011, I spoke by telephone with Senator Schumer and, thereafter, with a member of his staff. Since that date, I have been in contact with pre-nomination officials from the Department of Justice. On April 15, 2011, I interviewed with officials from the White House Counsel’s Office and the Department of Justice in Washington, DC. On June 7, 2011, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

I, Jesse M. Furman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/6/11
(DATE)

Jesse M. Furman
(NAME)

Jeanette Ann Grayeb
(NOTARY)

JEANETTE ANN GRAYEB
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No. 01GR4995793
Qualified in Kings County
Commission Expires Nov 30, 2013