



**The United States District Court
for the Eastern District of New York:
A Retrospective (1990-2014)**

**The New York County Lawyers Association
Committee on the Federal Courts**

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Introduction

On behalf of the Board of Judges, I wish to express our deep gratitude to the New York County Lawyers Association Committee on the Federal Courts for its prodigious effort in producing this comprehensive Retrospective of the work of our court on the occasion of its 150th Anniversary.

The Eastern District has seen tremendous growth over the last 150 years, both in the number of judges on the Eastern District's bench and the population the court serves. In 1865, there was a single judge. Today, we have 28 Article III Judges and 14 Magistrate Judges. This growth is matched by the growing population of the district. In 1865, the Eastern District served a population of 300,000 people. It now serves a population of over 8.2 million. Based on population, it is the largest district in the Second Circuit. The caseload of the Eastern District has also greatly increased since the court's founding and has become far more diverse. The docket in the court's early history consisted largely of admiralty cases. Today it includes complex criminal prosecutions, sophisticated commercial litigation, and civil rights actions.

The last twenty-five years, the focus of this Retrospective, have brought significant changes. We constructed two new courthouses in the Eastern District: the Alfonse M. D'Amato Courthouse in Central Islip and the Theodore Roosevelt Courthouse in Brooklyn. The composition of our bench has changed considerably. On our 125th Anniversary, there was one woman on the bench. Today the majority of the active judges are women. We have been able to meet the challenges of our increased caseload with greatly increased numbers of senior judges. The world has also changed: technology and terrorism have altered our landscape. With the advent of electronic case filing, attorneys can file complaints and documents from their computers. The dangerous world in which we live has altered our dockets and required increased security measures. Post-9/11, the Eastern District has seen more terrorist prosecutions than any court in the nation. To address the security risk this creates, we have undertaken a construction project to create a secure perimeter for the courthouse.

What has remained the same throughout the history of the Eastern District, however, is the court's dedication to deciding all cases fairly and efficiently. As one of the Eastern District's finest jurists, the late Judge Eugene H. Nickerson, stated:

It would be presumptuous for a district court to assess the significance of the work it does. It is enough for trial judges that they are called upon to interpret those constitutional affirmations of liberty now almost two hundred years old, and, in the words of the oath we take, to "administer justice without respect to persons" and to "do equal right to the poor and to the rich." We do not regard that as an

ignoble task.¹

My colleagues and I join Judge Nickerson in affirming our commitment to fair and impartial justice. Hopefully, the pages that follow confirm that commitment.

Carol Bagley Amon, Chief Judge

¹ Hon. Eugene H. Nickerson, *United States District Court for the Eastern District of New York: Footnotes to Its History*, Second Circuit History Lectures (Apr. 29, 1982).

A Brief History of the Court (1865-1990)

Founding: 1865

The Eastern District of New York was created for the great commercial Port of New York as a result of an argument in the United States Senate. In 1865, the Port of New York was booming with business, and the Federal Judicial branch of the Southern District of New York was not equipped to handle the vast amount of admiralty litigation. Many, particularly the senator from Connecticut, thought it was irrational to have two federal judicial institutions within three miles of each other, competing for business, and the Eastern District only gaining cases out of the Port. The Senate nevertheless voted 26 to 7 to have the matter be solved internally by the State of New York, whose senators were in favor of forming the Eastern District. Therefore, in 1865, the Senate and House of Representatives approved the Act creating the United States District Court for the Eastern District of New York. President Abraham Lincoln signed the Act on February 25, 1865. The Eastern District is comprised of Kings, Queens, Nassau, Richmond and Suffolk Counties.

The Honorable Charles L. Benedict, appointed on March 9, 1865, and sworn in on March 20, 1865, served as the first judge of the new court. At that point, however, Judge Benedict had no official courtroom, courthouse, rules, docket, files, or staff. When the first session for the new court was calendared, it took place in the Governor's Room at the Brooklyn City Hall.

The Early Era: 1866-1965

The history of the United States District Court for the Eastern District of New York is as dynamic and diverse as the District itself. After the Court's founding in 1865, the majority of its early cases were admiralty cases. Disputes in the early days of the Court commonly involved collisions between two vessels. A famous example is the "Chesapeake" case, which involved a collision between a ferryboat and a steamer in 1866.² These cases typically did not consume significant judicial resources and were resolved with relative ease.

The 1880s and 1890s saw modest growth in the Eastern District's population and commercial activity. Immigrants began to pour into New York, and the Irish, German, Italian, and Swedish populations began to rival the citizens of English and Dutch descent. The Brooklyn Bridge's opening in 1883 enabled more New Yorkers to settle into the suburban and rural sections of Kings, Queens and Nassau Counties. As commercial activities increased, the Harter Act of 1893 brought a new dimension to commercial disputes related to sea merchants. These issues involved the seaworthiness of vessels, the proper care of goods, and the tortious acts of crew members.

² 5 Fed. Cas. 557 (E.D.N.Y. 1866).

In 1910, the Queensboro Bridge opened, further expanding the development of Kings, Queens, Nassau, Richmond and Suffolk Counties. The population had quintupled from 1865 to 1910, and the Eastern District finally added a second judge to its bench. World War I saw a rapid increase in the Court's caseload. By 1921, there were over 2,596 cases as compared to a caseload of only 83 prior to the war. These cases came from a variety of areas. Civil litigation and patent cases increased, as did bankruptcy and tax cases. Additionally, the 18th Amendment and the "Roaring Twenties" brought a slew of new criminal cases related to Prohibition. In 1922, Congress approved a new temporary third judge to deal with the Court's enormous caseload. Three judges were still too few to deal with the skyrocketing caseload, and, by 1935, Congress had increased the bench to six judges.

Following the stock-market crash and Great Depression, President Franklin D. Roosevelt's "New Deal" legislation was tested in the Eastern District. The famous 1933 *Schechter Poultry* case involved the National Industrial Recovery Act, which allowed the President to regulate the wage, hour, and trade practices of businesses.³ Defendants were found guilty of violating the Act, and the Court upheld their convictions. However, the Supreme Court reversed in a unanimous opinion, holding that the Brooklyn slaughterhouse at issue had no direct effect on interstate commerce, and thus the Act exceeded Congress's Commerce Clause powers.⁴ This seminal case prompted President Roosevelt's unsuccessful attempt to pack the Supreme Court with more liberal judges.

World War II brought a renowned espionage case to the Eastern District. In *United States v. Lang*,⁵ the infamous "Duquesne Spy Ring," a German espionage network of over thirty members, was tried and convicted in the largest espionage case in U.S. history. These German spies had infiltrated various American jobs to report information regarding the war effort to the German Reich. The FBI utilized double agent William Sebold to uncover the espionage network in its prosecution. The events surrounding the *Lang* case inspired the 1945 film *The House on 92nd Street*.

Immediately preceding and following World War II, the Eastern District became the center of New York air travel by virtue of the construction of LaGuardia and Idlewild (now JFK) Airports. These two airports span over 5,300 acres, and tens of millions of passengers travel through them each year. The expansion of air travel in the Eastern District was accompanied by its share of litigation. Numerous regulatory issues have arisen from the airports including administrative law, conflict of laws, and federal preemption. The FAA's regulation of JFK and LaGuardia at times conflicts with local ordinances. This has resulted in cases like *Allegheny Airlines v. Vill. of Cedarhurst*, which found the Village of Cedarhurst's ordinance prohibiting airplanes from flying under 1,000 feet over its community to be an unconstitutional intrusion on

³ *United States v. Schechter*, 8 F. Supp. 136 (1934).

⁴ *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

⁵ 73 F. Supp. 558 (E.D.N.Y. 1947).

Congress's authority to regulate air traffic.⁶ The airports have also led to a plethora of drug trafficking cases against couriers of illegal narcotics, as well as complex torts litigation.

The postwar years saw a burgeoning of the suburban communities in Queens, Nassau and Suffolk Counties, which prompted Congress to add two more judges to the bench in 1961. At this point, the Eastern District had six million people but only eight judges. Between 1965 and 1990, the Court's caseload tripled. Starting in the late 1960s and early 1970s, the Court established magistrate judge positions to relieve the increasing caseload.

The Modern Era: 1965-1990

The 1960s saw an increase of civil-rights jurisprudence in the Eastern District. In *Blocker v. Board of Education of Manhasset*, the Court found that a strict non-transfer policy that restricted 99% of African American public-school children to just one school in the area constituted unconstitutional state-imposed segregation.⁷ The civil-rights era also saw challenges to electoral apportionment and to racially-motivated peremptory challenges to minority jurors. Gender equality came to the forefront in the Title VII case of *Berkman v. City of New York*, where a class of female plaintiffs claimed that the City's Fire Department employment test constituted unlawful discrimination.⁸ That employment process involved a written test, which 95% of female candidates passed. However, the process also included a physical strength and fitness test—which required carrying a 120-pound dummy on one shoulder up and down a flight of stairs—that every woman failed. The Court found that the physical test was not job-related and needed to be revised.

In the 1970s and 1980s, the Court saw cases on a range of issues including: abortion; Vietnam; environmental law; and labor law. The environmental cases included instances of illegal dumping of material dredged from Westchester and Connecticut harbors into Long Island Sound, preservation of the Jamaica Bay Wildlife Refuge, and opposition to the Shoreham Nuclear Reactor. Labor disputes centered on transportation systems. For example, in 1983, the Court enjoined a strike by the workers of the Long Island Railroad. Similar strikes and judicial interventions have occurred with the Brotherhood of Locomotive Engineers and Air Traffic Control workers.

Some of the most noteworthy cases in the Eastern District were RICO prosecutions of organized-crime bosses. The United States Attorney's Office for the Eastern District grew significantly in size and professionalism to deal with the proliferation of organized crime. Some of the most famous prosecutions during this period include Carmine Persico of the Colombo Family and Joey Gallo, John Gotti and Gene Gotti of the Gambino Family. The U.S. Attorney also focused on political corruption, bribery and other white collar crimes.

⁶ 132 F. Supp. 871, 885 (E.D.N.Y. 1955), *aff'd*, 238 F.2d 812 (2d Cir. 1956).

⁷ 226 F. Supp. 208 (E.D.N.Y. 1964).

⁸ 536 F. Supp. 177 (E.D.N.Y. 1982).

1990-2014: A New Era

The caseload of the Eastern District is one of the most fascinating in the nation because of the District's diversity, unique combination of urban, suburban and rural communities, and major commercial activity in New York City. Over its first 150 years, the Court was transformed from the single-judge Court of 1865 that oversaw mainly admiralty cases to a bench of 28 Article III Judges and 14 Magistrate Judges who preside over a vast and complex docket. The Eastern District has been at the forefront of issues that have shaped our nation's jurisprudence, from RICO prosecutions, to complex torts and commercial litigation, to civil rights. The United States District Court for the Eastern District has served its eight million citizens well and leads the nation in judicial excellence.

An Increasing Docket

The workload of the Eastern District of New York has dramatically increased since 1990 when a total of 5,424 cases (4,432 civil and 992 criminal) were filed in the District. The Court's workload steadily climbed during the 1990s. By 2000, the Court had a total of 9,760 new cases filed (8,664 civil and 1,096 criminal), an 80% increase from 1990. During the following decade, the Court's new filings declined, ranging between 6,157 and 9,583 new filings per year, but still remained well above the 1990 numbers. In 2013, the last full year for which caseload statistics are currently available, there was a total of 7,680 cases filed (7,078 civil and 602 criminal), which exceeded the 1990 totals by more than 40%.⁹

Despite the increase in new cases over the last 25 years, the Eastern District has not seen any increase in its number of judgeships since 1990 when Congress created three new Eastern District judgeships to bring the total number of active judgeships to 15. That number has not changed. In 1990, the Eastern District had 11 active Article III judges and four vacancies. As of December 31, 2014, the Eastern District had 14 active Article III Judges and one vacancy. The Eastern District has one of the highest caseloads per judgeship in the entire country.

As discussed in more detail below, the Court's Senior District Judges and Magistrate Judges have taken on a greater role to help the Court deal with its increasing caseload. Whereas in 1990 the Court had four Senior Judges presiding over cases, the Court has 13 Senior Judges with active caseloads as of December 31, 2014. Similarly, the number of Eastern District Magistrate Judges increased from five full-time Magistrate Judges and one part-time Magistrate Judge in 1990 to 14 full-time Magistrate Judges as of December 31, 2014.

⁹ The statistics in this paragraph are taken from the Judicial Facts and Figures Archive on the United States Courts' website, http://www.uscourts.gov/Statistics/JudicialFactsAndFigures/JudicialFactsAndFigures_Archive.aspx.

Two New Courthouses for a New Era

In 1990, the Eastern District conducted its business in three courthouses located in Brooklyn, Uniondale and Hauppauge. At that time, cases arising in Kings, Queens and Richmond Counties were handled in Brooklyn; cases arising in Nassau County were handled in Uniondale; and cases arising in Suffolk County were handled in Hauppauge. During the last 25 years, the Court moved to two brand-new courthouses: the Alfonse M. D'Amato United States Courthouse and Theodore Roosevelt United States Courthouse.

The Alfonse M. D'Amato United States Courthouse

In 2000, the Long Island United States Courthouse opened in Central Islip, New York after four years of construction. This courthouse was renamed the Alfonse M. D'Amato United States Courthouse in 2002. The D'Amato Courthouse was designed by Richard Meier. At 12 stories and approximately 870,000 square feet, it is the largest building on Long Island outside of New York City and the third-largest federal courthouse in the United States. It is also the first United States Courthouse and Federal Building on suburban Long Island. Cases arising in Nassau and Suffolk Counties are handled in the D'Amato Courthouse. It invites the public and embodies the joinder of architecture and civic function.



In this courthouse, an entry rotunda contains the Gallery of Shorthand which was created in homage to one of the law's oldest specialties—transcription. More than 5,000 years ago, at the time of the Sumerian civilization, rulers, scholars and judges realized that ideas should be preserved. The Sumerians created the earliest known written language. Cicero, believing that spoken thought was equally important, invented the first system of shorthand in 64 B.C. Inheriting this practice from the ancient scribes, modern artisans today use high-tech shorthand devices and computer technology to instantly produce complete and accurate records of historic and everyday events.

The Theodore Roosevelt United States Courthouse

In 2006, a new courthouse designed by Cesar Pelli opened in Brooklyn, which in 2008 was officially named the Theodore Roosevelt United States Courthouse. While construction of the new courthouse started in 2000, it had to be halted in the wake of the Oklahoma City bombing and September 11 attacks so that the design could be modified to include additional security measures. The new courthouse connects to the old courthouse, which is named for Congressman Emanuel Celler of Brooklyn who was the House author of the landmark civil rights legislation of the 1960s. The Celler Courthouse remains in use, through a new atrium and entryway, and is home to the Court's Ceremonial Courtroom. Cases arising in Kings, Queens and Richmond Counties are handled in the Roosevelt and Celler Courthouses.



The courthouse location is steeped in history, and the new courthouse embodies much of the spirit of the Court. The address itself, 225 Cadman Plaza East, is also a nod to Brooklyn history, community and technology—Cadman Plaza is named after Samuel Parkes Cadman, a Brooklyn minister who was one of the first radio personalities to connect with his audience across the nascent radio waves of the early 20th century.

Housed in the Roosevelt Courthouse's first floor is the Charles P. Sifton Gallery, which is dedicated to Judge Sifton in recognition of his commitment to the arts and the many excellent art exhibits and performances the Judge arranged for the Court family over the years. A flight up the stairs that open to the rotunda is the Ceremonial Courtroom and waiting areas used for the citizenship and naturalization ceremonies held at the courthouse—one of the activities at the courthouse of which the bench is most proud.

The Ceremonial Courtroom is also home to a series of murals by Edward Laning, entitled *The Role of the Immigrant in the Industrial Development of America*. These monumental panels, which tower over visitors to the Courtroom, depict immigrants engaged in building railroads, farming, mining and beginning their lives in America. The murals were originally commissioned for Ellis Island in 1935 under the Works Progress Administration's Federal Art Project. However, after Ellis Island ceased operations, the INS sent a request to Judge Zavatt, who was then the Court's Chief Judge, asking if it could discard the murals. Rather than throwing away these valuable works of art, Chief Judge Zavatt recognized the power of the stories they depicted, and instead had them moved to the Court's Ceremonial Courtroom where immigrants are naturalized.



Naturalization is the process by which U.S. citizenship is conferred upon a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act. Throughout the week, hundreds of people gather on the second floor of the courthouse to become citizens of the United States or to witness their family members or friends

become citizens.

The faces seen and languages heard before and after the naturalization ceremonies are those of the world. To become citizens, these petitioners come from across the globe, clearing numerous personal hurdles (sometimes economic, cultural and geographic). While each immigrant is different, all are unified in a goal to start a new life here as partners with those of us who have come before them or are fortunate enough to be born in this great country.

The ceremonies are presided over by a United States District Judge or Magistrate Judge. These are special moments for the judges as well, giving them a chance to salute the efforts of the men and women they are about to naturalize, while encouraging these new Americans to fully participate in the rights and responsibilities that come with citizenship. These ceremonies serve as a real, and often moving, civics lesson that visitors will not soon forget.

The Vital Role of the Eastern District's Senior Judges

The District's Senior Judges play a vital role in the Court's management of its expanding caseload. As Judge Glasser stated:

Prior to 1869, there was neither a resignation nor a retirement system available for federal judges. Old judges, even those who were either physically or mentally disabled, were compelled to remain in office as a regular active judge or resign without any retirement benefit whatsoever. By an Act of 1869, a judge appointed pursuant to Article III of the Constitution could resign at age 70 after ten years of service with a continued right to receive his salary for life thereafter. That Act, however, made no provision for continued judicial service and deprived the federal judiciary of the service of many very experienced and able judges who were willing to continue to work at least part-time if they were unable to continue to do so full time. Responding to that undesirable situation, [in 1919] Congress created the office of Senior Judge and thus enabled the federal judiciary to continue to benefit from the service of many dedicated and experienced judges.¹⁰

The Eastern District of New York historically has carried a higher workload per active judge than most other federal district courts. As the Court's docket has significantly increased in volume over the last 25 years, the Court has counted on a corps of productive Senior District Judges to continue to manage its caseload. Rather than opt for full retirement, which would entitle the retiree to an annuity equal to his or her salary at the time of retirement, nearly all of the Court's judges upon becoming retirement-eligible continued in their public service and take senior status. In fact, many of the Court's Senior Judges continue to carry substantial dockets even though they are not required to do so. As Judge Frederic Block wrote in 2008:

¹⁰ Hon. I. Leo Glasser, Remarks at Portrait Unveiling, Brooklyn, New York (May 22, 1996) (reprinted in The Hon. Frederic Block, *Senior Status, An "Active" Senior Judge Corrects Some Common Misunderstandings*, 92 CORNELL LAW REVIEW 533, 535 (2008)).

Not every senior judge decides to cut back on his or her workload; there are many who continue full-steam ahead. . . . As statistics show EDNY's senior judges clearly as a group fall into this category, currently maintaining on average a larger caseload than the court's active judges. They obviously find the work of the court more fulfilling than retirement, and many of them avail themselves of the opportunity that senior status affords to increase their involvement in diverse legal interests.¹¹

The Court has had a long tradition of extended service from judges on senior status. For example, Judge John R. Bartels served for 38 years on senior status until his death in February 1997 at the age of 99. As of December 31, 2014, 14 of the Court's 28 district judges served as Senior Judges: Hon. Frederic Block; Hon. Raymond J. Dearie; Hon. Nicholas G. Garaufis; Hon. Nina Gershon; Hon. I. Leo Glasser; Hon. Denis R. Hurley; Hon. Sterling Johnson, Jr.; Hon. Edward R. Korman; Hon. Thomas C. Platt, Jr., Hon. Allyne R. Ross; Hon. Joanna Seybert; Hon. Arthur D. Spatt; Hon. Jack B. Weinstein; and Hon. Leonard D. Wexler. The Court honors the service of its Senior Judges by hanging their portraits in the Ceremonial Courtroom in the Celler Courthouse.

The Eastern District's Magistrate Judges: An Indispensable Resource

It can hardly be denied that the system created by the Federal Magistrates Act has exceeded the highest expectations of the legislators who conceived it. In modern federal practice, federal magistrates account for a staggering volume of judicial work.¹²

Given the bloated dockets that district courts have now come to expect as ordinary, the role of the magistrate in today's federal judicial system is nothing less than indispensable.¹³

The work of the United States Magistrate Judges of the Eastern District of New York over the last 25 years exemplifies these observations, made by the United States Supreme Court in 1991. Under the Court's Local Rules, Magistrate Judges are expressly granted the maximum powers authorized by law.¹⁴ To effectuate that directive, a Magistrate Judge is randomly assigned at the commencement of all civil actions, with the exception of habeas corpus petitions, social security disability cases, motions to vacate sentences, forfeitures and reviews from administrative agencies.¹⁵ In addition, most District Judges refer all pre-trial case management, discovery and settlement matters in civil proceedings to the Magistrate Judges.

¹¹ The Hon. Frederic Block, *Senior Status: An "Active" Senior Judge Corrects Some Common Misunderstandings*, 92 CORNELL LAW REVIEW 533, 545-46 (2008).

¹² *Peretz v. United States*, 501 U.S. 923, 928 n.5 (1991) (quoting *Gov't of the Virgin Islands v. Williams*, 892 F.2d 305, 308 (3d Cir. 1989)).

¹³ *Id.* at 928 (quoting *Williams*, 892 F.2d at 308).

¹⁴ Local Rule 72.1.

¹⁵ Local Rule 72.2.

The expansive role of the Eastern District Magistrate Judges began during the Honorable Jack B. Weinstein's tenure as Chief Judge.¹⁶ In 1982, Judge Weinstein established the Special Committee on Effective Discovery in Civil Cases for the Eastern District of New York to study civil discovery practices in the Court and to make proposals concerning the conduct of discovery.¹⁷ Among other things, the Special Committee proposed random assignment of a Magistrate Judge at the start of each civil case. While the proposal further provided for discretionary, as opposed to mandatory, referral of civil discovery matters to a Magistrate Judge, the Special Committee opined that "discovery matters in most cases ought to be handled by magistrates" and "that greater utilization of magistrates is important to the expeditious disposition of discovery disputes."¹⁸ The Board of Judges initially adopted this proposal in 1984 for a three-year period and subsequently adopted it permanently.¹⁹

As of December 31, 2014, there are 14 full-time Magistrate Judges—10 in Brooklyn and four in Central Islip. In addition to handling pre-trial case management in most civil cases, the Court's Magistrate Judges try nearly all of the Court's misdemeanor criminal cases, try civil cases on consent, serve as special masters, take criminal guilty pleas, conduct suppression hearings and issue reports and recommendations on dispositive motions and motions for preliminary injunctions.

Given the strain placed on the Court by the sheer volume and complexity of its cases, the Court's Magistrate Judges have played a crucial role in managing its docket, reducing delay and expense in the adjudication of civil cases and promoting public trust in the Court. Indeed, the Special Committee's assessment of the Court's Magistrate Judges in 1984 is no less true today: "the magistrates in the Eastern District are of uniformly high caliber and are widely respected by the bench and bar."²⁰

The Bankruptcy Court

The past quarter century has seen many changes in the Bankruptcy Court for the Eastern District of New York. Some of these changes have resulted from actions by Congress, while other changes in the Court's caseload reflect demographic and economic developments in the District and nationwide. And of course, no history of this period would be complete without a remembrance of Judge Conrad B. Duberstein, who served as Chief Judge until his death in 2005, and for whom the Brooklyn bankruptcy courthouse is named.

¹⁶ See *Report on Magistrates by the Committee on the Federal Courts of the New York County Lawyers' Association*, 136 F.R.D. 193, 211 (1991).

¹⁷ See *Revised Report of the Special Committee*, 102 F.R.D. 357 (1984).

¹⁸ *Id.* at 373.

¹⁹ See *Final Report to Hon. Thomas C. Platt, Chief Judge Pursuant to the Civil Justice Reform Act of 1990*, 142 F.R.D. 185, 195-96 (1992).

²⁰ *Id.*; see also *Report on Magistrates by the Committee on the Federal Courts of the New York County Lawyers' Association*, 136 F.R.D. 193 (1991).

Changes in Bankruptcy Law

Since 1990, Congress has made several significant amendments to the Bankruptcy Code, starting with the Bankruptcy Reform Act of 1994, which simplified and quickened the reorganization process for small businesses, allowing small business debtors to proceed in Chapter 11 subject to more liberal disclosure and voting solicitation requirements for proposed reorganization plans. This Act also added protections for secured lenders and created new criminal bankruptcy fraud offenses, enhancing the integrity of the bankruptcy process and providing additional prosecutorial tools to root out fraudulent conduct in the bankruptcy courts.

Eleven years later, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the most extensive overhaul of bankruptcy laws since 1979. Though BAPCPA included provisions affecting business Chapter 11 cases (such as strict limitations on the time frame for assuming a lease of nonresidential real property), the amendments principally concerned consumer bankruptcy law, restricting access to Chapter 7 for individuals by imposing a means test; limiting the availability of the automatic stay for repeat filers and for individual debtors whose landlords had obtained a pre-petition judgment of possession; and providing for automatic dismissal of individual cases where schedules and statements are not timely filed. BAPCPA also added provisions to protect individual debtors and deter abusive practices by non-attorney petition preparers, and, in addition, created a new Chapter 15 to the Bankruptcy Code, which incorporates the UNCITRAL Model Law on Cross-Border Insolvency and promotes cooperation and coordination in cross-border bankruptcy cases.

Consequently, the Bankruptcy Court for the Eastern District of New York also made a number of changes to its Local Rules during this period, including, for example, the adoption of Local Rule 9019-1, which provided for uniform mediation procedures in bankruptcy cases and proceedings. The use of mediation in bankruptcy has increased substantially in this District over the past decade, with Court-annexed mediation proving a valuable tool, especially in difficult or complex cases.

The Bankruptcy Court's Caseload

Since 1990, the population of the District has grown to over eight million, and has increased in ethnic and economic diversity. During this time, the Bankruptcy Court's annual filings increased from 10,714 in 1990 to 30,481 in 2005. Following the enactment of BAPCPA in 2005, filings dropped significantly, to 11,800 in 2007. Filings subsequently climbed to 22,803 in 2010, as individuals and businesses in the District experienced the effects of the financial crisis of 2008 and subsequent recession.

Residents of the District have also been affected by the national mortgage foreclosure crisis, as many individuals filed for bankruptcy from 2008 to 2014 in an effort to save their homes. In response, the Bankruptcy Court adopted loss mitigation procedures, through which

the Court works with individual debtors and lenders to assist the parties in arriving at mortgage modification agreements. When successful, this process results in a modified mortgage loan with an affordable monthly payment, permitting the debtor to remain in his or her home and providing the lender with a performing loan. This program has been well received by all interested parties and has resulted in the successful modification of many home mortgages.

The Bankruptcy Court's Chapter 11 caseload has also reflected economic trends within the District. The history of the Court prepared in 1990 for the District's 125th anniversary noted the significant hospital bankruptcy cases during the period from 1965 to 1990, many of which resulted in hospital closures. The process of hospital consolidation in the District has continued in the past 25 years, and the Bankruptcy Court has presided over Chapter 11 cases resulting in the closure of multiple hospitals. On the other hand, several hospitals successfully emerged from Chapter 11 between 2006 and 2014.

The Court's caseload during this period also included a number of large bankruptcies, including:

- *In re Cengage Learning*: the largest bankruptcy case filed nationwide in 2013, involving one of the largest global publishers of higher education course materials, which successfully emerged from Chapter 11 in 2014;
- *In re Global Aviation, Inc.*: a case involving the largest commercial provider of airlift transport services for the United States military, which downsized its fleet, reorganized its capital structure, and emerged from Chapter 11 in less than a year;
- *In re Metro Fuel Oil Corp.*: a case involving a large energy company which sold its primary assets in Chapter 11;
- *In re Chana Taub*: a heavily litigated individual Chapter 11 case, intertwined with contentious divorce proceedings, involving the disposition of more than \$60 million in real estate assets;
- *In re Suffolk County OTB*: a Chapter 9 case in which the first municipal reorganization plan in the Second Circuit was confirmed in 2014;
- *In re Personal Communications Devices*: a case involving a Long Island-based global leader in wireless distribution and services, which sold substantially all of its assets in bankruptcy for a price in excess of \$125 million;
- *In re Long Beach Medical Center*: a case involving a Long Island hospital which closed after being devastated by Hurricane Sandy in 2012;
- *In re Amsterdam at Harborside*: a Chapter 11 case involving a Long Island-based continuing care facility with over 300 units, which successfully restructured \$200 million in bonds; and
- *In re hibu Inc., et al*: a group of Chapter 15 cases commenced to facilitate restructuring proceedings in the United Kingdom for the Yellowbook group of companies, the world's largest print and digital directory provider.

The Bankruptcy Court has also presided over the restructurings of many significant residential and commercial real estate projects throughout the District during this period. In 2014, the Bankruptcy Court, seeking to optimize this District as a venue for Chapter 11 commercial cases, created the Chapter 11 Lawyers' Advisory Committee, a bench-bar committee to identify and address issues of concern to Chapter 11 practitioners.

During this period, the Bankruptcy Court has also overseen liquidations of several significant fraudulent enterprises. Notable among them was Agape World, Inc., which held itself out as an investment firm, but was actually a Ponzi scheme run by Nicholas Cosmo, who was sentenced to 25 years in prison for his fraudulent activities. Approximately 5,000 individuals invested a total of more than \$400 million in Agape and its affiliates. Although some investors succeeded over the years in making full or partial withdrawals before the scheme was discovered, approximately 4,100 investors in Agape sustained actual losses totaling \$178 million.

Another massive fraudulent scheme unraveled in the Bankruptcy Court was that of Allou Distributors, a publicly-held company engaged in the wholesale distribution of personal care products, which was used as a vehicle for a \$250 million fraud conducted by the company's senior officers. The case, which was commenced as an involuntary bankruptcy, involved more than 800 adversary proceedings, principally to recover fraudulent transfers among the company, other families and religiously-affiliated institutions. Several of the principals were convicted of fraud and are incarcerated.

The Conrad B. Duberstein United States Bankruptcy Courthouse

Judge Duberstein served as Chief Judge for the Bankruptcy Court from 1984 until his death, at the age of 90, in 2005. Judge Duberstein was an active advocate for the restoration of the historic district courthouse in downtown Brooklyn, and in 1996, the General Services Administration began the renovation and redesign of the building as a home for the Bankruptcy Court (as well as the United States Attorney's office and post office). The project was completed in 2005, and the Romanesque Revival courthouse at 271 Cadman Plaza East, built in 1892, was restored to its original glory. The Brooklyn Bankruptcy Court moved to these magnificent quarters only weeks before Judge Duberstein's death in November of that year. On July 15, 2008, President George W. Bush signed into law an act designating the building as the "Conrad B. Duberstein United States Bankruptcy Courthouse." At a ceremony held on March 16, 2009, the granite plaque bearing the building's new official name was unveiled. It is entirely fitting that Judge Duberstein's legacy of commitment to justice and to service to the residents of this District should be honored in this way.

1990-2014: Notable Cases, Trials and Decisions²¹

Admiralty Law

In re City of New York (Judge Korman)

Judge Korman presided over a civil action stemming from the October 15, 2003 crash of the Staten Island ferryboat *Andrew J. Barberi* into a pier at the St. George ferry terminal in Staten Island. The ferry was carrying approximately 1,500 passengers from Manhattan to Staten Island. As a result of the crash, the edge of the pier sliced into the main passenger deck killing eleven passengers and injuring 70 others. At the time of the crash, the ferry pilot was passed out at the wheel due to a number of prescription drugs that he had taken for back pain. The passengers and their surviving relatives brought wrongful death and personal injury claims against the City of New York.

Plaintiffs asserted that the City's negligence caused the crash because the City's director of ferry operations at the time of the accident failed to enforce the rule requiring that there be two pilots in the pilothouse at all times. The City objected and also argued that the Limitation of Vessel Owner's Liability Act (the "Act") limited its liability to the value of the vessel as assessed after the collision. Judge Korman rejected both arguments and denied the City's petition seeking to avoid liability for the crash.

Judge Korman applied a formula articulated by Judge Learned Hand in 1947 under which the duty of a ship owner to provide against resulting injuries is a function of three variables: (1) the probability that the ship will break away; (2) the gravity of the resulting injury, if she does; and (3) the burden of adequate precautions. Judge Hand stated the formula in algebraic terms as follows: "[I]f the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether $B < PL$."

Judge Korman stated that

The application of this formula compels the conclusion that the City did not act reasonably to avoid the risk to the passengers who rode the Staten Island Ferry. The probability, however remote, of a scenario where the pilot would become incapacitated was considered by the City. The gravity of possible resulting injury to its passengers, not to speak of the City's exposure to substantial monetary damages, is reflected in the loss of life and devastating injuries suffered by the passengers on the *Barberi*. It is unnecessary to quantify these factors, because enforcing the two-pilot rule involved nothing in the way of an additional burden, and the City does not argue otherwise. On the contrary, there were two qualified pilots on the Staten Island Ferry and the City concedes that, in these

²¹ Citations, or docket numbers where applicable, to matters discussed in this section are set forth *infra* in the "Case Index."

circumstances, “there would be no additional expense involved” in requiring the presence of the second pilot in the pilothouse.

The Court also ruled that the Act did not limit the City’s liability because the negligence was attributable to supervisory personnel.

In re Dorothy J. v. City of New York (Judge Korman)

Judge Korman presided over a civil action brought by the owner of a tugboat and its crew against the City of New York seeking an award for marine salvage services performed in the aftermath of the crash of the Staten Island ferryboat *Andrew J. Barberi* on October 15, 2003. The tugboat was docked at the same maintenance pier into which the ferryboat crashed and attempted to assist the ferryboat back to the passenger slip where emergency personnel were waiting to help. The tugboat and its crew also spent the next several days continuously pushing on the ferry to hold it in position.

As Judge Korman wrote, “[s]alvage is a doctrine unique to maritime law that pre-dates the Christian era by nine hundred years. It refers to the principle of rewarding services that are ‘voluntarily rendered to a vessel needing assistance, and [are] designed to relieve her from some distress or danger either present or to be reasonably apprehended.’” To determine whether plaintiffs’ actions constituted a salvage service, as opposed to simply routine towing or pushing services, the Court evaluated whether: (1) there was marine peril; (2) the service was voluntarily rendered and not required by duty or contract; and (3) the operation was a success or the services provided contributed to the success.

On cross motions for summary judgment, the City contested the first two of these elements. First, the City asserted that there was no marine peril because the ferry was not in danger of sinking. Judge Korman rejected this argument because, given the circumstances of the crash, the tugboat’s owner and crew had a reasonable apprehension of injury or destruction if the services at issue had not been provided. Second, the City argued that the tugboat’s services were not voluntary because the tugboat had a duty to act pursuant to a contract between the tugboat’s owner and the City. Interpreting the provisions of the contract, Judge Korman held that the tugboat’s spontaneous assistance rendered in the immediate aftermath of the crash was not covered by the contract and granted summary judgment in plaintiffs’ favor on that portion of the claim. Judge Korman further held, however, that the tugboat’s services in holding the ferry in place after it had provided the initial assistance were covered by the contract and granted the City’s motion for summary judgment on that portion of the claim.

At a trial to determine the appropriate award for salvage services, Judge Korman evaluated the third issue in the analysis. While concluding that the tugboat did not significantly expedite the ferry’s return to the slip, Judge Korman nevertheless determined that the tugboat’s efforts were not entirely devoid of value because they provided comfort and aid to the ferry’s

passengers and crew. Judge Korman granted plaintiffs a total salvage award in the amount of \$75,000 plus prejudgment interest.

In re Air Crash Near Nantucket Island, Massachusetts (Judge Block)

Judge Block presided over multi-district litigation involving a wrongful death suit arising from the crash of EgyptAir Flight 990 on the high seas approximately 60 miles from Nantucket on October 31, 1999. The crash killed all 217 passengers on board, including 131 American citizens, and strained relations between the American and Egyptian governments. Plaintiffs were the personal representatives and decedents of the deceased passengers and brought suit against EgyptAir under the Death on the High Seas Act (“DOHSA”).

The Warsaw Convention conveyed jurisdiction over DOHSA’s claims brought in one of four locations: (1) the carrier’s domicile; (2) the carrier’s principal place of business; (3) where the contract of transportation was made; or (4) where the transportation was to end. Because EgyptAir’s domicile and principal place of business were in Egypt and the flight was due to land in Cairo, the Court had jurisdiction over only the claims brought on behalf of deceased passengers who purchased their tickets in the United States on the basis of the location of the contract for transportation.

EgyptAir did not contest liability under DOHSA. While many of the cases settled, Judge Block decided damages claims in several matters. For example, Judge Block held that the stepchildren of one of the passengers were not entitled to any recovery because DOHSA only applied to children or dependent relatives of the passengers. Judge Block also dismissed the damages claims of two representatives because the passengers did not purchase their tickets in the United States. In two other cases, Judge Block found that plaintiffs had stated valid DOHSA claims and issued total judgments in those cases in favor of plaintiffs in the amounts of \$1.52 million and \$1.3 million.

Judge Block also presided over related litigation brought by plaintiffs who could not bring DOHSA claims in the United States, but who sued the aircraft and the parts manufacturers. Despite the fact that Egyptian law governed the damages claims in these cases, Judge Block facilitated the settlement of many of these cases by traveling to Cairo to preside over oral testimony with the assistance of a special master.

Antitrust

Air Cargo Industry Antitrust Litigation (Judge Gleeson)

From 2006 to 2011, Judge Gleeson presided over a multidistrict putative antitrust class action stemming from an investigation by governmental authorities of worldwide price fixing in the air cargo industry. The plaintiffs, direct and indirect purchasers of airfreight shipping

services, alleged that domestic and foreign airlines that provided airfreight shipping services around the world conspired to fix prices through the concerted worldwide imposition of surcharges and other anticompetitive behavior.

The action arose out of publicity in February 2006 about a coordinated global antitrust investigation launched by American, European, Korean and Canadian competition authorities into anticompetitive conduct in the air cargo industry. As a result of these investigations, over 100 cases alleging antitrust violations were filed in district courts throughout the United States. In June 2006, the Judicial Panel on Multidistrict Litigation ordered that all air cargo antitrust lawsuits be transferred and consolidated for pretrial proceedings in the Eastern District of New York.

The actions were all settled, resulting in an aggregate settlement amount of hundreds of millions of dollars. The settlements included the resolutions of class lawsuits pending against All Nippon Airways, Cargolux Airlines, Qantas Airways Limited and Thai Airways Public International Limited.

Judge Gleeson certified settlement classes and approved these settlements. Applying the strong judicial policy favoring settlement of complex cases, he found that the settlements were entered in good faith and were fair. Judge Gleeson opined that:

The airline industry is experiencing especially difficult times. It would not be unreasonable to conclude that the long-term viability of some of the defendants is unclear, and that, of course, could obviously impact Plaintiffs' ability to recover even if they were able to establish liability at trial.

Vitamin C Antitrust Litigation (Judges Cogan and Trager)

Judge Trager and Judge Cogan presided over the Vitamin C Antitrust Litigation, which arose out of allegations that a group of Chinese manufacturers conspired to fix the price of vitamin C at non-competitive levels and to limit the supply of vitamin C for export to the United States. Judge Trager denied motions to dismiss based on international comity and the sovereign compulsion defense (*i.e.*, the defense that the Chinese companies were not liable because their actions were compelled by the Chinese government). After discovery, Judge Cogan again rejected the defendants' compulsion defense in denying a motion for summary judgment.

In 2012, Judge Cogan approved settlements between one of the defendant manufacturers, Aland (Jiangsu) Nutraceutical Co., Ltd. and two certified plaintiff classes of direct and indirect purchasers. Aland agreed to pay \$9.5 million to the direct-purchaser class and to comply with any injunction under Section One of the Sherman Act that the Court entered against any other defendants in the litigation. Aland also paid the indirect purchasers \$1 million. Several other defendants, including Northeast Pharmaceutical Group Company, Ltd., also settled with one or

more of the certified plaintiff classes.

In March 2013, a jury returned a verdict against certain non-settling defendants, finding that North China Pharmaceutical Group Corp. and Hebei Welcome Pharmaceutical Co. Ltd. unlawfully fixed prices and controlled the supply of vitamin C exports from China to the United States. The jury rejected the companies' defense that their actions were compelled by the Chinese government. The jury awarded the plaintiffs \$54.1 million, which was trebled under the antitrust statute to \$162.3 million.

In re Visa Check/Mastermoney Antitrust Litigation (Judge Gleeson)

Judge Gleeson presided over the *Visa Check/Mastermoney Antitrust Litigation*, which resulted in the largest antitrust settlement in history. Plaintiff merchants brought a class action against Visa, MasterCard and other payment card companies, alleging violations of Sections 1 and 2 of the Sherman Act. Plaintiffs alleged that the defendants used illegal "tying arrangements," *i.e.*, agreements by a party to sell one product only on the condition that the buyer also purchase a different (or tied) product, to force plaintiffs to accept not only defendants' credit cards, but also their debit cards.

Defendants moved for summary judgment on plaintiffs' Sherman Act claims, and the Court denied the motion as to both claims. As to the Section 1 claim, plaintiffs argued that defendants' culpability should be analyzed under the *per se* test, which required plaintiffs to establish that: (1) the tying arrangement affected a substantial amount of interstate commerce; (2) the two products were distinct; (3) defendants actually tied the sale of the two products; and (4) the sellers had appreciable market power in the tying market. In denying summary judgment on the Section 1 claim, the Court found that it was unable to conclude at that stage of the case that the *per se* test applied and that, in any event, plaintiffs failed to satisfy the fourth prong of the *per se* test as a matter of law as it pertained to MasterCard. The Court also denied the motion as to plaintiffs' Section 2 claim, which asserted that "Visa, separately and together with MasterCard, [was] attempting to monopolize and conspiring to monopolize the debit card services market," holding that genuine issues of material fact existed as to whether defendants specifically intended to monopolize the debit card services market and whether there existed a dangerous probability of achieving monopoly power.

By December 2009, the parties reached a \$3 billion settlement that included an award of over \$600 million in attorneys' fees. Judge Gleeson approved the settlement, with the exception of the attorneys' fees, after considering nine relevant factors established by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974). In rejecting the proposed fees award, the Court held that the requested fees were unreasonable in that, *inter alia*, the fees represented 18% of the settlement fund and would result in lead counsel being paid nearly 10 times their hourly rate. Recognizing that the case was litigated for seven years, and involved nearly 400 depositions, 21 experts, 16 summary judgment motions, and a pretrial order

identifying 230,000 pages of exhibits, the Court awarded class counsel approximately \$220 million in fees, which represented about 6.511% of the settlement fund, and reimbursement for more than \$18 million in expenses. Several parties who objected to the settlement appealed Judge Gleeson's decision to the Second Circuit, which affirmed Judge Gleeson's approval of the settlement.

Bankruptcy

***Baranek v. Baranek* (Judge Chen)**

Judge Chen presided over an appeal from a Bankruptcy Court adversary proceeding brought by the ex-husband of the debtor pertaining to the dischargeability of liability potentially arising from a state court lawsuit relating to a home that the couple once shared. The dispute turned on the interpretation of a stipulation to which the parties agreed in connection with their divorce. The stipulation provided that the ex-husband would transfer title to the marital residence to the debtor "in full satisfaction of all claims of equitable distribution." Before the initiation of the bankruptcy proceeding, the ex-husband filed an action in New York State court alleging, *inter alia*, that he had entered into the stipulation under duress and that the Debtor's subsequent transfer of the property to her parents was therefore improper.

In 2011, the debtor filed for bankruptcy, listing the potential liabilities in the state court action brought by the ex-husband as contingent unsecured debts that were subject to discharge in bankruptcy. In response, the ex-husband commenced an adversary proceeding claiming that any debt arising from the state court action was not dischargeable under Sections 523(a)(2) and 548 of the Bankruptcy Code.

The bankruptcy court rejected the ex-husband's claims and ruled that the debt was dischargeable, and Judge Chen affirmed this decision. Judge Chen found that Section 523(a)(2) of the Bankruptcy Code contains two specific exceptions to dischargeability in bankruptcy for "debts traceable to falsity or fraud or to a materially false financial statement," both of which required the creditor to show reliance upon the alleged false statement. Judge Chen held that the ex-husband failed to make such a showing.

Judge Chen also rejected the ex-husband's Section 548 claim on the ground that only the Bankruptcy Trustee or similar court-appointed representative has standing to assert a Section 548 claim to avoid allegedly fraudulent transfers. The Court also decided that neither of the two circumstances that might justify a direct creditor claim under Section 548 existed here because the Trustee did not "unjustifiably" decline to commence an action under Section 548, nor did he "consent" to the ex-husband doing so. Indeed, Judge Chen opined, "it would have been frivolous for the Trustee to do either, since the substance of any such action would have been the same as the Creditor's multiple unsuccessful actions in New York State Supreme Court."

Finally, the Court upheld the Bankruptcy Court's imposition of sanctions. Judge Chen stated that the Bankruptcy Court acted within its discretion to sanction the ex-husband for commencing this "objectively frivolous" action where his only apparent purpose was to "embarrass and saddle the already-bankrupt Debtor with burdensome and unnecessary costs."

Civil Rights

Emergency Contraception Case (Judge Korman)

Judge Korman presided over a suit challenging the United States Food and Drug Administration's ("FDA") denial of a citizen petition seeking over-the-counter access to Plan B and Plan B One-Step, emergency contraceptives that can be taken after intercourse to reduce the risk of pregnancy. The suit was initially brought in January 2005 as a challenge to the FDA's denial of non-prescription access to Plan B for women of all ages. During the pendency of the case, in 2006, the FDA approved non-prescription access to Plan B for women aged 18 and older, but continued to require a prescription for adolescents under the age of 18.

Citing the overwhelming evidence of political pressure underlying the FDA's actions, Judge Korman found in favor of the plaintiffs, vacated the FDA's denial of the citizen petition and remanded the matter for re-decision by the FDA. Judge Korman also directed the FDA to make Plan B available without a prescription to 17-year-old women, finding that the same evidence relied on by the FDA to make Plan B available over-the-counter to women 18 years or older also applied to 17-year-olds.

The FDA did not rule on the remanded citizen petition for almost three years. During this time, the FDA received a supplemental new drug application for Plan B One-Step. While the FDA initially approved this application and allowed for over-the-counter access to women of all ages, Secretary of Health and Human Services Kathleen Sebelius disagreed with the FDA's decision largely because of the purported risks to minors. President Obama endorsed Secretary Sebelius's decision, citing concern that over-the-counter access could adversely affect 10- and 11-year-old girls. As a result, the FDA denied the citizen petition on remand.

Judge Korman reversed the FDA's denial, finding that the FDA's own studies showed that the likelihood of unsafe use and misuse of the emergency contraceptives was much lower than the danger of misuse of other common over-the-counter medications. Judge Korman therefore found that the FDA's decisions were "arbitrary, capricious and unreasonable" and ordered that the FDA make the emergency contraceptives available over-the-counter without point-of-sale or age restrictions.

Mandatory Contraception Coverage Case (Judge Cogan)

Judge Cogan presided over a suit brought by five New York-area Roman Catholic

entities challenging the coverage mandate of the Patient Protection and Affordable Care Act, also known as Obamacare. The coverage mandate requires that group health insurance plans cover preventative medical services that, by regulation, include contraception, sterilization and related counseling. Plaintiffs alleged that the coverage mandate violated their rights to religious liberty because it required them to provide coverage that contravened their sincerely held religious beliefs.

Defendants filed a motion to dismiss the complaint for lack of subject-matter jurisdiction arguing that plaintiffs lacked standing to challenge the coverage mandate. In the alternative, they argued that the case was not ripe for judicial review. The Court granted defendants' motion to dismiss as to two of the plaintiffs, finding that they lacked standing because the complaint failed to establish that the coverage mandate applied to them in that they did not fall within the exception for group health plans that were "grandfathered." As to the other three plaintiffs, defendants argued that the complaint should be dismissed because plaintiffs could not establish an imminent injury because the plans were not presently required to comply with the coverage mandate under a safe harbor provision and regulators filed an advance notice of proposed rulemaking which reflected that they intended to amend the regulation before the expiration of the safe harbor. Disagreeing with other courts that had considered the issue, the Court rejected defendants' argument and found that plaintiffs' "preparatory costs in advance of the effective date of a binding regulation, which an agency acknowledges are necessary, can constitute certainly impending harms." For similar reasons, the Court further denied defendants' assertion that the case was not ripe for judicial review.

United States v. City of New York (Judge Garaufis)

Judge Garaufis presided over an action brought by the United States in 2007 against the City of New York under Title VII of the Civil Rights Act of 1964. The complaint challenged as racially discriminatory the City's practices for hiring entry-level firefighters into the Fire Department of the City of New York ("FDNY"), asserting that the City's pass/fail and rank-order uses of written examinations to hire such firefighters had an unlawful disparate impact on black and Hispanic applicants.

Judge Garaufis granted summary judgment on the United States' disparate impact claim against the City and granted the government's request for injunctive relief. In so doing, Judge Garaufis stated that this suit was only the most recent effort "in what amounts to a nearly forty-year struggle to integrate the [FDNY]." Calling the continuance of this discrimination a "shameful blight" that persisted through six mayors, the Court found that the City's pattern of discrimination against black firefighter applicants caused "the disproportionate underrepresentation of blacks in the FDNY, and that the underrepresentation of blacks . . . is a vestige of that discrimination."

The Court therefore issued a remedial order that compelled the City to make Court-

guided institutional reform. The order did not merely require the City to adopt specific changes or practices because the Court found that “nearly forty years of discrimination will not be cured by a few simple tweaks to the City’s policies.” The order, *inter alia*, (1) enjoined the City from continuing to use unlawful hiring practices and directed it to take steps to end the hiring policies and practices that perpetuated the effects of the City’s discrimination against black firefighter candidates; (2) created a process for an independent review of the City’s firefighter recruitment efforts and required the City to set measurable goals; and (3) required the City to implement a written plan to mitigate high rates of voluntary candidate attrition.

On appeal, the Second Circuit upheld the Court’s disparate impact judgment against the City. Although the court modified the remedial scheme ordered by Judge Garaufis, it “le[ft] in place the many provisions that [Judge Garaufis] has wisely required in order not only to remedy the disparate impact of the challenged exams but also to put the FDNY on a course toward future compliance with Title VII.”

***Henrietta D v. Giuliani* (Judge Johnson and Magistrate Judge Pollak)**

Plaintiffs, indigent New York City residents who suffer from AIDS or HIV-related illnesses, commenced this class action against then-Mayor Rudolph Giuliani, the City of New York, and several other state and municipal defendants. The action claimed that the Division of AIDS Services and Income Support (“DASIS”)—the City agency charged with assisting persons with AIDS or HIV-related illnesses in obtaining public assistance benefits and services—failed to provide plaintiffs with meaningful and equal access to public benefits and services as required by state and federal law. Plaintiffs brought claims under the Americans with Disabilities Act (“ADA”), the Medicaid Act, Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”) and various other state and federal laws.

The Court conducted a bench trial and found that the accommodations sought by plaintiffs were necessary for the State and City to comply with both the ADA and the Rehabilitation Act. As Judge Johnson found, it is not sufficient “to open the door for the handicapped. . . . [A] ramp must be built so that the door can be reached.” Judge Johnson stated, however, that “the ramp that DASIS purports to be is broken, *i.e.*, that defendants are failing to make the reasonable accommodations necessary to ensure plaintiffs meaningful access to, and an equal opportunity to benefit from, the social welfare benefits and services that defendants provide to eligible New York City residents.” Judge Johnson held that “[t]he evidence presented demonstrated an alarming failure to provide plaintiffs with the intensive case management and assistance that DASIS was intended to provide. In the unsatisfactory performance of these services, DASIS cannot ensure plaintiffs meaningful access to their subsistence benefits.” Accordingly, the Court granted the declaratory judgment and permanent injunction sought by the plaintiff class.

Judge Johnson thereafter appointed Magistrate Judge Pollak to monitor compliance with

the Court's order. Although the ordered monitoring period was initially set at three years, Judge Pollak ultimately supervised the City's and State's compliance with its obligations to indigent New Yorkers with AIDS or HIV from 2000 through 2011. Among other things, Judge Pollak issued a Report and Recommendation that fashioned a procedure for remedying the violations found by the Court, which Judge Johnson adopted in its entirety. Judge Pollak also ruled in 2011 that she would not allow the Bloomberg administration to make a massive staff cut to the City's HIV/AIDS Services Administration.

***Candelaria v. Spurlock* (Judge Cogan)**

Judge Cogan presided over a civil rights action arising from plaintiff's appearance for three or four seconds in the defendant's documentary film "Supersize Me." The movie followed defendant, the writer, director, producer and star of the movie, for 30 days during which he ate only food purchased from McDonald's restaurants throughout the country. In the clip at issue, plaintiff's image appeared in a scene discussing the nutritional content of McDonald's food and the availability of this information to the public. Plaintiff did not speak during the clip. Plaintiff asserted that defendant unlawfully used her image in violation of Section 51 of the New York Civil Rights Law.

The Court held that plaintiff failed to establish one of the elements of a Section 51 claim, namely, that the use of her image was "for advertising purposes or for the purposes of a trade." The Court noted that there is a "newsworthiness exception" to this prong that broadly applies where a person's image is used to depict "newsworthy events or matters of public interest." The Court found that the movie fell within the newsworthiness exception because it "aim[ed] to educate and address in detail the obesity epidemic and related health risks associated with eating fast-food." The Court rejected plaintiff's contention that this exception did not apply because the movie's portrayal of these health risks was unscientific, finding that the movie did not need to be scientific to fall within the exception.

The Court also held that plaintiff's claim fell within a court-established exception to Section 51 for "fleeting and incidental" uses of a person's image. The Court found that plaintiff's three or four second on-screen appearance fell within this exception. The Court also rejected plaintiff's assertion that this exception did not apply because she was filmed with a hidden camera, holding that this exception applied even where a person was unaware that she was being filmed.

***New York State Association for Retarded Children, Inc. v. Carey* (Judges Bartels and Judd)**

The Willowbrook State Development Center was a complex in Staten Island, housing children and adults with developmental disabilities. The residents at Willowbrook were living in inhumane conditions due to overcrowding and the fact that the Willowbrook facility was understaffed and underfunded. In 1965, Senator Robert Kennedy made an unannounced visit to

Willowbrook and found thousands of residents living in filth. In response to the Senator's visit, the State of New York developed a five-year plan for improving the conditions at Willowbrook. This five-year plan, however, did not significantly improve the conditions for the residents.

In 1972, Willowbrook was thrust into the national spotlight when ABC News investigative reporter Geraldo Rivera exposed the institution's serious overcrowding, dehumanizing practices and abuse of residents in a television film entitled "Willowbrook: The Last Disgrace." Following the airing of this film, the parents of Willowbrook residents filed a class action against the Governor of New York and other state officials with responsibilities for the care of the developmentally disabled, alleging that the conditions at Willowbrook violated the constitutional rights of residents and requesting injunctive relief. After several years of litigation, the parties negotiated a settlement that resulted in the entry of a Consent Decree signed by Judge Judd in April 1975, which included a 29-page appendix of "Steps, Standards, and Procedures" for improving the conditions at Willowbrook.

The Court retained jurisdiction over the case, which was reassigned to Judge Bartels. From approximately 1976 to 1992, Judge Bartels oversaw the State of New York's compliance with the Consent Decree, held numerous hearings and issued many decisions. Through these decisions, the population of Willowbrook was significantly reduced through the transfer of many of its residents to smaller community facilities.

Zimmerman v. Poly Prep Country Day School (Judge Block and Magistrate Judge Pollak)

Judge Block presided over a suit and resulting settlement of claims brought against Poly Prep Country Day School ("Poly Prep"), its Board of Trustees, and current and former administrators by ten former Poly Prep students and two former attendees of the school's summer camp. Plaintiffs alleged that they were molested by a football coach employed at Poly Prep from 1966 to 1991, who was deceased at the time of the case, and brought claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), Title IX of the Education Amendments of 1972 and New York State law. The claims "focus[ed] on the defendants' alleged knowledge of the coach's predatory behavior [over a span of two decades], their failure to take corrective action, and their attempts to conceal both the coach's conduct and their knowledge of it."

Judge Block dismissed the civil RICO claims against Poly Prep itself on the ground that plaintiffs impermissibly alleged that Poly Prep was both a RICO "person" and a RICO "enterprise." Judge Block also held that several plaintiffs lacked standing to sue under civil RICO because their purported economic injuries were inextricably tied to their state law personal injury claims. Judge Block refused to dismiss the RICO claims against several Poly Prep administrators and board members, finding that they constituted a RICO enterprise that was distinct from the alleged RICO persons.

Judge Block also rejected defendants' contentions that plaintiffs' Title IX claims must be dismissed because (i) they were based on a construction of relevant law that post-dated the challenged period of conduct and (ii) they were otherwise time-barred. In so doing, Judge Block held that the Civil Rights Restoration Act of 1988 applied retroactively to conduct predating its enactment because there was "clear congressional intent" favoring retroactive application.

In addition, Judge Block held that New York's three-year statute of limitations for negligence, which normally requires plaintiffs to bring child sex abuse claims before their 21st birthdays, did not necessarily bar the plaintiffs' negligence claims as a matter of law. Judge Block ruled that defendants may be equitably estopped from asserting their statute of limitations defense if their "deceitful conduct" could "plausibly have led [the plaintiffs] to falsely believe that Poly Prep was unaware of [the coach's] misconduct and could not be liable for negligent retention or supervision." Thus, the negligence claims brought by all but one of the plaintiffs survived dismissal pending a subsequent determination as to whether the defendants engaged in an affirmative course of deceitful conduct upon which the plaintiffs reasonably relied such that it prevented the plaintiffs from filing suit before the expiration of the relevant limitations period. However, before that question was decided, the parties agreed to mediation before Judge Pollak and eventually settled the case in December 2012.

***Turkmen v. Ashcroft* (Judge Gleeson and Magistrate Judge Gold)**

Judge Gleeson presided over claims brought by eight non-United States citizen plaintiffs who were arrested by federal authorities in connection with the investigation of the terrorist attacks of September 11, 2001. Plaintiffs, most of whom were Muslims, were held in immigration custody for periods ranging from three to eight months after receiving final orders of removal or grants of voluntary departure. Plaintiffs alleged that they were subjected to a harsh confinement policy, which included physical abuse, food and sleep deprivation, and unlawful strip searches, in order to pressure them to cooperate with the anti-terrorism investigation. Plaintiffs brought suit on behalf of a purported class against federal detention center officials and several high-level governmental officials, including the United States Attorney General and the Director of the FBI, alleging discriminatory and punitive detention in violation of 42 U.S.C. § 1985 and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

Judge Gleeson denied the detention center defendants' motion to dismiss the substantive due process claims premised on the harsh conditions of confinement. In so doing, Judge Gleeson rejected their qualified immunity defense, opining that reasonable officials would have been aware that their behavior violated clearly established law. Judge Gleeson also declined to dismiss plaintiffs' equal protection claims against the detention center defendants for allegedly "implementing a policy expressly singling out Arabs and Muslims for harsh conditions of confinement." Judge Gleeson, however, dismissed both the due process and equal protection claims against Attorney General John Ashcroft, FBI Director Robert Mueller and Commissioner

of the Immigration and Naturalization Service James Ziglar, concluding that the Complaint failed to allege facts sufficient to raise a reasonable inference that these officials created the alleged harsh confinement policy.

In addition, Judge Gleeson dismissed plaintiffs' claims based on the alleged communications blackout and interference with counsel in their entirety on the ground of qualified immunity. He reasoned that:

Assuming *arguendo* that plaintiffs had a right to make phone calls and to be in contact with persons outside the detention facility, and that the right was violated, officers of reasonable competence could nonetheless have disagreed about whether their conduct violated that right in light of national security concerns in the aftermath of the 9/11 attacks. Considering the context and the lack of clear case law from the Supreme Court and the Second Circuit, reasonable officers could believe that such a policy—though crude and overbroad—was permissible.

***Louima v. City of New York* (Judge Johnson and Magistrate Judge Pollak)**

Judge Johnson handled a lengthy satellite litigation arising out of the Abner Louima criminal case, which is discussed *infra*. Louima filed a civil action alleging violations of 42 U.S.C. § 1983 in connection with police brutality directed at him in 1997. The case settled, resulting in an award to Louima and his wife of \$8.75 million.

Following this settlement, a dispute arose between the Louimas and their previous attorneys in this case, Carl Thomas and Brian Figeroux of Thomas, Figeroux (“T&F”), over the amount of attorneys’ fees due to T&F as a result of the settlement. T&F withdrew from the case in 1998, approximately three years before the settlement.

Judge Johnson referred this dispute to Magistrate Judge Pollak. In a report and recommendation that exceeded 100 pages, Judge Pollak found that T&F performed some work before its withdrawal, including participating in press and television appearances on the Louimas’ behalf, retaining investigators, and communicating with the U.S. Attorney’s Office. Judge Pollak, however, found that T&F voluntarily withdrew from the case after violating the Louimas’ instructions to cease speaking to the press without first obtaining their authorization. Judge Pollak rejected T&F’s contention that it was fired, as well as its alternative argument that it was forced off the case when another law firm alienated it from the Louimas. Although Judge Pollak acknowledged that T&F’s working relationship with the Louimas had broken down, she attributed the poor relationship, in large part, to T&F’s behavior. In particular, Judge Pollak held that “there are numerous instances in which either Thomas or Figeroux is quoted relating information about the case that constitutes client secrets. These disclosures were not authorized by Louima.”

Based on these findings, Judge Pollak recommended that T&F be denied any share of the

attorneys' fees because they voluntarily withdrew from further representation of the Louimas without good cause. Judge Pollak also recommended that, in the alternative, if the Court found that T&F should receive attorneys' fees, the fees should be reduced due to the disclosure of client confidences and secrets in violation of disciplinary rules. Judge Pollak calculated this reduced amount at \$156,800.

Judge Johnson adopted Judge Pollak's recommendation in part. Judge Johnson agreed with the finding that T&F withdrew from the case without cause. Judge Johnson concluded, however, that T&F was nevertheless entitled to some attorneys' fees for its work in the early stages of the litigation. Judge Johnson adopted Judge Pollak's alternative finding that the fee award should be discounted based on the T&F's misconduct and her calculation of that discounted fee award at \$156,800.

***Rockefeller v. Powers* (Judge Korman)**

Judge Korman presided over a case challenging New York's ballot access rules for the selection of delegates to the Republican National Convention in connection with the 1996 primary election. The case was brought by Republican primary voters against the New York State and City Boards of Elections and other entities and individuals. Under the ballot access rules, delegate candidates were required to collect signatures from the lesser of 5% of or 1,250 enrolled Republicans in the delegates' Congressional district. Plaintiffs asserted that these rules discriminated against voters in districts with relatively few Republicans because they effectively precluded some Republican candidates for President from getting on the ballot in those districts. Plaintiffs argued that the New York ballot access rules therefore constituted an undue burden on the right to vote in violation of the First and Fourteenth Amendments to the Constitution.

Judge Korman held that the ballot access rules contained a number of unjustified hurdles that had a chilling effect on the ability of candidates to compete in the Republican primary. Judge Korman further found that, based on these rules "only the most atypical of candidates, ones with unlimited financial resources" had a chance of getting on the ballot without the support of party leaders. Judge Korman therefore agreed with plaintiffs and ordered that all candidates for the Republican Presidential Nomination be placed on the Republican Primary ballot statewide.

***Molinari v. Powers* (Judge Korman)**

Judge Korman presided over a case challenging New York's ballot access rules for the selection of delegates to the Republican National Convention in connection with the 2000 primary election. Plaintiffs were Republican primary voters who asserted that New York State election laws imposed an undue burden on their access to the ballot. Defendants ultimately entered into a stipulation with plaintiffs in which the parties agreed that the ballot access rules were unconstitutional.

Judge Korman accepted the stipulation and issued injunctive relief directing that full delegate slates, and alternative delegate slates, pledged to all Republican candidates be placed on the Republican primary ballot in each congressional district in the State of New York. In so doing, Judge Korman observed that “the New York ballot access scheme . . . poses an undue burden in its totality on the right to vote under the First Amendment.” Judge Korman further found two individual but related elements of the ballot access scheme to be unconstitutional—specifically, the statutory provisions requiring that (1) each witness to a designating petition reside in the same congressional district as the delegate candidates for whom he/she is witnessing signatures; and (2) each witness list the town in which they live on the designating petition. In commenting on Judge Korman’s decision, the New York Times wrote that *Molinari* “gave Republicans in the state something Republicans take for granted elsewhere . . . the opportunity to choose a full slate of candidates.”

Favors v. Cuomo (Judges Irizarry, Lynch and Raggi and Magistrate Judge Mann)

In February 2012, a three-judge panel comprised of Circuit Judges Raggi and Lynch and District Judge Irizarry was convened to preside over a voting rights case in which plaintiffs alleged that New York State leaders’ failure to redraw New York’s federal congressional districts consistent with the results of the 2010 census deprived them of rights guaranteed by the federal and state constitutions.

The Court noted that similar complaints had previously been filed based on the results of prior censuses. Whereas these past complaints spurred the New York legislature to produce its own plan in time to avoid judicial action, the New York legislature failed to do so in response to this complaint. The three-judge panel therefore declared New York to be without a congressional redistricting plan that complied with federal law.

The Court referred the task of devising a recommended plan for redrawing New York’s congressional districts to Magistrate Judge Mann with instructions to issue a report and recommendation in two weeks. “Exerting efforts that have been aptly characterized as ‘Herculean,’” Judge Mann filed a detailed report within the time frame set by the Court. The Court stated:

The Report is remarkable in several respects. First, and most obviously, it provides this court in two weeks’ time with what defendants have been unable—or unwilling—to provide New York State voters in more than a year: a redistricting plan for the state’s congressional districts. In doing so, the Report cogently sets forth controlling principles of law, the challenging choices implicated in any redistricting assignment, and the magistrate judge’s reasons for making the choices reflected in the Recommended Plan. Second, the Report discusses the commendable process employed by the magistrate judge to develop the Recommended Plan, which afforded the parties and interested members of the public frequent opportunities to be heard. Third, the Report recommends a

redistricting plan that is exemplary in satisfying each and every standard set forth in this court's referral order.

The Court reviewed Judge Mann's recommended plan *de novo* and adopted it with only "minor and uncontroversial adjustments."

Del Col and Doukas v. Rice et al. (Judge Brodie)

Judge Brodie presided over a civil rights case premised on allegations that plaintiffs were arrested as part of a "pay to prosecute" conspiracy. In connection with a pending patent litigation between plaintiffs and the Data Treasury Corporation ("DTC"), plaintiffs alleged that DTC and its attorneys conspired with the members of the Nassau County District Attorney's Office to maliciously prosecute plaintiffs to help DTC prevail in that patent litigation. Plaintiffs' claims included unlawful search and seizure, abuse of process, conspiracy to obstruct justice, malicious prosecution and false arrest and imprisonment.

According to the Complaint, DTC and associated individuals gave \$150,000 to defendant Kathleen Rice, the Nassau District Attorney, in her campaign for office. Plaintiffs alleged that following this donation, Rice appointed defendant Guido Gabriele III, a former Assistant District Attorney, as a Special Assistant District Attorney to prosecute plaintiffs. Plaintiffs further alleged that Gabriele presented false evidence to a state grand jury, which returned an indictment against them for grand larceny in the second degree based on the alleged extortion of DTC. This indictment was subsequently dismissed on the ground that District Attorney Rice had no authority to appoint Gabriele as a Special Assistant District Attorney.

Defendants moved to dismiss all counts of the complaint. Judge Brodie dismissed the false arrest and malicious prosecution claims as to all defendants because they were barred by the one-year statute of limitations. Judge Brodie dismissed the malicious prosecution claim against District Attorney Rice, Gabriele and the other defendants who were members of her office on the ground that they were absolutely immune from suit as to claims related to their prosecutorial function. Judge Brodie, however, denied the motion to dismiss plaintiffs' other claims against these defendants because a prosecutor's actions prior to a decision to indict are only given qualified immunity. Judge Brodie held that a decision on whether qualified immunity applied should be reserved for summary judgment or trial. Judge Brodie also denied the motions to dismiss of DTC and its attorneys because plaintiffs had satisfied their pleading burden of alleging facts that demonstrated that these defendants engaged in joint action with the state.

As of December 31, 2014, discovery was stayed so that the parties could engage in settlement discussions.

Class Action Litigation

Shady Grove Orthopedic Associations v. Allstate Insurance Company (Judge Gershon)

New York Civil Practice Law & Rule 901(b) provides that an action to recover a statutory penalty “may not be maintained as a class action” unless the relevant statute specifies otherwise. In *Shady Grove*, Judge Gershon held that this provision applies to actions heard by the federal courts pursuant to their diversity jurisdiction. This case was ultimately decided by the Supreme Court in a splintered decision in which the justices advanced differing interpretations of the modern scope of the rule of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

Plaintiffs brought a class action against a no-fault insurance company, seeking the payment of penalties provided for under New York Insurance Law. Defendant moved to dismiss, invoking the plain language of Rule 901(b). In response, plaintiffs contended that, as a procedural rule, Rule 901(b) was inapplicable to federal courts under *Erie*, and that their ability to bring a class action should be governed exclusively by Federal Rule of Civil Procedure 23. Judge Gershon agreed with the defendant and dismissed the case, holding that “[i]t would be patently unfair to allow a plaintiff an attempt at recovery in federal court for a state law claim that would be barred in state court.”

The Second Circuit affirmed, holding that there was no conflict between Rule 901(b), which it described as a substantive rule governing “which substantive causes of action may be brought as class actions or which remedies may be sought by class action plaintiffs,” and Rule 23, which it described as a procedural rule applicable to any type of class action. The Court also noted that a contrary holding would lead to forum-shopping, as certain state law claims could be pursued as class actions only in federal courts.

The Supreme Court reversed in a 5-4 decision. In the majority opinion authored by Justice Scalia and joined by Chief Justice Roberts and Justices Stevens, Thomas, and Sotomayor, the Court held that Rule 23 and Rule 901(b) do in fact conflict, since the latter precludes the maintenance of class actions even in situations where the former requires certification. Given this conflict, the Court held that the federal rule would govern unless it was not authorized by the Rules Enabling Act. The majority agreed that Rule 23 was authorized by that Act (and that Rule 901(b) therefore was preempted), but split as to the reasons why. Justices Scalia, Roberts, Thomas, and Sotomayor asserted that the rule was authorized simply because it was procedural rather than substantive, while Justice Stevens (whose narrower opinion will presumably be controlling) contended that the rule was authorized only because it did not “abridge, enlarge, or modify” substantive state law rights or remedies. In dissent, Justice Ginsburg, joined by Justices Kennedy, Breyer, and Alito, adopted the Second Circuit’s holding that the two rules do not conflict because they address different issues.

In re Holocaust Victim Assets Litigation (Judges Block and Korman and Magistrate Judge Orenstein)

For more than a decade, Judge Korman has presided over the distribution of \$1.25 billion paid by Swiss financial institutions to settle class actions brought by victims of the Holocaust. The case has presented what the Second Circuit has described as “the monumental challenge of allocating limited funds among the victims of a limitless atrocity.” Judge Korman has written more than 30 opinions in the case; Judge Block and Magistrate Judge Orenstein have added three more; and the Second Circuit has issued seven decisions.

In 1996 and 1997, Holocaust victims filed several class actions against Swiss banks. Plaintiffs alleged that the defendants and other Swiss institutions had knowingly retained and concealed victims’ assets, “transact[ed] in the profits of slave labor,” and “collaborated with and aided the Nazi regime.” The cases were consolidated before Judge Korman in 1997. While motions to dismiss were pending, the defendants agreed to pay \$1.25 billion, in exchange for the class’s release of a wide range of claims related to the Holocaust and World War II. Judge Korman approved the settlement in July 2000, and subsequently adopted a distribution plan developed by a Special Master.

Approval of the settlement did not put an end to the controversy. Judge Korman’s decision to allocate funds to Holocaust victims in the former Soviet Union—at the expense of victims in the United States, Israel, and Europe—was challenged on appeal. Ultimately, the Second Circuit upheld the decision, praising Judge Korman for his “thoughtful analysis” and “scrupulous fairness.” Advocacy groups also asked that funds be set aside for their use, and the settling banks continued to object to elements of the process, raising privacy concerns and denying that they had destroyed documents.

Judge Korman also adjudicated several fee requests made by attorneys for plaintiff class. In a particularly heated fee dispute, from which Judge Korman recused himself, Judge Block adopted Magistrate Judge Orenstein’s report recommending the award of fees to an attorney who had assisted the Court and the parties as lead settlement counsel. Even after taking senior status, Judge Korman has continued to devote his time to the case. Most recently, he has continued to hear appeals from the Claims Resolution Tribunal set up to distribute proceeds.

Bodner v. Banque Paribas, et al. (Judge Johnson and Magistrate Judge Go)

Judge Johnson presided over two substantially identical class actions brought by Holocaust victims against a number of banks that operated in France during World War II, as well as their predecessors or successors. The putative classes consisted of Jewish victims and survivors of the Nazi Holocaust in France, and their family members, whose assets were deposited in or converted by defendant banks during or after the Holocaust and not returned. Plaintiffs specifically alleged that the defendants aided and abetted and conspired with the Vichy

and Nazi regimes to plunder plaintiffs' private property.

Defendants filed motions to dismiss on jurisdictional and other grounds. Defendants asserted that plaintiffs lacked standing, that there was no federal question subject-matter jurisdiction or diversity jurisdiction, that the Eastern District should defer to proceedings in France in the interest of international comity, and for failure to join indispensable parties.

Judge Johnson denied the motions to dismiss in their entirety. The Court concluded that plaintiffs had standing because plaintiffs alleged that each defendant, or its predecessor or successor, participated in the purported misconduct and generally identified defendants' role in the alleged conspiracy. The Court also rejected defendants' assertion that it should decline to exercise jurisdiction on the basis of international comity because there was no pending litigation in France to specifically address plaintiffs' claims. In addition, the Court rejected defendants' argument that it should decline jurisdiction based on the Act of State doctrine, "which essentially provides that U.S. courts will not sit in judgment of acts of a foreign state within its own territory." The Court concluded that it was not being asked to pass judgment on any acts of a foreign state, and noted that "[t]he wholesale rejection of the Vichy government at the close of World War II render[s] the Act of State doctrine wholly inapplicable to this case." The Court also denied defendants' motion to dismiss based on failure to state a claim, finding that plaintiffs "have stated a cognizable claim under international law for the confiscation and plunder of private property, for aiding and abetting genocide, and for conspiracy to plunder and transact in plundered property, all violations of international law."

***Lujan v. Cabana Management, Inc.*, (Magistrate Judge Mann)**

Magistrate Judge Mann ruled on the standard for admissibility of evidence submitted in support of class certification in connection with motions to decertify a Fair Labor Standards Act collective action and for class certification of state law claims. The parties filed various motions to strike documents and other evidence submitted in support of the motions for certification and decertification. One motion sought to strike declarations on the ground that they were not based on personal knowledge and included inadmissible hearsay.

In ruling on this motion, the Court observed that "[o]utside the Second Circuit, courts are split as to how stringently to apply the rules of evidence at the class certification stage." After analyzing Second Circuit case law, Judge Mann stated that "this Court is of the opinion that the Second Circuit would require that such declarations be admissible (i.e., based on personal knowledge and either non-hearsay or information subject to hearsay exceptions)." The Court further found that recent Supreme Court dictum also suggested that evidence offered in support of a class certification motion must be admissible. The Court therefore held that it would not consider declarations that were not based on personal knowledge or contained inadmissible hearsay in determining whether the standards for class certification under Federal Rule of Civil Procedure 23 had been satisfied.

Goodman v. Genworth Financial Wealth Management (Judge Bianco)

Judge Bianco presided over a putative securities fraud class action filed by investors in portfolios managed by Genworth Financial Wealth Management, Inc. (“Genworth”). Plaintiffs alleged that they lost millions of dollars because defendants misrepresented the role that Robert Brinker—host of the popular radio talk show “Moneytalk”—would play in the fund’s asset allocation and investment choices.

Judge Bianco denied plaintiffs’ motion for class certification, holding that plaintiffs failed to prove by a preponderance of the evidence that common questions of law or fact predominated. The Court concluded that plaintiffs failed to demonstrate that “the reliance element of their securities fraud claim is susceptible to a common method of proof for all class members” because plaintiffs were not entitled to either of the two well-established presumptions of reliance—“fraud-on-the market” and *Affiliated Ute*. The Court held that the fraud-on-the market presumption established in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), did not apply because plaintiffs did not identify an efficient market or market price for the securities at issue. The Court also rejected plaintiffs’ assertion that they were entitled to the presumption established in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), which applies in cases primarily concerning a failure to disclose, because “the crux of plaintiffs’ claims is that defendants misrepresented Brinker’s role in selecting mutual funds and allocating assets” for the portfolios.

In addition, the Court rejected plaintiffs’ contention that they could prove classwide reliance circumstantially, even if a presumption of reliance did not apply, by establishing that the misrepresentations were uniform and material. The Court stated:

[H]aving abandoned any claim to the *Basic* presumption, and having unsuccessfully invoked *Affiliated Ute*, plaintiffs are not entitled to prove classwide reliance simply by showing that the representations and omissions at issue were uniform and material. If they could, it would be pointless in any case to consider whether *Basic* or *Affiliated Ute* apply. Such an approach would collapse the reliance element into the materiality element in all securities fraud cases. The *de facto* abolition of reliance as a separate element of securities fraud in all cases, even if only for purposes of Rule 23(b)(3)’s predominance requirement, is an unacceptable consequence of plaintiffs’ argument.

In re Simon II Litigation (Judge Weinstein)

Judge Weinstein presided over a putative nationwide class action on behalf of millions of smokers against various tobacco companies for fraudulent denial and concealment of the health risks posed by cigarettes. In a decision later reversed by the Second Circuit, Judge Weinstein certified a nationwide non-opt-out class for the punitive damages claims of millions of smokers diagnosed with smoking-related diseases. Pursuant to this ruling, the punitive damages claims of

smokers who brought claims around the country would be transferred to Judge Weinstein for resolution, but these plaintiffs would continue to pursue all other portions of their cases in the jurisdictions in which they filed suit. Judge Weinstein certified this class under Rule 23(b)(1)(B) as a limited fund class pursuant to a “limited punishment” theory.

In deciding to certify a limited fund class, Judge Weinstein decided a number of significant subsidiary issues, holding that: (1) the putative class action was not preempted by the Federal Cigarette Labeling and Advertising Act; (2) the consumers’ proposed use of statistical evidence to establish causation did not violate the cigarette manufacturers’ due process rights or their right to jury trial and did not violate the *Erie* doctrine; and (3) New York law applied to the consumers’ claims. Judge Weinstein held that the proposed class satisfied Rule 23’s requirements for a limited fund class action, including numerosity, commonality, typicality, and adequacy of representation.

The Second Circuit vacated the class certification decision, opining that “there is no evidence by which the district court could ascertain the limits of either the fund or the aggregate value of punitive claims against it, such that the postulated fund could be deemed inadequate to pay all legitimate claims.” The Second Circuit also stated that “the order fails to ensure that a potential punitive award in this action would bear a sufficient nexus, and be both reasonable and proportionate, to the harm or potential harm to the plaintiff class and to the general damages to be recovered.”

Commercial Law

***Berman v. City of New York* (Judge Vitaliano)**

Judge Vitaliano presided over a suit brought by law firms and other organizations engaged in the business of consumer debt recovery against New York City and City officials alleging that New York City Local Law 15—a 2009 amendment to the City’s debt collection ordinance—violated New York State law and the United States Constitution. Local Law 15 expanded the City’s debt collection licensing rules to require debt buyers and attorneys regularly engaged in activities performed by debt collectors to obtain a Department of Consumer Affairs (“DCA”) license.

Plaintiffs asserted that Local Law 15 was preempted by New York State law both because the New York legislature intended to preempt the entire field of debt collection and because the law conflicted with New York’s statutes addressing consumer debt collection and the regulation of attorney conduct. The Court rejected plaintiffs’ field preemption argument, finding that New York’s debt regulatory scheme did not reflect any intent by New York State to preempt the entire field of consumer debt collection. The Court also concluded that there was no conflict between Local Law 15 and the New York State debt collection regulations. The Court,

however, agreed with plaintiffs that the portion of Local Law 15 applying to attorneys was in direct conflict with the provision of the New York Judiciary Law establishing judicial governance over the conduct of attorneys. The Court stated that:

Under Local Law 15, no attorney or law firm may regularly represent creditors seeking to recover on consumer debts without first obtaining a DCA license and, having obtained a license, complying with the DCA licensing requirements. But it is simply not within the DCA's power to license attorneys or regulate their professional conduct. . . . Rather, when an attorney contacts a debtor on behalf of a client, she acts as an officer of the court and is subject to the supervision and control of the New York judiciary. With respect to attorneys authorized by state law to practice in the courts of New York, the DCA can have no role as gatekeeper.

Plaintiffs also asserted that Local Law 15 violated the Commerce Clause of the United States Constitution to the extent it applied to out-of-state debt buyers that did not engage in any in-state collection activity. The Court held that the dormant Commerce Clause prevented the application of Local Law 15 to debt buyers who entered into out-of-state contracts with third-party debt collectors and law firms to collect on debts owed by New York City consumers. The Court, however, denied summary judgment on this issue to both plaintiffs and defendants, finding that neither side had provided sufficient evidence concerning whether the contracts at issue were, in fact, formed out of state.

Paulsen ex rel. N.L.R.B. v. All American School Bus Corporation (Judge Matsumoto)

Judge Matsumoto presided over an action brought by the National Labor Relations Board (“NLRB”) on behalf of employees of multiple New York City bus companies that contracted with the New York City Board of Education (“BOE”) for scholastic public transportation services. The NLRB sought a preliminary injunction pursuant to Section 10(j) of the National Labor Relations Act (“NLRA”) against 28 bus companies flowing from their failed negotiations with the Local 1181-1061, Amalgamated Transit Union, AFL-CIO (“Local 1181”) over a new collective bargaining agreement. The NLRB claimed, *inter alia*, that the bus companies prematurely declared an impasse on a “single critical issue,” and thus improperly and unilaterally imposed a “best and final offer” that included sharp decreases in wages, a moratorium on welfare contributions, an elimination of longevity pay, and other decreases in the benefits of its drivers and escorts.

Upon review of the record, and giving deference to the findings of the NLRB, Judge Matsumoto concluded that: (1) there was reasonable cause to believe that the bus companies engaged in unfair labor practices and (2) injunctive relief was just and proper. Judge Matsumoto concentrated on whether the negotiations surrounding the inclusion or exclusion of a most-favored-nations clause had caused a bona fide impasse on a critical issue. The Court found that the NLRB had reasonable cause to believe that the companies did not bargain in good faith,

thereby violating Sections 8(a)(1) and 8(a)(5) of the NLRA. According to Judge Matsumoto, the parties' bargaining history demonstrated that the companies and Local 1181 had not come to an overall impasse, but that negotiations had in fact been fruitful before the companies unilaterally declared an impasse. Moreover, she held that injunctive relief was proper in large part because allowing the companies to continue to implement their best and final offer would irreparably harm their employees' ability to exercise their collective bargaining rights as it would unduly tilt the bargaining power in the companies' favor. The companies were ordered to rescind their best and final offer—thus restoring the status quo—and recommence good faith negotiations with Local 1181.

The Court also rejected bus companies' contention that the NLRB lacked the legal authority to file the action because President Obama's appointments to the NLRB were invalid because they occurred during an intra-session recess of the Senate. Judge Matsumoto found that the validity of the appointments did not have any significant effect on whether the general counsel held the legal authority to bring an action because the NLRB delegated authority to its general counsel before the appointments.

In re Frito-Lay North America, Inc. All Natural Litigation (Judge Mauskopf)

Judge Mauskopf presided over multi-district litigation involving a putative class action alleging, *inter alia*, that Frito-Lay North America Inc. ("Frito-Lay") deceptively labeled and marketed as "All Natural" various products that allegedly contained unnatural, genetically-modified organisms. Frito-Lay moved to dismiss the complaint on various grounds. While Judge Mauskopf dismissed several of plaintiffs' claims, the Court denied Frito-Lay's assertion that the complaint should be dismissed in its entirety.

Specifically, Frito-Lay asserted that the entire action should be dismissed or stayed pursuant to the primary jurisdiction doctrine, which applies when enforcement of a claim would require the resolution of issues that an applicable regulatory scheme has placed within the special competence of an administrative body. Frito-Lay asserted that the Court should defer to the FDA for a determination of whether foods containing bioengineered ingredients may be labeled as "natural." Although Frito-Lay pointed out that several other courts had agreed to stay cases involving food-labeling claims, the Court rejected Frito-Lay's argument, indicating that it was rejecting the reasoning in those cases. First, the Court held that the primary jurisdiction doctrine did not apply because the issue at stake was legal in nature and fell within the realm of judicial competence. Second, the Court found that deference to the FDA was unwarranted because the FDA was unlikely to respond in a timely manner to any referral from this Court, concluding that the agency "would need far more than six months to define the term 'natural,' or pass on whether foods containing bioengineered ingredients may be labeled as 'natural.'"

Frito-Lay also asserted that named plaintiffs did not have standing to bring claims related to the "All Natural" labeling of eight products that none of them purchased. After concluding

that each named plaintiff had Article III standing because they each purchased at least one Frito-Lay product, the Court held that whether named plaintiffs could represent putative class members who purchased Frito-Lay products that none of the named plaintiffs purchased presented an issue of “class standing” that should be resolved in connection with the class certification motion.

Finally, the Court rejected Frito-Lay’s assertion that no reasonable consumer would view “All Natural” as a representation that its products did not contain bioengineered ingredients, finding that this assertion presented a fact question that could not be resolved on a motion to dismiss.

***Cityspec, Inc. v. Smith* (Judge Wexler)**

Judge Wexler presided over a case brought by a boiler-inspection company and one of its employees challenging the constitutionality of the New York State statute regulating the inspection of boilers. This statute generally authorized only state employees and insurance companies to conduct boiler inspections, except in “cities.” The statute expressly empowered cities to enact local laws regulating the inspection of boilers within their jurisdictions. Under this provision, New York City and other cities in the State received variances from the State allowing licensed boiler installers who were neither state employees nor insurance companies to inspect boilers within their jurisdictions.

Plaintiff Cityspec, Inc. (“Cityspec”) inspected boilers in New York City, Yonkers and Great Neck pursuant to variances granted by the State. Cityspec subsequently applied to the State for variances allowing it to inspect boilers state-wide. The State Department of Labor denied this request, and CitySpec’s appeal of this decision was denied. CitySpec and one of its employees sued the Commissioner of the Department of Labor alleging, *inter alia*, that the State statute deprived them of the constitutionally protected liberty interest to engage in a chosen profession free from arbitrary governmental interference in violation of the Due Process Clause of the Fourteenth Amendment.

The Court stated that while the Constitution protects a person’s right to pursue a chosen occupation, that right is not absolute. Rather, an unconstitutional deprivation of a person’s liberty or property interest occurs only “when the challenged action effectively prohibits one from engaging in a profession, or pursuing any job in a given field.” The Court held that no such right was implicated here because plaintiffs were actively engaged in the profession of boiler inspection and the challenged state action interfered only with plaintiffs’ ability to expand their market share within a particular area. The Court further held that “the right to expand one’s business is neither a liberty nor a property right protected by the Constitutional right to engage in a chosen profession.”

Sergeants Benevolent Association Health and Welfare Fund v. Sanofi-Aventis U.S. LLP
(Judge Townes and Magistrate Judge Reyes)

Judge Townes presided over a putative class action filed by employee welfare benefit plans against the United States-based subsidiaries of a French pharmaceutical company. Plaintiffs brought claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), various state consumer protection laws, and for unjust enrichment based on their assertion that defendants misrepresented the safety and efficacy of Ketek, a prescription antibiotic.

After the Food and Drug Administration (“FDA”) approved Ketek, defendants engaged in a marketing campaign aimed at physicians and other members of the healthcare community that was designed to increase physicians’ prescription of Ketek. The marketing campaign led physicians to prescribe Ketek more than 6 million times in the first two years after FDA approval. Ketek use was subsequently linked to liver injuries and failures, several of which were fatal.

After Judge Townes adopted Judge Reyes’s report and recommendation that plaintiffs’ motion for class certification be denied, defendant moved for summary judgment on all of plaintiffs’ claims. Judge Townes granted the motion except with respect to plaintiffs’ state law-based consumer protection claims.

Specifically, as to plaintiffs’ RICO claims, Judge Townes concluded that plaintiffs did not establish proximate cause. Unlike common law proximate cause which focuses on the foreseeability of injury, civil RICO proximate cause requires a direct relationship between the conduct and the harm alleged. Judge Townes found that plaintiffs could not establish RICO proximate cause because a number of intervening acts interrupted the causal chain between defendants’ alleged RICO violations and plaintiffs’ injuries.

As to the state consumer protection claims, the Court held that plaintiffs’ claims should not be limited to the laws of their home states because the alleged misrepresentations were directed to the healthcare community at large, including in the states where the physicians who prescribed Ketek to plaintiffs’ members practiced. While the Court further found that plaintiffs failed to establish violations of the consumer protection laws of their home states, it permitted plaintiffs to amend their complaint to clarify whether their beneficiaries were prescribed Ketek in states other than those addressed in the Court’s opinion.

Judge Townes also dismissed plaintiffs’ unjust enrichment claim, finding, *inter alia*, that there was nothing unjust or inequitable in permitting defendants to retain profits from Ketek sales to plaintiffs’ beneficiaries. The Court stated that “[w]hile Defendants may have procured the sales by failing to disclose certain risks and by exaggerating the efficacy of Ketek, there is no evidence that Plaintiffs’ beneficiaries suffered any ill-effects or found Ketek to be ineffective.”

Hamilton v. Accu-Tek (Judge Weinstein)

Judge Weinstein presided over a suit filed by relatives of six people killed by handguns, as well as one injured survivor and his mother, against twenty-five handgun manufacturers. Plaintiffs claimed that the manufacturers' indiscriminate marketing and distribution practices generated an underground market in handguns, providing youths and violent criminals with easy access.

After a trial, fifteen of the defendants were found to have negligently marketed or distributed handguns. Although the jury concluded that most of the plaintiffs were not entitled to any damages, it found that two plaintiffs were entitled to \$4 million in damages, apportioned among three defendants.

On appeal, the Second Circuit certified certain state law questions to the New York Court of Appeals, including whether the gun manufacturers owed a duty to the plaintiffs. The New York Court of Appeals concluded that they did not, finding that defendants' relationships with their dealers and distributors did not place defendants in the best position to protect against the risk of harm given the very large pool of potential plaintiffs and the remote connection among defendants, the criminal wrongdoers and plaintiffs. The Court of Appeals also distinguished this case from products liability cases cited by plaintiffs on the rationale that those suits involved products that failed to include adequate safety features or warnings, unlike the guns involved in the present suit which were concededly not defective. Applying the Court of Appeals' holding, the Second Circuit dismissed the lawsuit, holding that defendants owed no duty to plaintiffs.

City of New York v. Beretta U.S.A. Corp. (Judge Weinstein)

Judge Weinstein presided over an action brought by the City of New York against firearms manufacturers seeking to abate an alleged public nuisance caused by the alleged negligent and reckless merchandising of handguns. During the pendency of the lawsuit, Congress enacted the Protection of Lawful Commerce in Arms Act ("PLCAA"), which generally required dismissal of any pending civil action against a firearm manufacturer or seller that is based on the criminal or unlawful misuse of a firearm. While finding the PLCAA to be constitutional, Judge Weinstein nonetheless denied defendants' motion to dismiss, finding that the PLCAA's statutory exception for claims based on the violation of a state statute applied to the City's claim. Judge Weinstein certified his order for immediate appeal.

On appeal, the Second Circuit affirmed the portion of Judge Weinstein's decision upholding the constitutionality of the PLCAA. In a split decision, however, the court reversed the portion of Judge Weinstein's decision finding that the state statutory violation exception applied in this case. As a result, the Second Circuit remanded the case to Judge Weinstein with instructions to dismiss the case as barred by the PLCAA.

In re Zyprexa Products Liability Litigation (Judge Weinstein)

Judge Weinstein presided over a multi-district litigation involving Zyprexa, an anti-psychotic drug manufactured by Eli Lilly and Company (“Lilly”) and prescribed for the treatment of schizophrenia and bipolar disorder. The litigation involved over 30,000 individuals who principally alleged that Zyprexa caused “deleterious side effects of excessive weight gain, hyperglycemia, and diabetes; that Lilly misled them and their physicians about the likelihood of these side effects; and that, had they or their attending physicians been aware of the risks, they would not have taken Zyprexa.”

Beginning in 2004, the Judicial Panel on Multidistrict Litigation transferred thousands of Zyprexa cases from district courts across the country to Judge Weinstein. As Judge Weinstein stated:

The resulting complex, sprawling series of Zyprexa litigations in state and federal courts has involved federal administrative agencies, federal criminal charges, federal and state statutory claims brought by the federal government and the states’ attorneys general, the common laws of all fifty states, a huge national discovery archive, and the utilization of six special masters, two plaintiffs’ steering committees, a national class action with a class of more than 30,000 third-party payors . . . individual claims for physical injuries (more than 30,000 of which have been settled), securities fraud claims, a derivative action against Lilly’s Board of Directors, and liens and “hold-backs” on individual recoveries by the states and the federal government and independent distribution entities.

Judge Weinstein issued a number of opinions on preemption of state law failure to warn claims (generally ruling that they were not preempted); accrual of statute of limitations; prescribing physicians’ state of knowledge about risks of diabetes and excessive weight gain associated with the drug (generally ruling that fact issues existed on this topic); and adequacy of warning labels (generally ruling that fact issues existed).

In November 2005, virtually all of the cases then-pending before Judge Weinstein were settled without any admission of wrongdoing by Lilly. The total settlement exceeded \$1.5 billion, with civil litigants receiving half of those funds and the federal government and approximately 30 states receiving most of the remainder.

Criminal Law

Organized Crime

United States v. Victor J. Orena (Judge Weinstein)

This case stemmed from the war between rival members for control of the Colombo Organized Crime Family in the late 1980s and early 1990s. Following the imprisonment of then-

Colombo boss Carmine Persico in 1986, La Cosa Nostra's governing body, which oversaw the activities of the five New York City-based organized-crime families, appointed Victor "Vic" Orena as the acting boss of the Colombo family. While Orena aspired to become the official boss, Carmine Persico intended to replace Orena with his son, Alphonse Persico. This dispute led to a war between the Orena and Persico factions in 1991 and 1992, resulting in a number of assassinations and attempted assassinations. An estimated twenty shootings took place between November 1991 and April 1992, resulting in eight deaths, including some innocent bystanders. For his role in the war, as well as his other illegal activities as boss of the Colombo Family, Orena was charged with, among other things, RICO conspiracy and conspiracy to commit murder. Orena was convicted on all charges, and Judge Weinstein sentenced him to life imprisonment.

United States v. Vittorio "Vic" Amuso (Judge Nickerson)

In 1992, Judge Nickerson presided over the trial of the then-boss of the Lucchese Organized Crime Family, Vittorio "Vic" Amuso. The government initiated the case with an indictment alleging that Amuso and 14 other Lucchese members gained control of the union responsible for window replacement in New York City and used that control to extort illegal payoffs from window-replacement companies in exchange for labor peace. Upon learning of this indictment, Amuso fled New York City and went into hiding. Amuso was later captured in Scranton, Pennsylvania. Following his arrest, Amuso was charged in a 54-count superseding indictment that included charges that Amuso ordered the murder of nine individuals and attempted to murder another five individuals. Five of the murders were committed while Amuso was a fugitive.

Prior to trial, Judge Nickerson granted the government's motion for an anonymous and sequestered jury. Judge Nickerson ordered that the jurors be housed during the trial in a hotel under guard and that their identities be kept secret. Amuso was convicted on all 54 counts and sentenced to life imprisonment. Judge Nickerson's decision to impanel an anonymous and sequestered jury was affirmed on appeal.

United States v. John Gotti and Frank Locascio (Judge Glasser)

In April 1992, after evading conviction in three previous prosecutions, John Gotti, the head of the Gambino Organized Crime Family, was convicted of racketeering and racketeering conspiracy charges premised on multiple homicides and other crimes. Frank Locascio, Gotti's co-defendant and the underboss or second-in-command of the Gambino Family, was also convicted of racketeering and racketeering conspiracy.

At the outset of the trial, Judge Glasser was presented with the government's motion to disqualify Gotti's longtime counsel. In granting the government's motion, Judge Glasser noted that contrary to the common misapprehension that a defendant has an absolute right to the

counsel of his choice without exception, the integrity of the judicial process trumps the defendant's right to select his counsel. Judge Glasser found that the evidence presented in the form of video and audio tapes left no doubt that Gotti's lawyers were in-house counsel to the Gambino Organized Crime Family. Judge Glasser further opined that the frequency with which counsels' names turned up on the audiotape and appeared in the videotape would have, in effect, made them unsworn witnesses at the trial.

At the trial, the government had two key pieces of evidence: tape-recorded conversations of the defendants and other alleged members of the Gambino Family and the testimony of Salvatore "Sammy the Bull" Gravano, a high-level advisor to Gotti. Gravano pleaded guilty to a racketeering charge and testified at length against the defendants. The combination of the tape recordings and Gravano's testimony—in which he confessed to several murders at the direction of Gotti—painted for the jury a vivid picture of the inner workings of the Gambino Family.

After deliberating for just 11 hours, the anonymous sequestered jury convicted Gotti on all 13 counts and convicted Locascio on 12 of 13 counts. Judge Glasser sentenced both defendants to life imprisonment. In sentencing Gotti and Locascio, Judge Glasser emphasized the pernicious and costly impact the mob has on the community by virtue of its stranglehold on the construction industry. Offended by the glamorization of the mob, Judge Glasser thought it important to convey to the public that the Mafia exists for the sole reason of generating money for its members through crime—hijacking, gambling, extortion, loan sharking, bribery, corruption and control of labor unions, drug dealing, and murder. Gotti died in prison in 2002.

United States v. George Pape (Judge Glasser)

Judge Glasser presided over the prosecution of George Pape on obstruction-of-justice charges. Pape served as a juror in the 1986 trial of John Gotti, which resulted in the acquittal of Gotti and his seven co-defendants on all charges. Judge Nickerson, who presided over the 1986 trial, had instituted anonymous selection procedures that required all prospective jurors to complete detailed 22-page questionnaires and appear individually before the Court for additional *voir dire*. In responding, Pape withheld that he was a close friend of someone connected to Gotti. After a selection process that lasted approximately one month, Judge Nickerson empaneled a jury with Pape seated as anonymous juror 11. Following the start of the Gotti trial, a member of a gang called the Westies, who did business with the Gambino Family, approached Salvatore Gravano and advised him that one of the jurors, referring to Pape, would vote to acquit Gotti and influence other jurors to do the same if he was compensated. Ultimately, Gravano paid \$60,000 to this member of the Westies to reimburse him for payments to Pape.

Following Pape's indictment, Judge Glasser granted the defense's request for permission to interview the former jurors on the Gotti trial under the following conditions: they could interview only those jurors who consented to be interviewed, the interviews must be conducted in the Court's presence, and the questions to be put to any of the jurors must be submitted to the

Court for review and approval. At trial, Pape was convicted on all counts of the indictment, and Judge Glasser sentenced him to a total of three years' imprisonment.

United States v. Vincent "Chin" Gigante (Judges Dearie, Glasser, Nickerson, and Weinstein)

The Court presided over the prosecution of the alleged crime boss of the Genovese Organized Crime Family, Vincent "Chin" Gigante. Gigante was initially charged in 1990 with committing crimes involving labor payoffs, extortions, and mail frauds. A grand jury later returned a second indictment in 1993 alleging that Gigante and others murdered six people between July 1980 and March 1982, engaged in conspiracies to murder three other people between 1982 and 1991, and committed additional crimes involving labor payoffs and extortion.

Prior to being charged, Gigante went to unusual lengths to avoid being caught by law enforcement. Among other things, he directed influential confederates to spread the word to the outside world that he was insane. To further this misimpression, he made annual visits to the hospital for psychiatric treatment and wandered the streets disheveled and unshaven in an old bathrobe and pajamas. Concerned about electronic surveillance, he also insisted that none of his criminal associates mention him by name. As a result, they referred to Gigante by touching their chin, in recognition of Gigante's nickname.

Following Gigante's indictment, Judge Dearie granted his motion for a hearing to determine his mental and physical competency to stand trial and appointed two psychiatrists to conduct psychiatric examinations. In 1996, Judge Nickerson presided over a hearing to determine whether Gigante was competent to stand trial. Judge Nickerson concluded that Gigante actively conducted the affairs of the Genovese Family during the time that he claimed to be mentally ill and planned a feigned insanity defense. Judge Nickerson accepted the opinions of the two court-appointed psychiatrists that Gigante was malingering and competent to stand trial.

Gigante then renewed his claim of incompetence due to Alzheimer's disease. Judge Nickerson recused himself and the case was reassigned to Judge Weinstein. Following a hearing, Judge Weinstein held that Gigante was competent and ordered that the trial proceed.

Thereafter, the government dismissed the 1990 indictment against Gigante and proceeded to trial on the 1993 indictment. The jury found Gigante guilty on all six counts of the 1993 indictment. In a special verdict relating to the predicate acts for the RICO charges, the jury acquitted Gigante or failed to reach a verdict on the predicates relating to all of the alleged murders, but found Gigante guilty of two of the alleged murder conspiracies, one of which was later dismissed by Judge Weinstein as time-barred.

Following his conviction, Gigante moved for an order declaring that he was incompetent to be sentenced. Judge Weinstein denied this motion and sentenced Gigante to a term of imprisonment of 12 years. In sentencing Gigante in 1997, Judge Weinstein wrote that Gigante

“is a shadow of his former self—an old man finally brought to bay in his declining years after decades of vicious criminal tyranny.”

In 2003, Gigante was indicted for additional crimes based on his alleged continued activities as boss of the Genovese Family while in prison. On the eve of trial before Judge Glasser, Gigante pleaded guilty to obstruction of justice, admitting that he had feigned insanity for decades. Judge Glasser sentenced Gigante to an additional three years’ imprisonment. Gigante died in prison in 2005.

United States v. Venero Mangano, et al. (Judge Dearie)

Judge Dearie presided over a multi-defendant RICO prosecution that was popularly referred to as the “Windows” case. The defendants were charged with illegally attempting to control New York’s window manufacture and installation industry through criminal racketeering, money laundering, extortion, mail fraud and other improper acts. As Judge Dearie stated, “[t]he centerpiece of the Windows prosecution was a massive RICO conspiracy in which it was alleged that, for over a decade, members and associates of four organized crime families joined with corrupt union officials and window manufacturers and installers in a bid-rigging scheme that controlled the lucrative window replacement market in New York City.”

During the course of the trial, Judge Dearie was confronted with a number of extraordinary issues, including one defendant who was found murdered, two defendants who suffered heart attacks and the need to dismiss two jurors based on misconduct. In addition, the trial had to be relocated for several days to the White Plains courthouse in the Southern District of New York to accommodate a wheelchair-bound cooperator who had been shot multiple times and was unable to travel more than a short distance from his rehabilitation facility.

Ultimately, eight defendants were tried to verdict in a trial that lasted more than six months, including Venero Mangano, Benedetto Aloï and Peter Gotti, the older brother of John Gotti. The jury convicted three of the defendants, including Mangano and Aloï, on extortion and conspiracy charges. The jury acquitted Peter Gotti and four other defendants. Judge Dearie sentenced Mangano and Aloï to 188 months and 200 months in prison, respectively.

United States v. Peter Gotti (Judge Block)

Judge Block presided over the prosecution of 17 members of the Gambino Organized Crime Family primarily relating to their corrupt influence over various labor unions, businesses and individuals operating the piers in Brooklyn and Staten Island. The lead defendant was Peter Gotti, who the government alleged became the acting boss of the Gambino Family after John Gotti’s son and successor, John A. Gotti, pleaded guilty to extortion in 1999. Defendants were charged in a 68-count indictment which included charges for racketeering and racketeering conspiracy. The indictment alleged that defendants exercised control over a longshoreman’s

union by using force to determine the leadership of that union and then by directing the activities of the individuals they placed in leadership positions. Defendants also were charged with illegal gambling and extorting money from movie star Steven Seagal.

Ten of the defendants pleaded guilty to racketeering, gambling or fraud charges. The remaining seven defendants, including Peter Gotti proceeded to trial before Judge Block. All seven defendants were convicted on racketeering and other charges. Judge Block sentenced Peter Gotti to a term of imprisonment of 112 months.

Unites States v. Alphonse Persico (Judges Johnson and Seybert)

Judges Johnson and Seybert presided over the prosecution of Alphonse “Allie Boy” Persico and co-conspirators on charges stemming from the murder of Colombo Organized Crime Family underboss William “Wild Bill” Cutolo. In the late 1990s, Persico was named as the acting boss of the Colombo Family. The government alleged that Persico murdered Cutolo to prevent Cutolo from taking control of the Colombo Family and as retribution for Cutolo’s actions in the bloody war between rival Colombo-family factions in the early 1990s. Persico summoned Cutolo to a meeting on the afternoon of May 26, 1999, and Cutolo was never seen or heard from after that meeting. The government contended that Cutolo’s body was most likely dumped into the Atlantic Ocean.

Following an eight-week trial before Judge Seybert, Persico was convicted of murder in aid of racketeering, based on the murder of Cutolo, and witness tampering, based on evidence that Persico threatened Cutolo’s family members after he learned that the FBI suspected him of Cutolo’s murder. Persico filed a post-trial motion for acquittal, contending that the government failed to prove that Cutolo was actually dead or had been murdered. While the motion was pending, Cutolo’s body was found to have actually been buried in Farmingdale, New York. Despite this new evidence contradicting the prosecution’s theory at trial that the body was dumped in the ocean, Judge Seybert denied Persico’s motion, holding that the evidence at trial was sufficient to prove that Cutolo had been murdered, regardless of how the body had been disposed. Judge Seybert sentenced Persico to life imprisonment, and the Second Circuit affirmed her rulings.

United States v. Richard Martino, et al. (Judge Amon)

Judge Amon presided over the prosecution of multiple alleged members of the Gambino Organized Crime Family who ran internet and phone-billing fraud schemes that swindled thousands of unwitting consumers out of more than \$650 million. Defendant Richard Martino controlled internet pornography websites that tricked website users into providing credit or debit card information ostensibly solely for the purpose of age verification to access “free tours” of the websites. Martino and his conspirators then caused these credit cards to be billed without the users’ knowledge or consent. Martino also advertised “1-800” and “1-900” numbers that

provided free samples of phone sex, psychic hotlines, and dating services, but collected recurring monthly charges from callers to these numbers that falsely appeared on the callers' phone bills as voicemail services or other seemingly innocuous standard telephone charges. Martino also paid a portion of his profits from the scheme to Salvatore Locascio, who was alleged to be a captain in the Gambino Family. Martino and Locascio pleaded guilty on the eve of trial, and Judge Amon sentenced them to jail terms of nine years and two-and-a-half years, respectively.

United States v. Louis Eppolito and Stephen Caracappa (Judge Weinstein)

Judge Weinstein presided over the prosecution of Louis Eppolito and Stephen Caracappa, two retired New York City Police Department detectives who for years served as mafia associates while working for the NYPD. Eppolito and Caracappa directly participated in or assisted eight mob-related murders, as well as two attempted murders and one murder conspiracy. Eppolito and Caracappa also routinely provided confidential law enforcement information, including the identities of cooperating witnesses, to members of organized-crime organizations. As Judge Weinstein wrote, Eppolito and Caracappa “used their badges not in service of the public, but in aid of organized crime. They kidnapped, murdered, and assisted kidnapers and murderers, all the while sworn to protect the public against such crimes.”

A jury convicted Eppolito and Caracappa on all charges, including racketeering conspiracy, narcotics conspiracy, and narcotics distribution. Following their convictions, both defendants filed motions for a new trial or judgment of acquittal. While Judge Weinstein granted defendants' motion for a judgment of acquittal on the racketeering conspiracy charge—ruling that this charge was barred by the statute of limitations because there was insufficient evidence of the conspiracy's existence within five years of the commencement of the prosecution—the Court of Appeals reversed and reinstated defendants' convictions. On remand, Judge Weinstein sentenced Caracappa to life imprisonment plus 80 years and Eppolito to life imprisonment plus 100 years.

The Bonanno Organized Crime Family Prosecutions (Judge Garaufis)

Judge Garaufis presided over the prosecution of more than 70 members of the Bonanno Organized Crime Family, including Bonanno Family boss Joseph Massino. Massino, referred to in the press as “the last don,” served as the boss of the Bonanno crime family from the early 1990s to 2003. In 2004, following a nine-week trial, Massino was convicted on all eleven counts of an indictment, including a racketeering charge that charged as predicate acts, among other things, seven murders, arson, loansharking, extortion and money laundering.

Following his conviction, Massino agreed to cooperate with the government, becoming the first boss of one of the five New York City-based organized-crime families to turn state's evidence. Massino's information included the disclosure that Vincent Basciano, who became acting boss of the Bonanno Family while Massino was in prison, had asked Massino for

permission to murder the lead Assistant United States Attorney responsible for the prosecution of the Bonanno Family. Massino agreed to permit the government to record his conversations with Basciano. Basciano was ultimately convicted in three separate trials of offenses including murder in aid of racketeering and conspiracy to commit murder in aid of racketeering. Judge Garaufis sentenced Basciano to life imprisonment. Following Massino's cooperation, Judge Garaufis commuted Massino's sentence of two life terms, stating that Massino "may be the most important cooperator in the modern history of law enforcement efforts to prosecute the American Mafia."

United States v. Vyacheslav Ivankov (Judge Amon)

Judge Amon presided over the prosecution of Vyacheslav Ivankov and other defendants in what the FBI has referred to as the first significant Eurasian Organized Crime investigation in the United States. Ivankov, dubbed in press accounts as the "Godfather of Russian organized crime," was charged with masterminding a scheme to extort \$3.5 million from two Russian businessmen. After a six-week trial, Ivankov and the other defendants were convicted of conspiracy to commit extortion and attempted extortion. Ivankov was also convicted in a separate trial of fraudulently marrying an American woman to gain legal status in the United States. Judge Amon sentenced Ivankov to 115 months in prison. After serving his term of imprisonment, Ivankov was deported to Russia, where he was subsequently assassinated in 2009.

United States v. Andrew Russo, et al. (Judge Matsumoto)

Judge Matsumoto presided over the prosecution of 35 leaders, members and associates of the Colombo Organized Crime Family. The government arrested these defendants as part of the Department of Justice's largest single-day operation against La Cosa Nostra.

The defendants included Andrew Russo, Benjamin Castellazo and Richard Fusco who at the time of their arrests served as the acting street boss, acting underboss and consigliere of the Colombo Family, respectively. The defendants collectively were charged with racketeering, racketeering conspiracy and other offenses based on acts that occurred during a 20-year period. The predicate crimes for the racketeering offenses included operating various illegal gambling businesses and participating in extortion conspiracies.

All 35 defendants pleaded guilty to racketeering or other federal charges. As part of the guilty pleas, the defendants collectively agreed to forfeit more than \$5.5 million in proceeds from their criminal activities.

Narcotics

***United States v. Munoz-Mosquera* (Judges Johnson and Weinstein and Magistrate Judge Chrein)**

On November 27, 1989, an Avianca jetliner carrying 107 passengers and crew, including two United States citizens, from Bogota to Cali, Colombia crashed as a result of a bomb explosion. The Medellin drug cartel, which was headed by Pablo Escobar, had paid someone unwittingly to bring the bomb aboard the flight. None of the passengers or the flight crew survived the crash, which also resulted in the death of three people on the ground from falling debris. Judges Weinstein and Johnson presided over several trials of the individual responsible for the bombing, Dandeny Munoz-Mosquera.

Munoz-Mosquera was arrested in 1991 and, at that time, was charged only with making a false statement to a government official and unlawful possession of a false identification document. At a bail hearing before Magistrate Judge Chrein following Munoz-Mosquera's arrest, the government represented that Munoz-Mosquera was a hired gun of the Medellin cocaine cartel and was wanted in Colombia on charges of killing at least 50 police officers and other public officials, helping to plan the assassination of a presidential candidate, and launching a car bomb that destroyed the headquarters of the Colombian equivalent of the Federal Bureau of Investigation. Judge Chrein ordered that Munoz-Mosquera be detained, opining that he was "a very grave danger to the public either in Colombia or in this country."

Munoz-Mosquera proceeded to trial on charges of making a false statement and unlawful possession of an identification document and was convicted. At a *Fatico* hearing held on the government's motion for an upward departure from the zero-to-six-month Guidelines range, witnesses testified that Munoz-Mosquera carried out and organized multiple murders and bombings on behalf of Escobar. Judge Weinstein sentenced Munoz-Mosquera to the maximum possible term of incarceration of six years. In a subsequent written opinion, Judge Weinstein indicated that the sentence "was designed to incapacitate and to send a message to drug smugglers not to send violent criminals to the United States."

Munoz-Mosquera was subsequently indicted on charges related to the Avianca bombing, and that case was ultimately assigned to Judge Johnson. Munoz-Mosquera was tried on these charges, and the first trial ended in a mistrial based on a hung jury. The government re-tried Munoz-Mosquera, and, on retrial, he was convicted on all charges. Based on these convictions, Judge Johnson sentenced Munoz-Mosquera to ten consecutive terms of life imprisonment, stating that "[n]ot only are you an evil man, but the things you did, you enjoyed doing." Munoz-Mosquera's convictions were the first convictions under the 1956 statute that made it a federal crime to bomb a civilian aircraft and the 1986 statute that made it a federal crime to kill a United States citizen abroad.

United States v. Peter Califano et al. (Judge Nickerson)

Judge Nickerson presided over the prosecution of 11 individuals who attempted to smuggle more than five tons of cocaine into the United States. The mastermind of the smuggling operation was Peter Califano. The cocaine involved in the deal was exported from South America aboard a freighter named the Blue Crown. Califano arranged for a mid-ocean transfer of the cocaine from the Blue Crown to Califano's fishing boat, the Hunter, at a deep-water spot popular with local fishermen about 80 miles east of Atlantic City.

Unbeknownst to the smugglers, federal law enforcement officials were in the air and on the sea looking for the two ships at the time of the transfer. Following a 95-mile chase by boat, helicopter and plane chase, Coast Guard officials stopped and boarded the Hunter. They subsequently seized 10,771 pounds of cocaine from under the deck, which, at the time, was the third largest cocaine seizure in the United States. At the time of the seizure, law enforcement officials arrested Califano and one other occupant of the Hunter. They subsequently arrested the captain of the Blue Crown, Abdel Eltayib, and eight other Blue Crown crewman.

Califano pleaded guilty to conspiracy to possess with intent to distribute cocaine. Judge Nickerson sentenced Califano to a term of imprisonment of 188 months. The one other occupant of the Hunter also pleaded guilty to a drug trafficking charge. Eltayib and the eight charged Blue Crown crewmen proceeded to trial. All nine of these defendants were convicted of possession with intent to distribute cocaine, conspiracy to do the same and conspiracy to import cocaine. Judge Nickerson sentenced Eltayib to 292 months' imprisonment. Eltayib's conviction and sentence were upheld on appeal.

United States v. Peter Gatien et al. (Judge Block)

Judge Block presided over the prosecution of Peter Gatien and more than 40 other defendants who allegedly conspired to distribute narcotics at several prominent New York City nightclubs owned by Gatien. Gatien, dubbed by the press as the "King of New York Clubs," was the owner of the popular 1990s "megaclubs" the Tunnel, Limelight and the Palladium. The government alleged that Gatien turned his clubs into drug distribution centers and charged him with RICO violations and narcotics trafficking. The other charged defendants were employees who allegedly worked for Gatien in the drug distribution operation, including (1) directors, who were allegedly responsible for scheduling theme parties and coordinating with party promoters to ensure that controlled substances would be available for sale consistent with the parties' themes; (2) party promoters, who were allegedly responsible for recruiting people to attend the nightclubs and for ensuring that controlled substances would be available for sale; (3) "house dealers," who distributed controlled substances at the nightclub parties; and (4) bouncers, who allegedly permitted the house dealers to enter the nightclubs without first searching them for controlled substances and failed to eject house dealers or their patrons for selling and buying drugs.

Many of Gatien's charged former employees pleaded guilty and agreed to testify at Gatien's trial. The government, however, was unable to use several potential witnesses because they committed additional crimes between the date of their pleas and Gatien's trial. These individuals included Michael Alig, an alleged party promoter who after agreeing to cooperate pleaded guilty to manslaughter related to the killing of a man whose body was dismembered and thrown in the Hudson River, and Brooke Humphries, an alleged house dealer at Limelight who resumed selling cocaine after agreeing to cooperate and then lied to prosecutors about these activities.

After a four-week trial before Judge Block, a jury acquitted Gatien on all charges. While many of Gatien's co-defendants pleaded guilty, co-defendant Stephen Lewis, who was alleged to control key club promoters, was tried separately from Gatien and was convicted of conspiracy to distribute and possession with intent to distribute ecstasy and cocaine, and of aiding and abetting the distribution of ecstasy and cocaine.

United States v. Kevin McKeon (Judge Sifton)

Judge Sifton presided over the prosecution of Kevin McKeon, a criminal defense attorney who misused his client's privileged communications to participate in a narcotics-trafficking conspiracy. McKeon conveyed to his co-conspirators information from his clients concerning the locations of narcotics stash houses. McKeon's co-conspirators then burglarized the stash houses and stole narcotics, cash, and other valuables. The co-conspirators then sold the stolen drugs and shared the proceeds with McKeon and the other members of the organization. The government learned about McKeon's role in the organization from several of his co-conspirators who, following their arrests, cooperated with the government. McKeon pleaded guilty to conspiracy to possess with intent to distribute narcotics, and Judge Sifton sentenced him to a term of imprisonment of 72 months.

United States v. Shaheed Khan (Judge Irizarry)

Judge Irizarry presided over the prosecution of Shaheed "Roger" Khan, a Guyanese national whom the government charged with being the leader of a violent, international cocaine trafficking organization. Khan allegedly controlled the cocaine industry in Guyana and was able to maintain control based on the backing of a paramilitary squad that would murder and threaten, on his orders, anyone who stood in the way of his drug empire. In June 2006, Suriname police arrested Khan and three ex-policemen, and seized over 200 kilograms of cocaine. Khan was set to be deported from Suriname to Guyana, but upon landing in Trinidad was handed over to United States officials. Within 24 hours of his departure from Suriname, Khan was arraigned in the Eastern District of New York.

The case required Judge Irizarry to rule on several complex pretrial motions. Khan moved to disqualify Judge Irizarry on several grounds, including based on his allegation that

Judge Irizarry's statements in a Court-issued gag order demonstrated that she pre-judged the case. Judge Irizarry found this and Khan's other arguments underlying his motion to be meritless and denied Khan's motion to disqualify. Judge Irizarry also granted the government's motion for an anonymous and partially sequestered jury, which was based on safety concerns stemming from the fear that Khan could order a murder through his "Phantom Squad," which was alleged to be responsible for at least 200 extra-judicial killings from 2002 to 2006. The Court granted the government's motion based on the evidence of Khan's willingness to tamper with the judicial process, Khan's alleged dangerousness and the potential for juror intimidation due to anticipated media coverage.

Judge Irizarry also granted in part and denied in part the government's motion in limine requesting permission to admit evidence at trial of uncharged crimes that allegedly occurred in Guyana. The Court permitted the government to introduce evidence of threats made by Khan's co-conspirators. The Court, however, ruled—on an issue of first impression in the Second Circuit—that the government could not admit evidence of uncharged murders against a defendant who was not charged with a crime of violence because the evidence's probative value was substantially outweighed by the danger of unfair prejudice.

While waiting for trial, Khan was indicted for conspiring with his attorneys to obstruct justice by using his drug organization to identify, locate and tamper with individuals they expected to be witnesses at Khan's trial. Thereafter, Khan pleaded guilty to conspiracy to distribute cocaine, tampering with a witness and unlawful transportation of firearms as part of a plea agreement in which the government agreed to recommend a sentence of 15 years imprisonment. In accordance with the agreement, Judge Irizarry sentenced Khan to a total term of imprisonment of 15 years.

United States v. Robert Simels and Arienne Irving (Judge Gleeson)

Judge Gleeson presided over the prosecution of Robert Simels and Arienne Irving, the attorneys for criminal defendant Shaheed "Roger" Khan, who were charged with conspiring with Khan to identify, locate and tamper with individuals they believed would be government witnesses at Khan's criminal trial. The government's evidence established that Simels met with a former member of Khan's Guyanese paramilitary organization who, unbeknownst to Simels, was a paid informant for the Drug Enforcement Administration. Simels authorized the informant to use violence to silence several suspected government witnesses and agreed to bribe another suspected government witness to induce her to give false testimony.

Before trial, the defendants moved to suppress the government's recorded wiretap communications between Simels, Irving and Khan on the ground that they were obtained in violation of Title III's minimization requirement. Given the fact that they would be intercepting attorney-client communications, the government recorded all communications between Khan and his attorneys in the prison in which Khan was housed and then minimized these recordings after-

the-fact. Judge Gleeson held that 18 U.S.C. § 2518 required contemporaneous minimization under the circumstances of this case, and the government's post-interception minimization was improper and unreasonable. Judge Gleeson also concluded that the remedy for this statutory violation was suppression of all recorded communications.

Notwithstanding the suppression of the wiretaps, Judge Gleeson permitted the government to introduce the portions of the recordings that contradicted Simels' trial testimony, opining that:

Like its close cousin the Fourth Amendment, Title III does not provide a license to use perjury by way of a defense. A defendant who, like Simels, succeeds in getting intercepted evidence suppressed has a choice. In choosing to offer testimony that was directly contradicted by the suppressed evidence, Simels forfeited his entitlement . . . to keep the impeachment material from the jury.

A jury convicted Simels and Irving of conspiracy to obstruct justice through witness tampering, attempted witness tampering and importation and possession of illegal eavesdropping equipment. Judge Gleeson subsequently granted Irving's post-trial motion for judgment of acquittal on all counts, finding that the evidence was insufficient to sustain her convictions. Judge Gleeson denied Simels' post-trial motions and sentenced him to a term of imprisonment of 14 years, noting that Simels actions were "egregious crimes" deserving of harsh punishment. On appeal, the Second Circuit vacated Simels' conviction for illegally importing electronic-surveillance equipment, but otherwise affirmed the convictions and sentence.

Gangs

The "Born to Kill" Gang (Judge Amon)

Judge Amon presided over the prosecution of members of the "Born to Kill" gang, including their leader, David Thai. The Born to Kill gang consisted almost entirely of young Vietnamese males who committed a series of violent crimes, including murders, extortions, and robberies, primarily in New York City's Chinatown. The gang took its name from a slogan painted on some American infantry helmets during the Vietnam War. The gang regularly extorted Chinatown shop owners, collecting up to several hundred dollars per week from each of the store owners and sidewalk merchants on Canal Street. Merchants who did not comply with the gang's demands were beaten, robbed or killed.

Judge Amon empaneled an anonymous jury to try the gang members based, in part, on her finding that several of the defendants had previously sought to interfere with the judicial process "by threatening and ultimately killing a civilian witness in an effort to subvert prosecution of a pending robbery case against Born to Kill members." Thai and multiple other gang members were convicted on racketeering and other charges relating to Born to Kill's

unlawful activities. Judge Amon sentenced Thai to life imprisonment. This case was featured in the book *Born to Kill: The Rise and Fall of America's Bloodiest Asian Gang*, written by T.J. English.

The Green Dragons Prosecution (Judge Raggi)

Judge Raggi presided over the prosecution of multiple members of the Green Dragons, a violent gang that operated primarily in the predominantly Chinese sections of Elmhurst and Flushing in Queens, New York. According to the indictment, gang members extorted protection money from Asian-American business owners in these neighborhoods and also engaged in a string of armed robberies. The gang used violent means to protect and expand its area of influence, including assaulting, kidnapping and murdering rival gang members, witnesses to their unlawful activities and business owners who refused to pay protection money. The government arrested 13 members of the gang based on a 36-count indictment that charged them with substantive violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and RICO conspiracy.

Four of the defendants pleaded guilty to either a RICO violation or other violent felony charge. The remaining nine defendants proceeded to trial before Judge Raggi. After a ten-week trial, all nine defendants were convicted of a substantive RICO violation and a RICO conspiracy charge, as well as other charges. Judge Raggi sentenced seven of the defendants who went to trial to multiple concurrent terms of life imprisonment for their participation in offenses involving murder to maintain or increase their positions in a RICO enterprise. At sentencing, Judge Raggi commented on the defendants’ lack of remorse that was on display during the trial, indicating that she observed the defendants using mocking gestures and laughing at the family members of their victims. In response to a question from the leader of the gang, Chen I. Chung, at sentencing as to whether he would ever get back his car, Judge Raggi responded, “Mr. Chung you’re going to have no use for it.”

***United States v. Ronell Wilson, et al.* (Judge Garaufis)**

Judge Garaufis presided over the prosecution of Ronell Wilson and four other members of the “Stapleton Crew,” a violent narcotics-trafficking and robbery gang based in the Stapleton section of Staten Island. The gang engaged in numerous drive-by shootings targeting rival gang members and endangering the lives of many innocent bystanders. The crew also regularly assaulted and robbed rival drug traffickers. In March 2003, the Firearms Investigation Unit of the New York City Police Department began investigating the crew. On March 10, 2003, Detectives James Nemorin and Rodney J. Andrews, posing as undercover gun traffickers, arranged to purchase a firearm from the crew. Wilson decided to rob the detectives instead and, after concluding that the detectives were police officers, shot both detectives in the head, killing them instantly.

The five members of the crew were charged in a 30-count indictment for racketeering, murder in aid of racketeering, narcotics trafficking, and other offenses. Wilson and two others were charged in connection with the murder and robbery of Detectives Nemorin and Andrews. With the exception of Wilson, the other charged defendants pleaded guilty to racketeering in exchange for negotiated sentences ranging from 10 to 27 years. Wilson proceeded to trial and was convicted on five capital counts and five non-capital counts. At a separate penalty phase, the jury unanimously voted to sentence Wilson to death on all five capital counts, the first federal death sentence in New York since the federal death penalty was reinstated in 1988. The Second Circuit overturned the death sentence in 2010 because of comments by the prosecutor at the sentencing phase about Wilson's failure to testify, and remanded for resentencing. On resentencing in July 2013, the jury again sentenced Wilson to death.

The “Supreme Team” Prosecutions (Judges Block, Dearie, Korman and Platt)

The Court presided over several prosecutions of the “Supreme Team” and its alleged leaders Kenneth “Supreme” McGriff and Gerald “Prince” Miller. According to charging documents, the Supreme Team was a street gang organized in the early 1980s in the vicinity of the Baisley Park Houses in Jamaica, Queens. In the late 1980s, the gang was alleged to be involved in the widespread distribution of crack with its drug receipts at one point exceeding \$200,000 per day. The Supreme Team also allegedly used violence to control the crack trade in the Baisley Park houses and to punish its own members suspected of disloyalty. The government charged that, during 1987 alone, McGriff and Miller ordered at least eight homicides.

In 1992, McGriff was convicted on a guilty plea before Judge Platt of engaging in a continuing criminal enterprise and sentenced to a 12-year term of incarceration. In 1993, Miller and six other Supreme Team members were convicted of narcotics trafficking and racketeering charges in a jury trial over which Judge Dearie presided. Judge Dearie sentenced Miller to life imprisonment. In so doing, Judge Dearie opined that it was “[a] just sentence, taking into account what’s been done, the people whose lives have been ruined, the people whose lives have been lost, and perhaps even more meaningfully, the people who have to live a kind of death every day as a result of the activity that you engineered, the living dead. . . .”

McGriff was released from prison in 1995. In 2005, the government charged him and a number of his alleged associates with various offenses stemming from McGriff's alleged actions to rebuild his criminal organization following his release from prison. According to charging documents, the rebuilt organization concentrated on the wholesale distribution of heroin, cocaine, and crack in a number of states on the East Coast. The rebuilt organization was also charged with using deadly violence against rival gang members and members of McGriff's organization suspected of disloyalty. McGriff was further charged with laundering the proceeds of his illegal drug activities with the help of executives and employees of the rap record label Murder, Inc. The government also charged a number of Murder, Inc. employees, including its

two top executives, Irving and Christopher Lorenzo, with laundering more than \$1 million in drug proceeds for McGriff's organization.

Judge Korman presided over the trial of Irving and Christopher Lorenzo, who were both acquitted on all charges. Judge Block presided over the trial of McGriff, who was convicted of racketeering, two murder-for-hire homicides, narcotics trafficking, and engaging in illegal financial transactions with drug money. After the jury voted not to impose the death penalty, Judge Block sentenced McGriff to life imprisonment.

The MS-13 Prosecutions (Judges Bianco, Feuerstein, Garaufis, Hurley, Johnson, Kuntz, Spatt, Townes, and Wexler)

La Mara Salvatrucha, also known as MS-13, is a nationwide criminal gang comprised primarily of immigrants from El Salvador, Honduras, and Guatemala. To become a full member of MS-13, an individual is required to "make his quota," *i.e.*, engage in a certain number of acts of violence against members of rival gangs. MS-13 is organized into local subunits, known as "cliques," and there are multiple MS-13 cliques within the Eastern District of New York. MS-13 is the largest street gang on Long Island.

From 2002 to 2013, multiple judges in this Court have presided over the prosecution of more than 200 MS-13 members responsible for numerous homicides and other acts of violence, including more than two dozen clique leaders. In these prosecutions, more than 100 MS-13 members have been convicted on federal racketeering charges. These cases have included:

- Judge Bianco presided over the prosecution of Jose Gustavo Orellana-Torres, also known as "Diablito," the former leader of the Coronados clique. Orellana-Torres pled guilty to racketeering, including predicate acts relating to the 2009 murder of an individual wrongly suspected to be a rival gang member and the 2009 attempted murder of another suspected gang member. Judge Bianco sentenced Orellana-Torres to 365 months in prison;
- Judge Garaufis presided over the prosecution of Hector Aleman Lemos, the former leader of the Flushing, Queens chapter of MS-13. Lemos pleaded guilty to racketeering and murder conspiracy charges. Judge Garaufis sentenced Lemos to 30 years' imprisonment.
- Judge Johnson presided over the prosecution of Amilcar Gomez, the leader of the MS-13 chapter in Jamaica, New York. Gomez was tried and convicted of multiple charges, including racketeering conspiracy and murder in aid of racketeering. Judge Johnson sentenced Gomez to life imprisonment.
- Judges Spatt and Wexler presided over the prosecution of Ledwin Castro, the head of

the Freeport clique of MS-13. Castro was convicted at trial of multiple counts based on two drive-by shootings of suspected rival gang members in 2003. Judge Spatt sentenced Castro to a total term of imprisonment of more than 60 years.

- Judge Wexler presided over the prosecution of Leonel Mejia, a member of the Far Rockaway and Hempstead chapters of MS-13. Mejia was convicted at trial on all counts relating to the murder of an MS-13 member who Mejia discovered had provided the Nassau County Police Department with information about other MS-13 members, leading to their arrests. Judge Wexler sentenced Mejia to life imprisonment.

Public Corruption

United States v. Pedro Espada, Jr. and Pedro Gautier Espada (Judge Block)

Judge Block presided over the prosecution of former State Senator Pedro Espada Jr. (“Espada”) and his son, Pedro Gautier Espada (“Gautier Espada”). In 1978, Espada founded Soundview Healthcare Center (“Soundview”), a charitable, not-for profit organization. By 2005, Soundview comprised a network of health care clinics located in the Bronx. Soundview received more than \$1 million per year in federal grant money from the United States Department of Health and Human Services, as well as millions of dollars more in Medicare and Medicaid reimbursements.

The defendants were charged with abusing their positions at Soundview through a number of schemes designed to divert Soundview funds to their own personal use and for the benefit of favored family members and friends from 2005 to 2009. These schemes allegedly included causing Soundview to use its corporate credit card to pay more than \$100,000 in Espada’s personal expenses, including meals for Espada and his family, window treatments for his home, and tickets to Broadway shows and sporting events. The total amount allegedly embezzled by the defendants exceeded \$500,000. On the day Espada was indicted, he was stripped of his title as the majority leader of the New York State Senate.

Both Espada and Espada Gautier proceeded to trial. A jury found Espada guilty of four counts of stealing funds, although the jury failed to reach a verdict concerning the remaining charges against Espada and all the charges against Espada Gautier. Following the trial, Espada pleaded guilty to making false statements on his personal tax returns and agreed not to appeal the jury’s verdict, and Espada Gautier pleaded guilty to one count of stealing federal funds from Soundview and one count of failure to file a tax return. During his sentencing hearing, Espada accused Judge Block of jury tampering, offering into evidence an affidavit of one of the jurors alleging that Judge Block had entered the jury deliberations room and influenced the verdict. Judge Block refuted this accusation with evidence from phone records showing that he was at home at the time, as well as records of his electronic access card, proving that he was not in the

jury room at the time alleged by the juror.

Espada was subsequently sentenced to a term of imprisonment of five years, followed by three years of supervised release. Espada was also ordered to serve 100 hours of community service, pay \$118,531 in restitution to the IRS and to forfeit \$368,088 to the government. Gautier Espada was sentenced to six months in prison, followed by six months house arrest, and one year of supervised release. Judge Block also ordered Gautier Espada to serve 100 hours of community service and pay \$15,628 in restitution to the IRS.

United States v. Luis Batista (Judge Irizarry)

Judge Irizarry presided over the prosecution of members of a narcotics-trafficking conspiracy involving a New York City Police Department (“NYPD”) detective, Luis Batista. Batista, who worked as an undercover narcotics officer for the NYPD, used confidential law-enforcement information to aid a major narcotics-trafficking organization led by Virgilio Hiciano. From approximately 1998 to 2006, Batista accessed various internal NYPD databases and provided Hiciano with information from those databases about police activity near Hiciano’s base of operations in Bushwick, Brooklyn. Following the arrest of members of the organization in 2006, Batista suspected that he might be under investigation. He confirmed his suspicion by persuading a childhood friend who was an NYPD Sergeant assigned to the Internal Affairs Bureau (“IAB”) to provide him with a report from a secure IAB database. Batista then falsely reported that Hiciano was his confidential source and tried to persuade his supervisor to corroborate that report.

Batista was convicted at trial on all charges. The evidence presented at trial included testimony from Hiciano, who cooperated with the government after his arrest, and recordings from a wiretap on Batista’s telephone that Judge Irizarry ruled were admissible in denying Batista’s motion to suppress. The government also charged Batista’s childhood friend with obstruction of justice and conspiracy to commit the same, but the childhood friend was acquitted on both charges. Judge Irizarry sentenced Batista to a term of imprisonment of 15 years. In so doing, Judge Irizarry ruled that the two-level Guidelines enhancement for possession of a firearm in connection with a drug trafficking offense applied to Batista based on Hiciano’s possession of a firearm. Deciding an issue of first impression in the District, Judge Irizarry found that this enhancement applied even where there was no physical proximity between Batista and the firearm at issue. Judge Irizarry held that Hiciano’s firearm possession was reasonably foreseeable to Batista, even though he never saw the weapon or had actual knowledge of Hiciano’s possession of it, based on his training and experience as an NYPD undercover narcotics officer. The Second Circuit affirmed Judge Irizarry’s decision on appeal.

United States v. Anthony Trotman and Jamil Jordan (Judge Block)

Judge Block presided over the prosecution of former New York City Police Officers

Anthony Trotman and Jamil Jordan. While working for the New York City Police Department, Jordan and Trotman became members of the Padmore Crew. The Padmore Crew was a loosely affiliated criminal network headed by Vere “the Joker” Padmore that perpetrated a string of armed robberies of jewelry stores and drug dealers. Trotman and Jordan provided the Padmore Crew with the identities of its drug dealer victims and supplied it with police uniforms to assist in the robberies. Trotman and Jordan also participated in some of the robberies.

In addition, Trotman and Jordan conspired to kill a New York City Police detective in retaliation for his revealing that they lied in connection with a prior arrest. The detective’s testimony led to Trotman’s and Jordan’s dismissal from the Police Department. Trotman and Jordan used a police computer to determine the detective’s address and subsequently drove to his house with a potential assassin. They also discussed killing the Assistant United States Attorney responsible for referring them for disciplinary charges for lying in connection with this arrest. Neither of these plots was ultimately carried out.

Trotman agreed to cooperate with the government and provide evidence against Jordan. Trotman also testified at four trials of his former conspirators. Judge Block sentenced Trotman to time served after Trotman had served four years in prison. Jordan also pleaded guilty, and Judge Block sentenced him to a term of imprisonment of 13 years.

United States v. Anthony Aliperti et al. and United States v. John McNamara (Judges Hurley and Korman)

Judge Hurley presided over the prosecution of four former officials of the Town of Brookhaven—former Town Planning Board members Buovodantona (Anthony) Aliperti and Peter Sapienza and former Town Board members Anthony LoSquadro and Donald Zimmer—who were charged with accepting bribes to support a prominent real estate developer’s projects. The case arose based on information provided by a real-estate developer named John McNamara who engaged in a scheme to defraud General Motors Acceptance Corporation (“GMAC”), the financial arm of General Motors. McNamara convinced GMAC to lend him more than \$6 billion to buy cars and vans to ship overseas. In reality, McNamara did not purchase any vehicles, but used the loans to expand his real estate business and make monthly payments on his multiple loans. Due to the scheme, McNamara became one of the largest developers on Long Island.

Because McNamara used the loans to keep up with his monthly payments, GMAC did not discover his scheme for several years, when a routine audit revealed that the vehicles did not exist. Federal authorities arrested McNamara in 1992 and seized a number of his assets. At the time of his arrest, McNamara still owed GMAC more than \$400 million.

Following his arrest, McNamara cooperated with the government. In addition to admitting to the scheme to defraud GMAC, McNamara told the government that he bribed the defendants so that they would quickly approve his building projects in Brookhaven without

requiring costly changes or delays. The government charged McNamara under the RICO statute, and the case was assigned to Judge Korman. Based on the information received from McNamara, the government charged the four former Brookhaven officials with extortion and other crimes.

Defendant Sapienza pleaded guilty to extortion charges, and Judge Hurley sentenced him to a total term of imprisonment of 18 months. The other three defendants proceeded to trial before Judge Hurley, and McNamara testified at three trials against these defendants. In the first trial, the jury acquitted defendants LoSquadro and Zimmer on all charges. The second trial involved defendant Aliperti and resulted in a hung jury. At the third trial, the government retried defendant Aliperti, and the jury acquitted Aliperti on the charge of extortion and deadlocked on the charges of conspiracy to commit extortion and perjury. Following the third trial, the government dismissed the open counts against Aliperti.

Following McNamara's testimony at the three trials, Judge Korman sentenced McNamara to a term of imprisonment of 60 months and ordered him to pay \$412 million in restitution to GMAC.

United States v. Angel Rodriguez et al. (Judges Block)

Judge Block presided over the prosecution of New York City Councilman Angel Rodriguez and his associate Jonathan Morales for the extortion of a real estate developer seeking approval to build a multi-million dollar waterfront project in the Red Hook section of Brooklyn. In order to complete the proposed project, the developer needed the affirmative vote of the City Council's Land Use Committee, as well as that of the full City Council. Rodriguez, who represented the 38th Council District in Brooklyn, carried out an extortion scheme to obtain \$50,000 in cash from the developer and the transfer of three Cobble Hill properties at below market value rates. In exchange, Rodriguez promised to support the developer's proposed project in connection with the votes in the City Council.

Both Rodriguez and Morales pleaded guilty to a charge of conspiracy to commit extortion. Judge Block sentenced Rodriguez to a term of imprisonment of 52 months and Morales to a term of imprisonment of 20 months.

Civil Rights

United States v. Adriana Paoletti-Lemus, et al. (Judge Gershon)

Judge Gershon presided over the prosecution of members of a human-trafficking organization believed to have trafficked over 1,000 deaf and mute Mexican men and women. The victims were brought from Mexico to the United States and led to believe that they would be given good jobs upon arrival. When they arrived, however, they were held in slave-like

conditions and forced to sell trinkets and beg on the New York City subways. Many of the workers were beaten or tortured with an electric stun gun if they tried to escape, refused to turn over all of the proceeds from their sales or failed to meet sales quotas of up to \$600 per week. The organization netted millions of dollars from the victims' sales.

The ring operated out of two houses in Queens, and the government found approximately 70 deaf Mexicans in servitude during raids of those locations. The government indicted 20 members of the organization, including the two leaders, Adriana Paoletti-Lemus and her brother, Renato Paoletti-Lemus. All but two of the 20 defendants, including both leaders, were also deaf. All 20 defendants pleaded guilty. Judge Gershon sentenced Adriana and Renato Paoletti-Lemus to 168 months and 105 months in prison, respectively.

United States v. Lemrick Nelson, Jr. (Judges Block and Trager)

On the evening of August 19, 1991, an automobile driven by a Hasidic Jew struck two black children playing in the Crown Heights neighborhood of Brooklyn, killing one of the children and seriously injuring the other. A crowd gathered at the scene of the accident. While some in the crowd attempted to help the injured children who were pinned beneath the automobile, others began to attack the driver. The first ambulance at the scene was from a Jewish volunteer organization, and its personnel began to assist the injured driver. At the direction of police officers, the ambulance quickly left the scene to protect the injured Jewish driver from the angry crowd.

The accident and the perceived unfairness of the conduct of the initial ambulance personnel on the scene in treating only the Jewish driver, exacerbated underlying tensions between Crown Heights' black and Orthodox Jewish communities and triggered three days of rioting. The catalyst for the riots was a speech given by Charles Price at the scene of the accident, which was captured on tape. During his speech, Price urged the crowd to proceed to a Jewish section of Crown Heights to "get the Jews." Following Price's exhortations, a large portion of the crowd, including Price and 16-year-old Lemrick Nelson, headed towards Kingston Avenue, a predominantly Jewish commercial street in Crown Heights.

Approximately one block past Kingston Avenue, the mob spotted Yankel Rosenbaum, a bearded man in Orthodox Jewish dress. After one individual shouted, "there's a Jew, get the Jew," Nelson and approximately 10 others chased Rosenbaum across the street and attacked him. Nelson stabbed Rosenbaum in the mid-section and left him bleeding on the street. After receiving inadequate medical care, Rosenbaum died from his stab wounds the following day.

Nelson was charged as an adult in the New York State system with several offenses relating to his stabbing of Rosenbaum, including second-degree murder. After a six-week trial, he was acquitted on all charges. Following the acquittal, the United States Attorney for the Eastern District of New York filed a juvenile information against Nelson charging him with an

act of juvenile delinquency based on the killing of Rosenbaum. Thereafter, the United States Attorney moved to transfer Nelson to adult criminal prosecution.

Judge Trager was randomly assigned to preside over the case. The defendant moved that Judge Trager recuse himself based, in part, on the fact that Judge Trager was an Orthodox Jew. Judge Trager denied the motion, opining that:

If Congress had enacted a statute disqualifying judges from sitting on certain cases because of their religious beliefs or because one of their co-religionists had some involvement or interest in the outcome of the case, there is no doubt that such a statute would be struck down. The defendant's effort to invoke an act of Congress to achieve such a result is equally unacceptable.

Indeed, defendant's argument stands on the same infirm footing as motions that have been made to recuse my African-American and female colleagues in civil rights cases where the victim of the alleged discrimination was black or female.

Judge Trager denied the government's motion to transfer the case to an adult prosecution, but the Second Circuit reversed this decision. The government subsequently filed a superseding indictment which also named Price as a defendant. Both defendants were charged with injuring and causing the death of Rosenbaum because of his religion and his use of the public streets.

At the start of jury selection, Judge Trager made clear that he intended to empanel "a moral jury that renders a verdict that has moral integrity." Judge Trager stated: "I have an agenda here which I have made very clear from the very beginning, to end up with a jury that represents the community that will have moral validity; and if there is a hung jury, that itself will be a statement to both sides about both what is the process and the problems are with our society. To me, justice will be served." The jury that Judge Trager empaneled convicted both Nelson and Price, and Judge Trager sentenced them to terms of imprisonment of 235 months and 262 months, respectively.

On appeal, the Second Circuit, in a split decision, concluded that Judge Trager erred in empanelling the jury, reversed the defendants' convictions and remanded the case for a new trial. Following remand, Price pleaded guilty to violating Rosenbaum's civil rights, and Judge Trager sentenced him to 140 months' imprisonment. Nelson proceeded to trial in front of Judge Block. On retrial, the jury convicted Nelson of violating Rosenbaum's civil rights but found that his conduct did not result in Rosenbaum's death. Judge Block sentenced Nelson to 120 months' imprisonment, the maximum term permitted under the statute.

United States v. Justin Volpe et al. (Judges Nickerson and Raggi)

Judge Nickerson and Judge Raggi collectively presided over four trials stemming from the assaults of Abner Louima and Patrick Antoine in the early morning hours of August 9, 1997.

That morning, New York City Police Officers from the 70th Precinct, including Officers Justin Volpe, Charles Schwarz, Thomas Bruder and Thomas Wiese, and Sergeant Michael Bellomo, were summoned to Club Rendez-Vous, a nightclub located on Flatbush Avenue in Brooklyn, to disperse a large crowd who had gathered to watch a fight. While attempting to disperse the crowd, Volpe was struck in the head and mistakenly believed that Louima was the person who struck him. Volpe went looking for Louima and encountered Antoine, who had not been at the club and was merely on his way home. Volpe yelled at Antoine and beat him in the head and face with a flashlight.

During this time, Schwarz and Wiese placed Louima in custody. Following his arrest, Louima was subjected to repeated physical abuse. While Louima was handcuffed in the patrol car on the way back to the 70th Precinct, four officers allegedly beat him. After Louima arrived at the station, Volpe beat him and sodomized him with a broken broom handle while another officer, alleged to be Schwarz held him down.

The five officers were charged in a twelve count indictment. Volpe, Schwarz, Bruder and Wiese were charged with conspiracy to deprive and depriving Louima of his civil rights by assaulting him in the police car, Volpe and Schwarz were charged with conspiracy to deprive and depriving Louima of his civil rights by sexually assaulting him at the 70th Precinct; Schwarz, Bruder and Wiese were charged with conspiracy to obstruct justice by lying to state and federal prosecutors in an effort to exculpate Schwarz with respect to the bathroom assault; and Volpe and Bellomo were charged with various offenses in connection with the assault on Antoine.

In the first trial, the five defendants were tried together on most of the charges filed against them. Three days before the scheduled close of the government's case-in-chief, Volpe pleaded guilty to six of the charges—conspiracy to deprive Louima of his civil rights by aggravated assault and aggravated sexual abuse, assaulting Louima in a police car, sexually abusing Louima in a restroom at the 70th Precinct, assaulting Antoine and witness tampering. The case against the remaining four defendants went to the jury. The jury found Schwarz guilty of conspiring to violate and violating Louima's civil rights in connection with the bathroom assault, but acquitted Schwarz, Wiese and Bruder on all charges relating to the car assault. The jury also acquitted Bellomo on all charges.

Judge Nickerson presided over a second trial involving the obstruction of justice charge against Wiese, Bruder and Schwarz based on Bruder's and Wiese's statements to various investigators that Schwarz did not participate in the bathroom assault. All three were convicted.

Judge Nickerson sentenced Volpe to a term of imprisonment of 30 years and ordered him to pay restitution to Louima in the amount of \$281,045 based on his guilty pleas. Judge Nickerson sentenced Schwarz to a total term of imprisonment of 188 months and ordered him to pay restitution to Louima in the amount of \$277,495. Judge Nickerson also sentenced Bruder and Wiese to 60-month prison terms.

The government also separately charged Officers Rolando Aleman and Francisco Rosario—members of the Street Crimes Unit of the 70th Precinct—with lying based on their statements to federal investigators in which they falsely denied seeing Volpe put Louima in a cell right after the bathroom assault. Aleman pleaded guilty. Rosario was convicted at a trial presided over by Judge Nickerson.

Schwarz, Bruder and Wiese appealed their convictions to the Second Circuit, which reversed the convictions of the three defendants. The court vacated Schwarz’s convictions for the civil rights violations and remanded those charges for a new trial because it found that his attorney had an unwaivable conflict of interest that denied Schwarz effective assistance of counsel and that the jury was improperly exposed to prejudicial extrinsic information during deliberations. The court also reversed Schwarz’s, Bruder’s and Wiese’s convictions at the second trial for conspiracy to obstruct justice on the ground that the evidence was insufficient with respect to the grand jury nexus element to sustain the defendants’ convictions. This decision resulted in the dismissal of the charge in the second trial with prejudice.

Judge Raggi presided over the retrial of Schwarz on the civil rights charges relating to the bathroom assault of Louima. In addition to trying Schwarz on charges of conspiracy to violate and violating Louima’s civil rights, the government also tried Schwarz for perjury based on his testimony at the obstruction conspiracy trial that he did not lead Louima to the bathroom on the night of the assault. The jury convicted Schwarz on the perjury charge, but deadlocked on the remaining charges.

On the eve of a fifth trial, Schwarz agreed not to oppose a five-year sentence for his perjury conviction, which was the maximum permissible sentence under the statute, in exchange for the government’s agreement to dismiss all remaining charges against him.

United States v. Sabhnani (Judge Spatt)

Judge Spatt presided over the prosecution of Varsha and Mahender Sabhnani in the case dubbed the “Long Island Slavery Case.” Defendants, who lived in Syosset, New York, were owners of a multi-million-dollar worldwide perfume manufacturing and distribution business. Defendants brought two women who did not speak English and had limited education from Indonesia to the United States to work as domestic servants. Defendants kept these two women enslaved in their home for several years, forced the women to labor up to 20 hours a day and subjected the women to beatings, starvation, sleep deprivation and mutilation.

Both defendants were convicted at trial of multiple charges, including forced labor and holding a person in a condition of peonage. Judge Spatt sentenced Varsha Sabhnani to 132 months in prison and sentenced Mahender Sabhnani to 40 months in prison. Judge Spatt also ordered both defendants to pay a total of \$679,866.98 in restitution to the two victims. In sentencing Varsha, Judge Spatt stated:

[N]o cultural difference would speak to the insidious and prolonged dehumanizing behavior engaged in by Varsha Sabhnani, while Mahender Sabhnani stood by and watched, or turned a blind eye. Rather, this is at its most fundamental level a clear demonstration of a woman and man's inhumanity to two powerless, vulnerable human beings, whose ability to ask for the most basic help was impaired by their inability to speak the language. A fact not lost on the defendants.

United States v. Eleutario Granados-Hernandez (Judge Matsumoto)

Judge Matsumoto presided over the prosecution of six members of the Granados-Hernandez sex trafficking organization, which was based in Tenancingo, Mexico, a notorious center for sex trafficking. The defendants were charged with multiple counts of sex trafficking and alien smuggling by force.

The organization deceived at least 14 women, some of whom were minors, into believing that they would come to the United States from Mexico as the romantic partners of male members of the organization. The victims were also told that they would work in restaurants in the United States to earn money that they could send back to Mexico to build dream homes. The victims instead were raped, beaten, threatened and forced to perform multiple acts of prostitution.

All defendants pleaded guilty to sex trafficking-related charges. Judge Matsumoto sentenced the lead defendant to a term of imprisonment of 22 years.

Business Crimes

United States v. Ralph Cioffi and Matthew Tannin (Judge Block)

Judge Block presided over the prosecution of Ralph Cioffi and Matthew Tannin, two former hedge fund managers at Bear Stearns Asset Management ("BSAM"). Cioffi and Tannin managed two hedge funds that heavily invested in subprime mortgage-backed securities and ultimately imploded. The collapse of the funds was one factor that contributed to the collapse of Bear Stearns which ultimately played a role in the financial crisis of 2008.

Cioffi and Tannin were charged with publicly misrepresenting the state of the funds despite allegedly being aware that the funds were in imminent danger of crashing. Specifically, the government alleged that starting in March 2007 Cioffi and Tannin believed that the two funds were in grave condition and at risk of collapse. The government further alleged that rather than disclosing the true state of the funds to investors, Cioffi and Tannin made misrepresentations to fund investors to induce them to continue to invest in the funds in the hope that the funds' prospects would change so that Cioffi's and Tannin's incomes and reputations could remain intact.

Before trial, Tannin moved to suppress evidence seized from his personal email account on the ground that the warrant authorizing the seizure did not comply with the Warrants Clause of the Fourth Amendment because the warrant failed to describe with particularity the materials that would be the subject of the search. Judge Block found that the warrant was facially invalid because it did not limit the search to emails from Tannin's account that evidenced the crimes charged in the indictment. Judge Block also held that the more detailed affidavit that had been submitted in support of the warrant did not cure the warrant's deficiency because it was not incorporated by reference into or attached to the warrant. Judge Block further found that the good faith exception to the exclusionary rule was inapplicable since the warrant was so facially devoid of particularity that no officer could reasonably presume the warrant valid. Judge Block finally concluded that the "inevitable discovery" doctrine, under which unlawfully seized evidence is not suppressed if the evidence would have ultimately been discovered by lawful means, did not apply because there was no way to purge the taint of the government's unconstitutionally overbroad search.

Cioffi and Tannin proceeded to trial and were acquitted on all remaining counts of the indictment. One juror stated to the press after the not guilty verdicts that it appeared to her that Cioffi and Tannin were chosen as "scapegoats for Wall Street."

The Stratton Oakmont Boiler Room (Judge Gleeson)

Judge Gleeson presided over the prosecutions of numerous individuals who participated in a "pump-and-dump" securities-fraud scheme masterminded by Jordan Belfort and Daniel Porush, who respectively were the chairman and president of Stratton Oakmont, Inc. ("Stratton"), a now-defunct Long Island brokerage firm. In guilty pleas, Belfort and Porush admitted to manipulating the stock prices of 34 public companies whose public offerings of stock were underwritten by Stratton. Belfort and Porush only agreed to help a company raise money if they were given control of a substantial amount of the company's stock. They caused the stock to be given to a number of co-conspirators, referred to as "flippers," who then sold the stock back to Stratton at pre-arranged below-market prices. Belfort and Porush would then sell the stock to Stratton's customers at fraudulently inflated prices using high-pressure sales tactics. To achieve this result, Stratton was operated as a classic "boiler room." The brokers sat side-by-side in a room the size of a basketball court. The firm held a mandatory sales meeting every morning at which brokers were given scripts for the firm's "house stocks," the stocks whose prices were to be manipulated as part of the scheme. Brokers were expected to stay on the phones selling Stratton's shares in the house stocks for the entire day. Once the shares were in Stratton's customers' accounts, the prices of the house stocks typically collapsed. The scheme, which operated from 1990 through 1997, cost investors hundreds of millions of dollars.

Belfort and Porush cooperated with the government, leading to the prosecution of multiple other conspirators, including shoe designer Steve Madden, who was the President and

Chief Executive Officer of Steve Madden, Ltd. Madden acted as a flipper in the scheme and even helped Stratton manipulate the stock price of his own company. Madden pleaded guilty, and Judge Gleeson sentenced him to 42 months in prison. Judge Gleeson also sentenced Belfort and Porush to terms of imprisonment of 42 and 48 months, respectively. At Belfort's sentencing, Judge Gleeson ordered Belfort to pay \$100.4 million in restitution following his prison sentence, prophetically stating that he had "no doubt" that "Mr. Belfort's going to earn a lot of money" after his release. In fact, Mr. Belfort wrote a best-selling book about his involvement in the charged activities called "*The Wolf of Wall Street*," which was made into a critically acclaimed movie released in late 2013.

The Computer Associates Prosecutions (Judge Glasser)

Judge Glasser presided over the government's prosecution of Computer Associates International ("CA"), a publicly traded computer-software company headquartered in Islandia, New York, and its senior executives on accounting fraud-related charges. The charges stemmed from the fraudulent inflation of CA's revenue and earnings by keeping open the company's books past quarter-ends through a practice known as the "35-day month." This practice gave investors the false impression that CA had met or exceeded quarterly revenue projections when it, in fact, had not. Judge Glasser approved a deferred prosecution agreement between CA and the government in which the company admitted that its former executives engaged in wrongdoing, agreed to institute a series of corporate reforms to prevent the illegal conduct from recurring, and agreed to pay \$225 million in restitution to current and former shareholders who incurred losses as a result of the illegal conduct.

The former CA executives charged by the government included Sanjay Kumar, the former Chief Executive Officer, and Stephen Richards, the former Head of World-Wide Sales. Both executives were charged with securities and wire fraud and conspiracy to commit the same for their participation in the "35-day month" scheme. They were also both charged for obstructing the government's investigation over a two-year period by, among other things, coaching CA employees to lie to the company's outside counsel. Kumar was also accused of paying several million dollars to an individual who threatened to reveal the scheme to the government in return for that individual's silence. Both Kumar and Richards pleaded guilty to all charges on the eve of trial. At Kumar's sentencing, Judge Glasser stirringly characterized the harm wrought by the offenses:

The securities fraud offenses . . . are not crimes of violence in the traditional sense. He hasn't murdered, he hasn't assaulted, he hasn't kidnaped, hasn't raped, but by the fraud enabled by his position of power and authority over the affairs of his company, he did violence to the legitimate expectations of the yet untold number of investors and others that the company, whose shares they owned or by which they were employed or with which they did business was being managed

with integrity. In a real sense he owed an obligation, characterize it as you wish, to all of them, owed them something stricter than the morals of the market place and in the eloquent words of the late Justice Cardozo, not honesty alone but the punctilio of an honor the most sensitive was the standard of behavior, which he should have observed.

It did violence to the innocent belief still hopefully held by some that economics success is achieved by hard work and merit, rather than dishonesty and callousness.

United States v. Amr Elgindy and Jeffrey Royer (Judge Dearie)

Judge Dearie presided over a criminal action involving a corrupt FBI agent, Jeffrey Royer. Royer misappropriated confidential law enforcement information about companies under investigation by the FBI and Securities and Exchange Commission (“SEC”) and leaked it to a stock trader, Amr Elgindy, who used that information to establish “short selling” positions in the stocks of those companies. Royer, who at one point was assigned to the FBI’s white-collar crime unit, obtained the confidential information by performing searches in confidential law enforcement databases, as well as by contacting personnel of the SEC and asking them to perform searches in a confidential SEC database. Royer conveyed the misappropriated information to Elgindy. Elgindy then established short positions in the stocks of the companies identified by Royer and induced others to do the same. Thereafter, Elgindy published the misappropriated information on a publicly-available website that he administered known as “*The Inside Truth*,” which represented itself to be a research tool seeking to uncover and reveal negative information about publicly-traded companies. Elgindy’s dissemination of the misappropriated information to the general public using *The Inside Truth* resulted in a drop in the stock prices of the companies he had shorted. Royer also revealed to Elgindy that a CEO of a publicly-traded company had a prior felony drug conviction that had been expunged, and Elgindy used this information to extort the CEO.

Elgindy and Royer were convicted at trial of multiple charges relating to this conduct, including racketeering conspiracy and securities fraud. Judge Dearie sentenced Elgindy and Royer principally to terms of imprisonment of 135 and 72 months, respectively. This case was featured on the CNBC show *American Greed* in an episode known as “The Mad Max of Wall Street.”

United States v. David Brooks (Judge Seybert)

Judge Seybert presided over the prosecution of two former officers of DHB Industries, Inc. (“DHB”), which was a leading supplier of body armor to the U.S. military and law enforcement. The government charged David H. Brooks and Sandra Hatfield, DHB’s former Chief Executive Officer and Chief Operating Officer, respectively, with insider trading, fraud,

obstruction of justice, and tax evasion. The indictment charged that Brooks and Hatfield falsified DHB's financial records to fraudulently increase DHB's reported earnings and profit margins. After the fraudulent financials caused a rise in DHB's stock price, Brooks and Hatfield sold several million DHB shares that they owned. Brooks realized more than \$185 million from his sales and Hatfield realized over \$5 million from her sales. The government further alleged that Brooks and Hatfield caused DHB to improperly pay millions of dollars of their personal expenses, including expenses related to Brooks' personal horse-racing business, vacation expenses, and expenses for cosmetic surgery.

After an eight-month trial, Brooks and Hatfield were found guilty of insider trading, fraud, and obstruction of justice. Brooks was also found guilty of lying to auditors. Following the verdict, Judge Seybert conducted non-jury civil-forfeiture proceedings and granted in part the government's motion for a preliminary order of forfeiture. Judge Seybert ordered Brooks to forfeit more than \$61 million in ill-gotten gains and ordered Hatfield to forfeit approximately \$1.8 million. Judge Seybert sentenced Brooks to a term of imprisonment of 17 years and sentenced Hatfield to seven years in prison.

United States v. Eric Butler and Julian Tzolov (Judge Weinstein)

Judge Weinstein presided over the prosecution of Eric Butler and Julian Tzolov, two former brokers at Credit Suisse charged with conspiracy, securities fraud, and wire fraud relating to their sale of auction-rate securities to Credit Suisse clients. The government charged that, while running Credit Suisse's Corporate Cash Management Group, Butler and Tzolov induced various Credit Suisse corporate clients to buy auction-rate securities backed by student loans. The government further charged that, unbeknownst to these companies, Butler and Tzolov instead invested these companies' funds in higher risk auction-rate securities backed by mortgage-backed collateralized debt obligations ("CDOs"). Because the CDOs were higher risk and produced a higher yield, Butler and Tzolov received higher sales commissions on these purchases. The government further charged that Butler and Tzolov's scheme was discovered when the market for mortgage-backed CDOs collapsed in fall 2007 and Butler and Tzolov were unable to liquidate the companies' securities and return their money. The government charged that the losses incurred by Butler's and Tzolov's clients as a result of the scheme exceeded \$1 billion.

After jumping bail, Tzolov was arrested in Spain and returned to the United States. Tzolov thereafter began cooperating with the government and pleaded guilty to various offenses, including conspiracy to commit securities and wire fraud, bail jumping, and visa fraud. Judge Weinstein sentenced Tzolov to four years in prison.

Butler was convicted at trial on all three charges against him, including conspiracy to commit securities and wire fraud. Before sentencing Butler, Judge Weinstein requested that the Chief Judge convene an advisory panel of judges and a Sentencing Guidelines expert from the

Probation Department to meet with him regarding Butler's sentence. This procedure had been routine in the Eastern District of New York before the adoption of the Sentencing Guidelines, but was abandoned "with the advent of rigid by-the-numbers sentencing under the Sentencing Commission's direction." Following the re-institution of discretionary sentencing, the Eastern District of New York re-established this practice when requested by the sentencing judge. Judge Weinstein requested an advisory panel prior to Butler's sentencing because of "the severe impact of [Butler's] frauds on the international short- and long-term securities markets, and other complexities presented by [Butler's] sentencing." Following his meeting with the advisory panel, Judge Weinstein sentenced Butler to a term of imprisonment of five years. In sentencing Butler, Judge Weinstein stated:

His trial laid bare the pernicious and pervasive culture of corruption in the financial services industry. The blame for this condition is shared not only by individual defendants like Butler, but also by the institutions that employ them, those who carelessly invest, and those who fail to regulate. Supervision is seriously negligent; greed and short-term gain are so enormous that fraud and arrogant disregard of others' rights and of ethics almost encourage criminal activities such as defendant's. . . .

The staggering sums involved in this case reflect more than the magnitude of the defendant's fraud. They also evince an industry beset by avarice that has been allowed to run rampant by regulators and negligent supervisors alike.

United States v. John Spano (Judge Platt)

Judge Platt presided over the prosecution of John Spano in connection with Spano's attempted purchase of the New York Islanders Hockey Club. Spano began negotiations with the owners of the Islanders in 1996. In order to convince the owners that he was serious about the purchase, Spano fraudulently persuaded a bank executive in Texas to write a letter to the Islanders' owners that indicated that Spano's net worth exceeded \$100 million. In reality, Spano's net worth was only several hundred thousand dollars.

Spano and the Islanders' then-owners agreed that Spano would purchase the Islanders for approximately \$165 million. After agreeing to the deal, the Islanders' owners ceded operational control of the team to Spano. For four months from the time that he signed the deal to the scheduled closing, Spano operated the team and sat in the owner's box.

Spano fraudulently induced several banks to lend him \$80 million to be used to finance part of the purchase of the team. Spano, however, was required to contribute approximately \$17 million from his own funds and did not have that amount of money available. The scheme unraveled after Spano did not show up with the money he was required to contribute on the date of the scheduled closing.

Spano was charged with bank fraud and making a false statement in connection with a loan application. Spano pleaded guilty to both charges. Judge Platt sentenced him to a total term of imprisonment of 71 months.

United States v. Michael Metter (Judge Irizarry)

Judge Irizarry presided over the prosecution of Michael Metter, the Chief Executive Officer of Spongetech Delivery Systems, Inc. (“Spongetech”), and others in connection with an alleged scheme to manipulate Spongetech’s stock price. Spongetech sold pre-soaped sponges, including a Sponge Bob Square Pants soap-filled bath sponge for children. Metter was charged with various securities crimes and other offenses based on an alleged scheme to artificially increase Spongetech’s stock price through, *inter alia*, publicly reporting materially overstated sales figures.

Metter filed a pre-trial motion to suppress evidence contained on approximately 65 computer hard drives and images of emails that was obtained pursuant to search warrants executed at his home and at Spongetech’s offices. Metter premised his motion on the government’s delay in conducting the searches of the images contained in these electronic media. As Judge Irizarry noted, Metter’s motion raised “an interesting issue of first impression in this Circuit that may impact electronic discovery in future criminal investigations and cases: How long may the government retain seized and imaged electronic evidence before conducting a review of that evidence to determine whether any of it falls outside the scope of a search warrant?”

Judge Irizarry held that, under the facts and circumstances of this case, the government’s more than 15-month delay in reviewing the seized electronic evidence constituted an unreasonable seizure under the Fourth Amendment. The Court found that the Fourth Amendment requires the government to complete its review of the seized materials within a “reasonable” time. Although noting that under current law there was no upper limit as to when the government must review seized electronic data, the Court found the government’s delay in this case to be unreasonable. The Court stated:

The parties have not provided the Court with any authority, nor has the Court found any, indicating that the government may seize and image electronic data and then retain that data with no plans whatsoever to *begin* review of that data to determine whether any irrelevant, personal information was improperly seized. The government's blatant disregard for its responsibility in this case is unacceptable and unreasonable.

The Court concluded that the appropriate remedy for the government’s violation of the Fourth Amendment was suppression of the evidence at issue.

As a result of this decision, the government dropped most of the charges against Metter.

Metter ultimately pleaded guilty to the reduced charge of making a false statement in a report filed with the Securities and Exchange Commission. For this offense, Judge Irizarry sentenced Metter to five years of probation.

United States v. Dmitriy Yakovlev (Judge Glasser)

Judge Glasser presided over the trial of Dmitriy Yakovlev, a Russian immigrant and trained surgeon, for various offenses relating to his exploitation of the identities of Michael Klein, Viktor Alekseyev, and Irina Malezhik to commit aggravated identity theft, credit-card fraud, and bank fraud shortly after each victim disappeared. In March 2011, a jury convicted Yakovlev. The jury also found that Yakovelev murdered Alekseyev and Malezhik in connection with his theft of their identities. Alekseyev went missing shortly after having been involved in a real-estate transaction with Yakovlev. Alekseyev's dismembered remains were found in a park in New Jersey, and the government called a forensic expert who testified that the manner in which Alekseyev's body was dismembered suggested that it had been done by someone with anatomical knowledge and surgical training, like that possessed by Yakovlev. Malezhik vanished after business dealings with Yakovlev, and her body was never found. Klein's body was also never found, but his abandoned car was found in the same area of New Jersey where Alexseyev's body was discovered.

At sentencing, Judge Glasser upwardly departed from the advisory Guidelines range and sentenced Yakovlev to thirty years of imprisonment and ordered restitution in the amount of \$432,050.74. In so doing, Judge Glasser stated:

The indescribable callousness with which this defendant plundered the bank accounts and credit card accounts, stole the money of an elderly man who had just retired, a civilian employee from the police department, within hours, days of their disappearance, [a]s addressed by the advisory guidelines, is shamefully anemic. A substantially greater and more fitting sentence I think will begin to impress upon him that the law means what it says when it criminalizes his brazen frauds and murders and will exact punishment. That's what promoting respect for the law is about.

United States v. HSBC Bank USA, N.A. and HSBC Holdings PLC (Judge Gleeson)

Judge Gleeson presided over an action in which the government filed a Deferred Prosecution Agreement ("DPA") against HSBC Bank USA, N.A. ("HSBC Bank") and its corporate parent, HSBC Holdings PLC ("HSBC Holdings") (collectively, "HSBC"), stemming from HSBC's violations of the Bank Secrecy Act ("BSA"), the International Emergency Economic Powers Act ("IEEPA") and the Trading with the Enemy Act ("TWEA").

In December 2012, the government filed a felony information, the DPA, a statement of facts and a corporate compliance monitor agreement. According to the statement of facts, HSBC

Bank failed to implement an effective anti-money laundering program to monitor suspicious transactions from Mexico. This failure, as well as deficiencies in the AML program of HSBC's Mexican affiliate, permitted Mexican and Colombian drug traffickers to launder at least \$881 million in drug proceeds through HSBC Bank undetected. Even though HSBC Holdings was aware of the compliance problems of its Mexican subsidiary for a number of years, it failed to alert HSBC Bank of these issues. In addition, HSBC Holdings and its subsidiaries knowingly and willfully engaged in practices outside the United States that caused HSBC Bank to process payments on behalf of customers in Cuba, Iran, Libya, Sudan and Burma, all of which were countries subject to sanctions enforced by the Office of Foreign Assets Control.

In the DPA, HSBC admitted to the government's statement of facts and to the alleged violations of the BSA, IEEPA and TWEA. HSBC also agreed to forfeit \$1.256 billion and to undertake remedial measures to address the systemic failures that led to these violations. The DPA also provided that if HSBC complied with its terms the government would move to dismiss the felony information after five years. Based on this provision, the government requested that the Court hold the case in abeyance for five years and exclude that time under the Speedy Trial Act.

In connection with this application to the Court, the parties asserted that the Court lacked authority over the approval or implementation of the DPA. Judge Gleeson rejected this contention on the ground that the Court is not "a potted plant." Judge Gleeson stated that "[b]y placing a criminal matter on the docket of a federal court, the parties have subjected their DPA to the legitimate exercise of that authority." The Court added that "it is easy to imagine circumstances in which a deferred prosecution agreement, or the implementation of such an agreement, so transgresses the bounds of lawfulness or propriety as to warrant judicial intervention to protect the integrity of the Court." Judge Gleeson approved the DPA because he found "no impropriety that implicates the integrity of the Court. Judge Gleeson further directed the parties to file quarterly reports to keep him apprised of significant developments in the implementation of the DPA.

United States v. Robert Catoggio et al. (Judge Dearie)

Judge Dearie presided over a case arising from a 55-defendant "pump and dump" securities fraud scheme involving over \$100 million in losses. The lead defendants were Robert Catoggio and Roy Ageloff, who headed four brokerage firms that employed hundreds of brokers in New York, New Jersey and Florida. Catoggio and Ageloff were alleged to be backed by members of organized crime and to have funneled millions of dollars in illicit profits to a captain in the Genovese organized crime family.

Catoggio and Ageloff acquired control of blocks of stocks traded on the OTC Bulletin Board and Nasdaq that the conspirators referred to as "house stocks." Using aggressive sales tactics, brokers working for Catoggio and Ageloff lied to customers about the business prospects

of the house stock companies, even though they knew that many of the companies did no business at all. Based on the false statements, the brokers sold the shares controlled by Catoggio and Ageloff to unsuspecting customers at artificially inflated prices.

The conspirators started the scheme in 1991 at the brokerage firm Hanover Sterling. The FBI raided Hanover Sterling and closed it down in February 1995. The conspirators thereafter continued the scheme at three other brokerage firms until 1998.

Catoggio and Ageloff pleaded guilty to engaging in a pattern of racketeering in violation of RICO. As for the remaining defendants, two were convicted at trial and the others pleaded guilty. Judge Dearie sentenced Catoggio and Ageloff to terms of imprisonment of 141 months and 96 months, respectively. Judge Dearie also ordered Catoggio and Ageloff to pay \$80 million and approximately \$190 million in restitution, respectively, to recompense the victims of the scheme for their losses.

United States v. Christopher Finazzo and Douglas Dey (Judge Mauskopf)

Judge Mauskopf presided over the prosecution of a \$25 million kickback scheme that defrauded Aeropostale, Inc., a national mall-based specialty clothing retailer that was traded on the New York Stock Exchange. The government charged Christopher Finazzo, Aeropostale's former executive vice president and chief merchandising officer, and Douglas Dey, the owner of South Bay Apparel, Inc., a major clothing supplier of Aeropostale, with conspiracy, wire fraud and multiple counts of mail fraud.

According to the Indictment, Finazzo caused Aeropostale to purchase more than \$350 million in clothing from South Bay in exchange for payments from Dey of approximately 50% of South Bay's profits. The government alleged that, between 2002 and 2006, Finazzo received approximately \$25 million in kickbacks from Dey. The government further alleged that defendants' conduct caused Aeropostale to lose profits and prevented it from seeking lower prices for merchandise either from South Bay or other vendors.

Dey pleaded guilty to conspiracy to bribe Finazzo. Finazzo proceeded to trial before Judge Mauskopf and was convicted on one count of conspiracy, 14 counts of mail fraud and one count of wire fraud. Judge Mauskopf sentenced Finazzo and Dey to terms of imprisonment of 96 and 42 months, respectively.

Judge Mauskopf also imposed a restitution judgment against both defendants in the amount of approximately \$25 million. In so doing, Judge Mauskopf rejected defendants' argument that Aeropostale did not suffer actual pecuniary harm because it received the clothing it paid for from South Bay. Judge Mauskopf stated: "Finazzo and Dey directly harmed Aeropostale through their criminal conduct because their agreement to exchange bribes and split South Bay's profits deceived Aeropostale into forgoing other business transactions, inflated the

prices Aeropostale paid to South Bay for its products, and caused Aeropostale unwittingly to pay millions of dollars in kickbacks to its own senior executive.” Judge Mauskopf further held that the kickbacks paid to Finazzo were a reasonable measure of restitution loss.

Terrorism

United States v. Russell Defreitas, et al. (Judge Irizarry)

Judge Irizarry presided over the prosecution of four individuals charged with conspiring to blow up John F. Kennedy International Airport in Queens, New York: Russell Defreitas, Abdul Kadir, Abdel Nur and Kareem Ibrahim. Defreitas, the leader of the scheme, described the planned attack as “worse than the World Trade Center,” referring to the September 11, 2001 attacks, and believed that the conspirators would destroy “the whole of Kennedy” and part of Queens. The conspirators attempted to enlist support from prominent international terrorist groups, including Al Qaeda, the Iranian revolutionary leadership and the Trinidadian militant group Jamaat al Muslimeen.

Judge Irizarry presided over two separate trials in this matter. Defreitas and Kadir were tried together in a nine-week trial before an anonymous jury. They were convicted of conspiracy to attack a public transportation system, conspiracy to destroy a building by fire or explosive, conspiracy to attack aircraft and aircraft materials, conspiracy to destroy international airport facilities and conspiracy to attack a mass-transportation facility. Ibrahim was separately tried and convicted after a four-week trial on the same charges. Nur pleaded guilty to providing material support to terrorists.

Judge Irizarry sentenced Defreitas, Kadir and Ibrahim to terms of life imprisonment. Judge Irizarry sentenced Nur to 180 months’ imprisonment.

United States v. Quazi Mohammad Rezwanul Ahsan Nafis (Judge Amon)

Judge Amon presided over the prosecution of Quazi Mohammad Rezwanul Ahsan Nafis, a Bangladeshi national who plotted to conduct a large scale terrorist attack on United States soil. While attempting to find co-conspirators to aid him in that effort, Nafis unknowingly approached a confidential source, who subsequently reported his activities to the FBI New York Joint Terrorism Task Force. Nafis considered destroying the New York Stock Exchange, attacking a military base in Baltimore and assassinating President Obama, before ultimately deciding to bomb the New York Federal Reserve.

In October 2012, Nafis and an undercover government agent assembled what Nafis believed to be a 1,000 pound bomb that could be remotely detonated by cell phone. Nafis armed the bomb and placed it in a vehicle parked near the Federal Reserve Bank on Liberty Street. Before attempting to detonate the explosives, Nafis created a videotape threatening that Al

Qaeda would not stop its attacks until it achieved victory or martyrdom. The FBI and NYPD arrested Nafis when he attempted to use his cell phone to remotely detonate the bomb.

Nafis was charged with using a weapon of mass destruction and providing material support to Al Qaeda. He subsequently pleaded guilty to attempting to use a weapon of mass destruction. Judge Amon sentenced Nafis to 30 years in prison and a lifetime term of supervised release following his period of incarceration. Judge Amon also ordered that Nafis not associate in any manner with individuals affiliated with terrorist or organized crime and that Nafis not reenter the United States if he is deported following his prison sentence.

United States v. Betim Kaziu (Judge Gleeson)

Judge Gleeson presided over the trial and sentencing of Brooklyn born Betim Kaziu who was convicted of joining Al Qaeda and the Taliban to fight in Afghanistan, Pakistan or Somalia. Kaziu was captured in Kosovo by local police and the FBI.

The principal witness against Kaziu was a childhood friend who had originally planned to participate in the scheme with Kaziu but later backed out. At trial, the prosecution introduced a video that a prosecutor described as Kaziu's "goodbye," describing his departure to paradise—which the prosecutor described as "a reward for those who die a martyr."

In July 2011, the jury deliberated less than four hours before finding Kaziu guilty of conspiracy to provide material support to a terrorist organization, conspiracy to commit murder and other charges.

In March 2012, Judge Gleeson sentenced Kaziu to 27 years in prison. At sentencing, Judge Gleeson stated: "You grew up in Brooklyn and you decided to murder your own country's soldiers." Judge Gleeson further stated that "[a]s a 19-year-old kid you failed miserably in high school and you got swept up in jihad. . . . I doubt your capacity to commit terrorism has been diminished by 29 months in [prison served so far]."

United States v. Agron Hasbajrami (Judge Gleeson)

Judge Gleeson presided over the guilty plea and sentencing of Agron Hasbajrami, an Albanian national who resided in Brooklyn. Hasbajrami was charged with attempting to provide material support to terrorists. In early 2011, Hasbajrami exchanged email messages with an individual in Pakistan who indicated that he was a member of an armed group that had murdered American soldiers. Hasbajrami then sent the individual more than \$1,000 to support the jihadist cause. In one email message, Hasbajrami stated that he wished to travel abroad to "marry with the girls in paradise," using jihadist rhetoric to describe his desire to die as a martyr. In September 2011, Hasbajrami purchased a one-way airplane ticket to travel from New York to the Middle East to wage violent jihad. He was arrested by the FBI's Joint Terrorism Task Force at

John F. Kennedy International Airport. At the time of his arrest, Hasbajrami was carrying a tent, boots and cold-weather gear. A search of Hasbajrami's residence in Brooklyn revealed a note stating "Do not wait for invasion, the time is martyrdom time."

In April 2012, Hasbajrami pleaded guilty to attempting to provide material support to terrorists by joining a jihadist fighting group overseas. For his role in this scheme, Hasbajrami was sentenced to 15 years in federal prison. In addition, Hasbajrami will be deported from the United States upon completion of his prison term.

United States v. Najibullah Zazi and United States v. Zarein Ahmedzay (Judge Dearie and Magistrate Judge Gold)

Judge Dearie and Magistrate Judge Gold presided over the guilty pleas of Najibullah Zazi and Zarein Ahmedzay on charges related to planned suicide bombings on the New York City subway system in September 2009.

Zazi and Ahmedzay underwent weapons and explosives training at an Al Qaeda training camp in Pakistan in 2008 before returning to the United States to carry out terrorist attacks here. In September 2009, Zazi drove from his home in Colorado to New York City with the intent to detonate explosives on the New York City subway during rush hour as one of three suicide "martyrdom" bombings. The other bombings were to be carried out by two Queens residents, Ahmedzay and Adis Medunjanin (whose case is discussed below). Zazi's car contained notes and materials for making bombs. Federal agents followed Zazi during the drive to New York, and Zazi became aware of the pursuit. Without accomplishing the bombings, Zazi abruptly flew back to Colorado. He and Ahmedzay were then arrested.

Zazi and Ahmedzay were subsequently indicted in the Eastern District of New York. In 2010, they pleaded guilty to conspiring to use weapons of mass destruction, conspiring to commit murder in a foreign country, and providing material support to a terrorist organization. Each of them admitted that he was recruited by Al Qaeda in Pakistan for a suicide "martyrdom" attack against the New York City subway system.

Zazi and Ahmedzay agreed to testify against their co-conspirator, Medunjanin. As of the time of publication of this Retrospective, Zazi and Ahmedzay had not yet been sentenced.

United States v. Adis Medunjanin (Judge Gleeson)

Judge Gleeson presided over the trial and sentencing of Adis Medunjanin, who was born in Bosnia and grew up in Queens, where he met Najibullah Zazi and Zarein Ahmedzay at Flushing High School. Like Zazi and Ahmedzay, Medunjanin underwent weapons training at an Al Qaeda camp in Pakistan and returned to the United States, where the three men plotted to explode bombs on the New York City subway. After learning that law-enforcement authorities were aware of the plot in September 2009, Medunjanin called 911 from his car and said "We

love death more than you love life” before deliberately crashing into another vehicle on the Whitestone Bridge in a failed suicide attack.

Unlike Zazi and Ahmedzay (whose guilty pleas are discussed above), Medunjanin went to trial. After a trial before Judge Gleeson in 2011, during which Zazi and Ahmedzay testified about the subway-bombing plot and the inner workings of Al Qaeda, Medunjanin was convicted of conspiring to use weapons of mass destruction and conspiring to commit murder abroad, as well as providing material support to and receiving military training from Al Qaeda. In November 2012, Judge Gleeson sentenced Medunjanin to a mandatory life sentence for conspiring to use weapons of mass destruction, plus 95 years on the other charges.

United States v. Mohammed Ali Hassan Al Moayad (Judge Johnson)

Judge Johnson presided over the 2005 trial and conviction of Mohammed Ali Hassan al Moayad, who was charged with providing material support, money, weapons and recruits to Hamas and Al Qaeda. Even before the trial, the case received wide attention when the government’s chief witness, a Yemeni informer, set himself on fire outside the White House. At trial, Judge Johnson permitted the government to offer evidence relating to attacks in Israel to show that Hamas is a terrorist organization. In addition, Judge Johnson allowed the government to introduce testimony relating to activities at an Al Qaeda training camp because al Moayad’s name appeared on an Al Qaeda training-camp form.

Al Moayad was convicted at trial, and Judge Johnson sentenced him to a total term of imprisonment of 75 years and a \$1.25 million fine. The conviction was hailed as a significant blow to Al Qaeda by the Bush Administration.

The Second Circuit later overturned al Moayad’s conviction, ruling that the jury had been prejudiced by inflammatory testimony about unrelated terrorism links. Al Moayad subsequently pleaded guilty to conspiring to raise money for Hamas and was released and deported to Yemen.

United States v. Ghazi Ibrahim Abu Maizar (Judge Raggi)

Judge Raggi presided over the trial, conviction and sentencing of Ghazi Ibrahim Abu Maizar. Maizar was charged with plotting to bomb the New York subway system (specifically, the B line) in a planned rush hour attack that, according to the police and federal agents, could have killed scores of people.

Maizar, who was born and raised in the West Bank, arrived in the United States illegally from Canada. Several months after his arrival, he was arrested with a pipe bomb in his Brooklyn apartment in July 1997. As Judge Raggi noted at Maizar’s sentencing, the police raid on his apartment, in which he was shot and wounded, came “literally hours before” he planned to plant the bomb in the subway. During the trial, Maizar testified that he had intended to use the bomb in a suicide attack in which he hoped to kill as many Jews as possible. Maizar also denounced

the policies of both the United States and Israel.

Maizar was convicted, and Judge Raggi sentenced him to life in prison without the possibility of parole. In sentencing Maizar, Judge Raggi stated that “whatever has occurred in Mr. Maizar's life” did not justify his desire to make average New Yorkers “bear the consequences of his hatred and frustration.”

United States v. Shahawar Matin Siraj (Judge Gershon)

Judge Gershon presided over the trial, conviction and sentencing of Shahawar Matin Siraj, a 24-year-old Pakistani immigrant, for plotting to bomb the Herald Square subway station in 2004. Siraj was arrested in August 2004, three days before the Republican National Convention began in New York City.

During his trial, he relied on an entrapment defense, contending that a police informant had entrapped him into making statements about his plan to blow up the subway and his anger at America, statements that were secretly recorded by the informant. The tapes were played at the trial. The jury rejected the entrapment defense and convicted Siraj on four counts of conspiracy, including the most serious charge of plotting to bomb a public transportation system.

In January 2006, Judge Gershon sentenced Siraj to 30 years in prison for his role in the criminal conspiracy. In handing down the sentence, Judge Gershon stated that “[t]he crimes committed here were extremely serious” and “had the potential, if not thwarted, to wreak havoc with the New York City transportation system, indeed, the tristate-area transportation system.” Judge Gershon added that such an attack would have meant enormous economic losses, disruption and loss of life.

United States v. Numan Maflahi (Judge Gershon)

Judge Gershon presided over the jury trial and conviction of Numan Maflahi, a New Jersey gas station owner convicted of making false statements to federal agents. Maflahi falsely denied helping a Yemeni cleric, Abdullah Satar, who allegedly traveled to Brooklyn in 1999 to raise money for international terrorism. The evidence at trial showed that Maflahi spent substantial time with Satar during his trip, belying Maflahi's contention that he did not have any involvement with Satar's fund-raising activities. The government further contended that Maflahi's lies to the FBI were intended to conceal his own involvement in raising money for Al Qaeda.

Maflahi was convicted at trial, and in July 2004, Judge Gershon sentenced him to a term of imprisonment of five years and a \$25,000 fine.

Linde v. Arab Bank (Judges Cogan and Gershon and Magistrate Judge Pohorelsky)

Judge Gershon and Judge Cogan presided over a civil suit brought by United States citizens who had been victims of terrorist attacks in Israel against a financial institution based in Jordan that was alleged to have facilitated the terrorist attacks. Six American families who were victims of Palestinian terrorism in Israel during the Al Aqsa Intifada (the “Intifada”) brought suit against Arab Bank PLC (“Arab Bank”) principally under the Anti-Terrorism Act (“ATA”) and the Alien Tort Statute (“ATS”). This case was consolidated with a number of other related cases, ultimately covering more than 6,000 plaintiffs.

Plaintiffs alleged that Arab Bank provided banking services to the following foreign terrorist organizations (“FTOs”): Hamas, the Palestinian Islamic Jihad and the Al Aqsa Martyrs Brigade. Plaintiff alleged that Arab Bank provided banking services to the FTOs knowing that the banking services facilitated the FTOs’ terrorist activities.

Plaintiffs also alleged that Arab Bank administered a Saudi-funded universal insurance plan for the benefit of Palestinian terrorists killed, injured or apprehended by Israeli security forces, as well as to prospective terrorists. Plaintiff alleged that the plan was established by the Saudi Committee in Support of the Intifada Al Quds (the “Saudi Committee”), which the complaints alleged to be a professional fundraising apparatus intended to subsidize the Palestinian terror campaign and to bankroll Hamas. Plaintiffs alleged that the plan was, in fact, a reward for the perpetrators of suicide attacks. According to the complaints, Arab Bank, in consultation with the Saudi Committee and Hamas, maintained a database of persons eligible to receive benefits under the death and dismemberment plan and opened a bank account for each beneficiary.

During discovery, Arab Bank opposed plaintiff’s request for production of a number of documents on the ground that they were protected from disclosure by foreign bank secrecy laws. This motion was referred to Magistrate Judge Pohorelsky, who overruled Arab Bank’s objections. Rather than require the immediate production of these documents, Judge Pohorelsky permitted Arab Bank to make a good-faith effort to secure permission from the foreign authorities to make the information available prior to production. Judge Gershon affirmed Judge Pohorelsky’s decision.

Relying on the fact that Palestinian and Jordanian officials denied Arab Bank’s request for permission to turn over the documents in question, Arab Bank refused to produce the requested documents. Based on this refusal, Judge Gershon imposed sanctions against Arab Bank in the form of several adverse instructions to be given to the jury at trial.

The case proceeded to trial in front of Judge Cogan starting in August 2014. After a month-long trial, the jury found Arab Bank liable for providing assistance to Hamas. As of the publication of this Retrospective, the Court had yet to hold a separate trial to determine the

amount owed to the plaintiffs as a result of Arab Bank's violations.

Other

United States v. Michael Swango (Judge Mishler)

Judge Mishler presided over several prosecutions of Michael Swango, a serial killer who fraudulently obtained employment at hospitals in both the United States and abroad and then murdered patients entrusted to his care. Swango graduated from medical school in 1983. Following his graduation, Swango obtained a position as a medical resident at the Ohio State University Hospital. During his internship, Swango murdered or attempted to murder his patients by intentionally injecting them with poisonous substances. After leaving Ohio State, Swango worked as a paramedic in Illinois where he poisoned co-workers with arsenic. He was convicted of aggravated battery for this conduct and was sentenced to five years in prison.

Following his release from prison, Swango applied for physician positions at several hospitals, including the Veterans Affairs Medical Center in Northport, New York. While working as a resident physician at the Veterans Affairs Medical Center, Swango murdered three patients by intravenous injection of toxic substances and assaulted another patient in the same manner. To assist his efforts to murder and assault his patients, Swango sometimes created false records relating to his victims, including fabricating "do not resuscitate" orders to prevent efforts from being made to revive those patients.

Swango was initially charged with submitting a false statement to a government agency premised on his fraudulently obtaining the position at the Veterans Affairs Medical Center. Swango pleaded guilty to this charge, and Judge Mishler sentenced him to 42 months' imprisonment. Shortly before he was scheduled to be released, the government filed another indictment against Swango charging him with the murders of the three patients at the Veterans Affairs Medical Center. Swango pleaded guilty to the three murders and other offenses, and Judge Mishler sentenced Swango to life imprisonment. Swango's story was the subject of the Edgar Award-winning book *Blind Eye: The Terrifying Story of a Doctor Who Got Away with Murder*, written by James B. Stewart.

The Golden Venture Prosecutions (Judge Raggi)

Judge Raggi presided over the prosecution of 22 individuals responsible for attempting to smuggle approximately 300 illegal Chinese aliens into the United States aboard the freighter *Golden Venture*. The *Golden Venture's* ill-fated four-month journey started in Thailand and ended on June 6, 1993, when the freighter was ordered to run aground on the Rockaway peninsula in Queens. The immigrants were then ordered to jump overboard and swim ashore. Ten immigrants died of drowning or hypothermia, and most who made it to shore were taken into custody by immigration officials.

Seven defendants who served as “enforcers” hired to control the immigrants initially pleaded guilty to conspiring to smuggle illegal aliens, agreeing with the prosecution to serve sentences of from 12 to 30 months’ imprisonment. Judge Raggi, however, rejected the pleas, finding that “[t]he sentences agreed to do not adequately do justice.” Judge Raggi subsequently accepted revised plea agreements and sentenced these defendants to between 36 and 54 months’ imprisonment.

The chief enforcer, Kin Sin Lee, also pleaded guilty, and Judge Raggi sentenced him to a total of ten years imprisonment after upwardly departing from the sentence called for under the federal sentencing Guidelines. In so doing, Judge Raggi stated that “the [Sentencing] Commission could not have imagined a degree of reckless and wanton misconduct such as this defendant engaged in on the board the ship, the Golden Venture. Moreover, the guidelines is calculated on the assumption that one person died. Ten people died in this case, and hundreds of others had their lives endangered.”

Judge Raggi sentenced the leader of the smuggling organization, Lee Peng Fei, to the maximum allowable sentence of 20 years’ imprisonment, even though the Guidelines called for a three-year sentence. In upwardly departing based on factors which included the dangerous and inhumane treatment of the passengers, Judge Raggi found that the passenger deaths “were directly caused by [the defendant’s] callous decision” to ground the boat at night and require the immigrants to swim ashore.

United States v. Timothy Donaghy (Judge Amon)

Judge Amon presided over the prosecution of Timothy Donaghy, a former National Basketball Association referee, who was charged with participating in an illegal sports-betting scheme in which Donaghy received cash for making winning gambling recommendations on the outcome of NBA games, including games that he officiated. The government charged that, in providing these recommendations to his co-conspirators, Donaghy relied on non-public information to which he had unique access, including his knowledge of the officiating crews assigned to upcoming games, the interactions between referees and players, and the physical condition of players.

Donaghy pleaded guilty to wire-fraud conspiracy, and Judge Amon sentenced him to a term of imprisonment of 15 months. In sentencing Donaghy, Judge Amon stated: “The NBA, the players and the fans relied on him to perform his job in an honest manner, nonconflicted manner, and not one compromised by a financial interest in the games he was officiating.”

In re the Complaint of the City of New York, as Owner and Operator of the M/V Andrew J. Barberi (Judge Korman)

On October 15, 2003, at approximately 3:00 p.m., the ferryboat *Andrew J. Barberi*

crashed at full speed into a pier at the St. George ferry terminal in Staten Island. The ferry was carrying approximately 1,500 passengers from Manhattan to Staten Island. As a result of the crash, the edge of the pier sliced into the main passenger deck killing eleven passengers and injuring 70 others. At the time of the crash, the ferry was piloted by Assistant Captain Richard Smith who had passed out at the wheel shortly before the crash due to a number of prescription drugs that he had taken for back pain. Following the crash, Smith attempted suicide first by slitting his wrist with a pocketknife and then by shooting himself twice with a pellet gun.

Smith waived indictment and pleaded guilty before Judge Korman to a twelve-count information charging him with eleven counts of seaman's manslaughter—one count for each of the passengers killed—and with making a false statement to the Coast Guard by concealing his use of pain medication when renewing his pilot's license. Smith's supervisor, Patrick Ryan, was also charged with seaman's manslaughter for failing to enforce New York's two-pilot rule, which required both the captain and assistant captain be in the wheelhouse when the ferry docked, and with making false statements to the National Transportation Safety Board during the investigation of the crash. Ryan pleaded guilty to both charges.

Judge Korman sentenced Smith to 18 months and Ryan to 12 months and 1 day. In sentencing Smith, Judge Korman stated that there was "no question that a sentence is required for the purpose of deterring others in not making false statements on medical information upon which the Coast Guard relies." Judge Korman, however, rejected the government's request for a higher sentence on the ground that Smith "is a broken person as a result of this event. And beyond whatever sentence I impose, he will suffer as a result of what he did, for the rest of his life."

United States v. Wing (David) Kwong (Judges Dearie and Glasser)

Judge Glasser presided over the prosecution of Wing (David) Kwong, a defendant turned informant and alleged James Bond wannabe, who sent a booby-trapped briefcase to the prosecutor responsible for his case. In April 1988, Kwong was arrested after sending 63 machine guns to an undercover agent. After pleading guilty to weapons charges pursuant to a cooperation agreement, Kwong began working as an informant for the DEA.

Concerned about the sentence he faced on the weapons charges, Kwong pressed his handling agents to make bigger cases. In particular, he pressed his handling agents to go after a reputed Chinatown crime figure named Chan Wing Yeung. Apparently frustrated by the agents' efforts in this regard, Kwong telephoned the prosecutor handling his weapons case to complain about the agents' conduct. The prosecutor hung up on him, and the DEA ultimately ceased using Kwong as an informant. Kwong then attempted to provide information about Yeung to the FBI.

On January 30, 1990, Kwong's prosecutor received a package in the mail. Upon opening the package with several agents, the prosecutor discovered that the package contained a briefcase

with a sawed-off rifle. The briefcase also contained a device comprised of a rat trap, some string, a nut and a paper clamp that was apparently designed to cause the weapon to fire once the briefcase was opened. Kwong left several clues in an effort to frame Yeung for sending the briefcase to the prosecutor, including leaving Yeung's address in the briefcase and disposing of the sawed-off barrel of the weapon in a trash can along with a sales slip from a Connecticut gun shop made out to Yeung. Agents ultimately determined that it was Kwong and not Yeung who sent the gun, and the government indicted Kwong for attempted murder of an Assistant United States Attorney.

Kwong was convicted at the initial trial before Judge Glasser in 1992 and sentenced to a combined sentence for the attempted murder and weapons charges of 293 months. The Court of Appeals for the Second Circuit reversed Kwong's attempted murder conviction on the ground that there was an error in the jury instructions concerning the intent to kill element. Kwong was then tried before Judge Dearie, and the jury convicted him again. Judge Dearie sentenced Kwong to a total combined sentence of 262 months. Kwong's second conviction was affirmed on appeal.

United States v. Victor Gordon (Judge Matsumoto)

Judge Matsumoto presided over the prosecution of Victor Gordon who was charged with smuggling ivory from endangered African elephants into the United States. During a nine-year period, Gordon acquired and attempted to sell approximately one ton of ivory. Gordon then sold much of this ivory to customers from his Philadelphia-based store. At the time of the government's search of this store, Gordon was attempting to sell this business, including the ivory collection, for \$20 million.

Gordon pleaded guilty to smuggling this ivory into the United States. Judge Matsumoto sentenced Gordon to a term of imprisonment of 30 months.

In the Matter of Applications of the United States of America for Orders Authorizing the Use of Pen Registers (Judge Azrack)

Judge Azrack decided an issue of first impression in the Second Circuit involving whether the pen register statute permitted the government to access what are known as "post-cut-through dialed digits" ("PCTDDs"). A pen register is a device capable of recording all digits dialed from a particular telephone. PCTDDs are the numbers dialed from a telephone after the call is initially setup or cut-through. In most instances, any digit dialed after the first ten digits is a PCTDD. In some cases, these digits include contents of communications over the telephone, including bank account numbers, Social Security numbers and credit card numbers. In the *ex parte* application for a pen register presented to Judge Azrack, the government contended that the pen register statute permitted it to access all digits from a dialed telephone, including PCTDDs. Judge Azrack rejected the government's position.

Judge Azrack concluded that the pen register statutory scheme distinguished between the content of communications and non-content call-processing information. Judge Azrack found that, although the pen register statute itself was ambiguous, it was inconsistent with the statutory scheme for the government to access the contents of telephone communications without a wiretap order, which required the government to make a showing of probable cause. Judge Azrack further found that granting the government's request for PCTDD would violate the Fourth Amendment as a search and seizure without a showing of probable cause. Applying the doctrine of constitutional avoidance—which requires that a court, when choosing between two plausible readings of a statute, to select the one that does not raise serious constitutional doubts—Judge Azrack construed the pen register statute so as not to permit the interception of PCTDDs.

Sentencing

United States v. Norris (Judge Nickerson)

In 2001, Judge Nickerson held that the Sixth Amendment's right to a trial by jury precluded a sentencing court from increasing a defendant's sentence based on Sentencing Guidelines enhancements resulting from facts not admitted by the defendant in his plea of guilty or proven to a jury beyond a reasonable doubt. Judge Nickerson based his conclusion on the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). In arriving at this conclusion, Judge Nickerson rejected the rationale of decisions in the Third, Fifth, Seventh, Ninth, and Eleventh Circuits that reached the opposite conclusion. While the Second Circuit reversed Judge Nickerson's decision on appeal, the Supreme Court ultimately adopted Judge Nickerson's holding in *Norris* three years later in *Blakely v. Washington*, 542 U.S. 296 (2004).

United States v. Dossie (Judge Gleeson)

In sentencing a young, small-time, street-level drug dealer's assistant who was subject to a statutory five-year mandatory minimum sentence, Judge Gleeson called on the Attorney General not to charge and advocate for a statutory minimum sentence unless the government intended to prove that the defendant occupied a leadership or managerial role worthy of an upward adjustment under the United States Sentencing Guidelines. In expressing this view, Judge Gleeson argued that the legislative history of the provisions requiring minimum sentences in drug cases demonstrated that the statutory minimums were designed to impose greater punishment on drug kingpins and other individuals occupying managing positions in drug organizations. Judge Gleeson further argued that Congress made a mistake in using drug quantity as a proxy for role in the statutory-minimum provisions. Judge Gleeson opined that “[d]rug quantity is a poor proxy for culpability generally and for a defendant's role in a drug business in particular.” To exemplify this, Judge Gleeson cited federal sentencing statistics showing that, in fiscal year 2011, while over 74% of crack defendants faced a mandatory minimum sentence, only 5.4% of them occupied a supervisory role in a drug organization.

Judge Gleeson further opined that the *Dossie* case “illustrates how mandatory minimums distort the sentencing process and mandate unjust sentences.” In the offense of conviction, Dossie acted on four occasions as a go-between in hand-to-hand crack sales. Dossie had a history of drug and alcohol abuse that began in high school and prior misdemeanor convictions resulting from that abuse precluding his eligibility for the statutory “safety valve,” which would have rendered the mandatory minimums inapplicable. Based on this history and the government’s decision to cite the statutory minimum in Dossie’s indictment, the law required Judge Gleeson to sentence Dossie to a term of imprisonment of at least five years without any proof of Dossie’s role in the criminal organization. Judge Gleeson therefore imposed a five-year term of imprisonment, but commented that “[i]t was not a just sentence.” Judge Gleeson further stated that the Department of Justice “routinely invokes” the statutory minimums against “non-violent, low level offenders” like Dossie with the following result: “Judges are removed from the sentencing process, along with transparency, appellate review, and, most importantly, justice.”

***United States v. Diaz* (Judge Gleeson)**

In anticipation of the sentencing of a “run-of-the-mill, low-level participant in a drug distribution offense,” Judge Gleeson wrote an opinion explaining why he would place almost no weight on the length of imprisonment recommended by the United States Sentencing Commission’s Guidelines Manual in sentencing the defendant. Judge Gleeson opined that the offense guideline for heroin, cocaine, and crack offenses is “deeply and structurally flawed” and produces recommended sentencing ranges that are “excessively severe across a broad range of cases.” According to Judge Gleeson, the root of the flaw was the decision of the original Sentencing Commission to link the Guidelines ranges for all drug-trafficking defendants to the “onerous” statutory mandatory minimum sentences enacted in 1986. Judge Gleeson further found that the Guideline ranges for drug trafficking offenses “are not based on empirical data, Commission expertise or the actual culpability of defendants.”

Judge Gleeson called on the Sentencing Commission to “de-link” the drug trafficking Guidelines ranges from the statutory minimum sentences, which are based exclusively on drug type and quantity, and “use its resources, knowledge, and expertise to fashion fair sentencing ranges for drug trafficking offenses.” As Judge Gleeson expected this re-fashioning of the drug trafficking Guidelines to take considerable time, he further called on the Sentencing Commission to lower the ranges by one third in the interim. In concluding his opinion, Judge Gleeson stated: “We must never lose sight of the fact that real people are at the receiving end of these sentences. Incarceration is often necessary, but the unnecessarily punitive extra months and years the drug trafficking offense guideline advises us to dish out matter: children grow up; loved ones drift away; employment opportunities fade; parents die.”

United States v. Parris (Judge Block)

Judge Block presided over the prosecution of two brothers involved in a “typical ‘pump-and-dump’ [securities-fraud] scheme in the world of the high-risk penny-stock investor.” The brothers issued false press releases concerning the business prospects of a public company that they controlled and thereafter profited from sales of the company’s stock at inflated prices. Both brothers were convicted at trial.

The Sentencing Guidelines called for an advisory Guidelines range of 360 months to life. Judge Block downwardly departed and imposed a term of incarceration of 60 months for each brother. Judge Block explained the basis for his departure in a written decision, noting that the case before him “represent[ed] another example where the guidelines in a securities-fraud prosecution ‘have so run amok that they are patently absurd on their face.’” He further explained that the brothers’ crimes were “simply not of the same character and magnitude as the securities fraud prosecutions of those who have been responsible for wreaking unimaginable losses on major corporations and, in particular, on their companies’ employees and stockholders, many of whom lost their pensions and were financially ruined. Yet the sentences entailed in those cases . . . were each less, and in some cases markedly less, than the lowest end of the guidelines range in this case.” Judge Block directed the government to compile a compendium of securities-fraud sentences dating back approximately seven years, which revealed that non-cooperators “responsible for enormous losses were sentenced to double-digit terms of imprisonment (in years); those whose losses were less than \$100 million were generally sentenced to single digit terms.” Based on the fact that the brothers netted only several million dollars in gains attributable to the scheme and other factors, Judge Block concluded that a 60-month sentence was sufficient, but not greater than necessary, to satisfy the purposes of sentencing.

Defendant Rehabilitation

STAR Program

In 2002, Judge Sifton directed the Probation Department to develop a post-sentence program that provided more intensive supervision to offenders with substance-abuse problems that included the direct participation of the Court. Based on this directive, the Court started the Supervision Treatment and Re-entry (“STAR”) program, the first post-sentence District Judge-supervised program for defendants with substance-abuse problems in the country. By offering defendants with substance-abuse problems more assistance, stricter accountability, and greater rewards, the program is designed to alleviate the problem of higher recidivism rates among addicts based upon the recognition that these individuals are often jailed for behavior directly related to their substance abuse and are not given sufficient help in controlling their addictions upon release.

By participating in this program, defendants place themselves under intensive supervision

of the Court. Among other things, participants meet with the judge, probation officer, and defense attorney every month and are required to attend weekly group counseling sessions with fellow participants. In order to graduate from the program, the participant must remain alcohol- and drug-free and observe all other conditions of supervision for 12 months. STAR has also been used as an alternative-to-incarceration program with mandated participation for two years.

Special Options Services (“SOS”) Program

The SOS Program was established by the Court in January 2000 as an alternative to pretrial detention for juvenile and young-adult defendants primarily between the ages of 18 and 25. The Court founded the SOS Program based on the premise that many young offenders will go on to lead law-abiding lives when provided with appropriate support and access to opportunities for education, training, and counseling that may have been unavailable to them prior to their arrest. Under the SOS Program, the district judge assigned to a defendant’s case has the discretion to offer SOS’s more intensive supervision techniques where pre-trial detention or a jail sentence may not serve the best interests of the defendant or society.

A defendant accepted into the SOS Program attends regular meetings with a judge other than the one assigned to his or her case, referred to as the Program Judge, and a Pretrial Services Officer. Other supervision techniques employed in the SOS Program include frequent contact with the defendant, regular communication with the defendant’s family members, verification of residence and employment, random drug testing and frequent criminal record checks. By providing young defendants with the framework of supervisions and services that they need, the SOS Program seeks to help defendants learn from their mistakes, make better choices, engage in productive behavior and reduce the risk of recidivism. Successful completion of the SOS Program may justify, but does not guarantee, the imposition of a non-custodial sentence or a significant reduction in the otherwise appropriate custodial sentence.

Pretrial Opportunity Program (“POP”)

In June 2012, at Judge Gleeson’s request, the Court’s Pretrial Services Agency implemented POP under the direction of the Court’s Board of Judges. POP is modeled on the drug courts that have been used widely in various forms at the state level and is designed primarily for non-violent defendants with a documented history of drug or alcohol addiction. The Court founded POP on the premise that many substance abusers are arrested for behavior related to their drug or alcohol addictions and would, but for those addictions, have lived law-abiding lives. POP provides a framework for more intensive supervision, relying heavily on the involvement of the judge and the efforts of a Pretrial Services Officer throughout a defendant’s term of pretrial supervision.

Defendants accepted into POP will meet with the sentencing judge, a participating magistrate judge, and a Pretrial Services Officer on a regular basis. Defendants will also be

required to report to a Pretrial Services Officer and a treatment provider as directed. The conferences with the sentencing judge, which are recorded, focus on the defendant's progress in drug treatment as well as other factors that may affect compliance with release conditions. To successfully complete POP, a defendant must remain drug- and alcohol-free for a minimum of 12 months.

By offering effective treatment alternatives and other forms of supervision during the pre-sentence phase, POP gives defendants an opportunity to engage in productive behavior, achieve a drug- and alcohol-free and law-abiding lifestyle, and prove to the Court and the community that an otherwise appropriate sentence of incarceration is unnecessary. POP also envisions that the United States Attorney might agree to dismiss some cases involving POP participants in their entirety.

Discovery

***Toussie v. County of Suffolk* (Magistrate Judge Lindsay)**

Magistrate Judge Lindsay decided a motion for sanctions based on the defendant's failure to properly produce and preserve Electronically Stored Information ("ESI"). Plaintiffs initially filed a motion to compel the defendant to supplement its ESI production, alleging that the defendant failed to perform a diligent search for responsive documents as evidenced by the fact that it produced only two emails. In response to the initial motion, the Court ordered the defendant to conduct a system-wide search of its servers for responsive emails.

Plaintiffs then sought sanctions for the defendant's failure to comply with the Court's order. In response, the defendant argued that it lacked the resources to perform the Court-ordered search of emails and explained that it did not have a system of archiving emails. At a subsequent hearing, the Court rejected the defendant's position and ordered the defendant to prepare a search plan, stating that the defendant "can't just throw up [its] hands and say we don't store [emails] in an accessible form and then expect everybody to walk away."

After receiving the defendant's search plan, the Court determined that, "notwithstanding the [defendant's] clear obligation to preserve relevant emails, the defendant had taken no steps to preserve its emails or to store them in a manner which would permit ready access and review." The Court ordered the parties to submit a joint amended search plan. After doing so, the defendant informed the Court that some of the back-up tapes containing historical emails were damaged and unreadable. The defendant produced some emails from the back-up tapes, although not all the emails were recovered. Based on the inability to recover these emails, plaintiffs sought a default judgment or, in the alternative, an adverse inference instruction against the defendant. Plaintiffs also sought sanctions in the amount of their costs in making the discovery motions to the Court.

The Court held that a party seeking sanctions based on the spoliation of evidence must establish three elements: (1) the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) the records were destroyed with a culpable state of mind; and (3) the destroyed evidence was relevant to the party's claim or defense. The Court determined that the first two prongs of this test were met because the defendant did not put in place a litigation hold when the complaint was filed and "did not alter its document and retention procedures in any way as a result of the lawsuit." The Court concluded, however, that plaintiffs were not entitled to an adverse inference instruction or default judgment because they failed to prove that the missing emails were necessarily relevant evidence. The Court found that the defendant's conduct, while grossly negligent, "did not rise to the egregious level seen in cases where relevance is determined as a matter of law," and plaintiffs failed to demonstrate that the destroyed emails were favorable or relevant to their claims. The Court nevertheless ordered the defendant to cover plaintiffs costs in appearing at several hearings relating to the defendant's failure to preserve ESI and their preparation of the motion for sanctions.

In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation (Magistrate Judge Orenstein)

In this case, Magistrate Judge Orenstein decided an application for a protective order regarding the production of metadata. Metadata is "data about data." In the context of the motion before Judge Orenstein, the metadata provided information about the produced electronically-stored documents that may not have been visible if the documents were reduced to printed form.

This consolidated case involved a putative class action and a group of plaintiffs (the "Individual Plaintiffs") who sued on their own behalf rather than joining the putative class action. In responding to the defendants' discovery requests, the Individual Plaintiffs made six productions using their own protocol, in which they printed the electronic documents and then scanned them to create "TIFF" images. While these images could be converted to a searchable text file, the Individual Plaintiffs' actions "stripped their text-searchable electronic documents of metadata that would not appear in printed form, and then converted them back into text-searchable electronic documents without that subset of metadata." The defendants objected to the Individual Plaintiffs' productions based on the absence of the metadata and asserted that the documents should be re-produced in the manner in which they were ordinarily kept.

The Court held that Federal Rule of Civil Procedure 34, which was amended in 2006, governed whether the Individual Plaintiffs were required to reproduce the documents with the metadata. The Court stated that the Advisory Committee Notes to Rule 34 provide that a party responding to a discovery request "may elect to produce a 'reasonably usable' form" of electronic data rather than produce it in the manner it was kept in the ordinary course of business. The Court found that, while the Individual Plaintiffs complied with this requirement, they violated the Advisory Committee's proviso that "data ordinarily kept in electronically searchable

form ‘should not be produced in a form that removes or significantly degrades this feature.’” The Court therefore directed the Individual Plaintiffs to produce the metadata, but limited its order to future productions of electronic materials based, in part, on defendants delay in raising this issue.

Reid v. Ingerman Smith LLP (Magistrate Judge Go)

Plaintiff brought an action seeking damages for pecuniary, physical and emotional damages arising from alleged sexual harassment. The parties conferred, per order of the Court, and resolved most of the discovery disputes, except for the defendants’ requests for information and documents relating to plaintiff’s social-media account on Facebook.

Magistrate Judge Go stated that although “the law regarding the scope of discovery of electronically stored information (“ESI”) is still unsettled, there is no dispute that social media information may be a source of relevant information that is discoverable.” In deciding the issue, the Court noted that, while courts in other personal injury cases have found that social media information can reflect on a person’s emotional and mental state and physical condition, Facebook usage is not subject to a strict legal demarcation and does not necessarily reflect a person’s actual state of being.

After examining the submissions, the Court held that the photographs and comments posted on plaintiff’s Facebook page provided probative evidence of her mental and emotional state and revealed the activities in which she engaged. The Court extended its ruling to include Facebook material not revealed to the public. The Court also rejected plaintiff’s assertion that these non-public materials should not be produced due to privacy considerations, stating that “legitimate expectations of privacy may be lower in e-mails or Internet transmissions.” The Court did, however, limit plaintiff’s required production, holding that non-party communications unrelated to plaintiff’s mental or physical state need not be produced.

Bellinger v. Astrue (Magistrate Judge Gold)

Plaintiff brought a lawsuit against the Commissioner of Social Security pursuant to Title VII of the Civil Rights Act of 1964, alleging that she was discriminated against because of her gender in that she was denied a promotion and equal pay. Plaintiff moved to compel responses to interrogatories, including interrogatories seeking detailed information regarding defendant’s electronically stored information.

In denying this motion to compel, the Court stated that, during prior motion practice, plaintiff received information about the manner in which defendant stored emails, including its practice of allowing individual employees to exercise control over which email messages were stored. The Court further found that plaintiff took various depositions of defendant’s employees during which she had the opportunity to ask them about their practices with respect to retention

or deletion of emails. In addition, the Court found that defendant disclosed a substantial number of emails in discovery, and plaintiff failed to identify a single email that she did not already possess that revealed a discriminatory animus or otherwise provided support for her claims. The Court therefore held that the evidence suggested that further email discovery would not be fruitful and denied plaintiff's motion to compel.

***Linde v. Arab Bank* (Magistrate Judge Pohorelsky)**

This case involved an action for damages based on injuries and deaths caused by suicide bombing attacks in Israel. Plaintiff alleged that defendant had sponsored these attacks by providing banking and administrative services to a number of organizations identified as terrorist organizations by the United States and Israel. Magistrate Judge Pohorelsky ruled on defendant's motion to compel production of documents from three non-party banks.

Defendant moved to compel Israel Discount Bank Ltd. ("IDB"), an Israeli corporation headquartered in Israel, to produce documents based on a subpoena served on its New York-based subsidiary, Israel Discount Bank of New York ("IDBNY"). The Court denied the motion to compel because IDBNY did not have control of or access to the documents requested and the Court lacked jurisdiction over IDB. In so doing, the Court evaluated four factors to determine the relationship between the parent and subsidiary: (1) common ownership; (2) financial dependency; (3) ability to select the subsidiary's executive personnel and failure to observe corporate formalities; and (4) degree of control. While these banks had common ownership, IDBNY was financially independent of IDB, appointed its own executive personnel and observed corporate formalities, and the parent had no control of the subsidiary. The Court therefore held that it did not have personal jurisdiction over IDB through IDBNY's presence in New York. The Court also denied jurisdictional discovery, concluding that IDB's limited relationship to the litigation was an insufficient basis on which to impose any third-party liability and that the information that would be obtained would be of limited value.

Defendant also served a subpoena on Hapoalim Bank, concerning transactions involving Hapoalim entities in New York and Israel. Hapoalim objected to the requests on that basis that the material was protected from discovery under Israeli law, including Israeli bank-client privilege and confidentiality laws. Based on the Israeli confidentiality laws, the Court performed an international comity analysis to determine whether to compel production. Under this analysis, the Court weighed the requested documents' importance to the litigation, the degree of specificity of the requests, whether the information originated in the United States, the availability of alternative means of securing the information, and the extent to which noncompliance would undermine important interests of the United States. The Court found that all but one of the factors—the specificity of defendant's request—weighed in favor of denying defendant's motion to compel. The Court concluded that the one factor favoring disclosure was "hardly enough to outweigh the others and avoid the conclusion that an order compelling

Hapoalim to produce documents in this case in violation of the foreign confidentiality laws . . . is inappropriate.” The Court limited this holding to the documents that actually fell within the Israeli confidentiality laws, which were a subset of the requested documents.

Environmental Law

State of New York v. U.S. Army Corps of Engineers (Judge Garaufis)

At a July 24, 2012 hearing, Judge Garaufis stated:

Everyone in this room drinks New York City water. I’m dealing with a real serious issue that may occur here with regards to the drinking water of 15 million people.

On behalf of the State of New York, New York Attorney General Eric Schneiderman challenged proposed regulations that would allow hydraulic fracturing at 15,000 to 18,000 gas wells in the Delaware River Basin. The State alleged that the studies of how this plan would affect New York’s health and environment were inadequate and violated the National Environmental Policy Act. Defendants in this case included the Delaware River Basin Commission, the Environmental Protection Agency, and other federal agencies.

Hydraulic fracturing, or fracking, is a process that cracks open underground rock formations with high pressure jets of water, sand and chemicals in order to release natural gas. While this abundant domestic energy source would create jobs and reduce dependence on foreign suppliers, there is allegedly a serious injury to the environment that results from the contamination of drinking water with radioactive materials, heavy metals, methane and other chemicals. Previous studies have documented cases where faucets could be lit on fire or wells exploded after gas seeped in.

Defendants claimed that these harms did not exist as the fracking process occurred much further underground than the drinking-water aquifers. They also challenged New York State’s authority to sue federal agencies. Judge Garaufis dismissed the case on procedural grounds, finding that the alleged harms were too speculative because the proposed regulations had not yet been finalized.

Agent Orange Litigation (Judge Weinstein)

Judge Weinstein presided over several cases brought by Vietnam veterans and Vietnamese nationals against the manufacturers of Agent Orange, an herbicide used as a defoliant by the United States during the Vietnam War. Plaintiffs in these cases alleged that they were injured from exposure to Agent Orange in Vietnam.

Judge Weinstein dismissed several of these cases based on his conclusion that they were

barred by the government-contractor defense. Judge Weinstein held that the defense applied because defendants satisfied all government specifications in producing Agent Orange and delivered barrels of Agent Orange in compliance with the government's order that there be no product warnings. In reaching this conclusion, Judge Weinstein opined that the government contractor defense would not apply if supplying contaminated herbicide constituted a war crime because the chemical companies could have stood up to the government and refused to use Agent Orange. Judge Weinstein concluded ultimately, however, that no war crime had been committed, writing that “[n]o treaty or agreement, express or implied, of the United States operated to make use of herbicides in Vietnam a violation of the laws of war or any other form of international law until at the earliest April of 1975,” years after the use of Agent Orange ended.

Judge Weinstein also denied the request of the Vietnamese national plaintiffs for injunctive relief seeking abatement and remediation of ongoing health hazards allegedly caused by contamination of large regions of Vietnam through use of herbicides during the Vietnam War. Judge Weinstein held that granting this relief would be “wholly impracticable” because of the difficulties involved in enforcing an order of abatement and remediation of vast areas of land over which the Court had no jurisdiction.

Brooklyn Heights Assoc., Inc. v. National Park Service (Judge Vitaliano)

Judge Vitaliano presided over a civil suit filed by civic groups against the National Park Service (“NPS”), the United States Secretary of the Interior, the Brooklyn Bridge Park Development Corporation and others to prevent the removal of two historic, Civil-war era structures—the Tobacco Warehouse and the Empire Stores—from federally-protected parkland. Plaintiffs brought claims for injunctive relief under the Land and Water Conservation Fund Act, the National Environmental Policy Act, the Administrative Procedure Act, the National Historic Preservation Act of 1966, and New York state law.

The case involved an NPS grant awarded under the Land and Water Conservation Fund to the New York State Office of Parks, Recreation, and Historic Preservation (“OPRHP”). The grant was issued in 2001 to benefit Empire Fulton Ferry State Park (the “Park”), which lies along the East River waterfront in Brooklyn between the Brooklyn and Manhattan Bridges near the site of the old Fulton Ferry Landing. At the time of the grant, the mapping for the Park included the two structures at issue. OPRHP completed the improvements pursuant to the grant in 2003, and NPS closed the grant that year.

Approximately five years after the project was closed, OPRHP wrote to the NPS to request that NPS revise the Park's boundary map to exclude the two structures at issue. To justify their exclusion, OPRHP filed letters with NPS declaring that the structures had been mistakenly included in the Park's map in 2001. The NPS ultimately acceded to this request. Plaintiffs sought to enjoin the NPS's action in this regard, alleging that the NPS capitulated to pressure from New York City Mayor Bloomberg's administration which hoped to turn over the

two structures at issue to private developers.

Judge Vitaliano granted plaintiffs' motions for a preliminary injunction and summary judgment on the federal claims. The Court found, as a factual matter, that NPS's "revisionist administrative review" resulted in a conclusion that was both contrary to the evidence before the NPS and implausible. In awarding plaintiffs a preliminary injunction, the Court commented that "[t]he house of cards erected by the defense cannot withstand the gentlest breeze." Similarly, the Court opined in its summary judgment decision that the evidence "[o]verwhelmingly" demonstrated the absence of any mistake on the part of OPRHP in including the two structures in the 2001 map. The Court also held that the NPS's conclusion that the Land and Water Conservation Fund Act allowed it to excise properties from a final map after the close of a grant was "flatly impermissible and directly contrary to established law." Based on these findings, the Court held that plaintiffs prevailed as a matter of law on all of their federal claims and ordered that the two structures be immediately returned to public parkland.

United States v. County of Nassau (Judge Mishler)

Judge Mishler presided over a suit by the United States seeking to enforce a consent decree that the County of Nassau ("Nassau") signed with the United States Attorney's Office in 1989 relating to Nassau's disposition of sewage sludge. The case arose out of Nassau's attempts to comply with the Ocean Dumping Ban Act (the Act") of 1988, which prohibited the dumping of sewage sludge into the ocean after August 14, 1989, unless permitted by the Environmental Protection Agency. The Act required each ocean dumper of sewage sludge to enter into either a compliance agreement if it could end ocean dumping by the deadline, or an enforcement agreement if it could not meet the deadline. Even for municipalities that could not meet the deadline, the Act prohibited dumping sewage sludge in the ocean after December 31, 1991.

Nassau was unable to meet the six-month deadline and, as a result, entered into a Consent Decree and Enforcement Agreement (the "Decree") with the United States Attorney's Office in August 1989. Among other things, the Decree required Nassau to take steps to cease disposal of 50% of its sewage sludge by June 1991, and required a long-term alternative system of sludge management to be operational by December 1991. The Decree also included a number of other deadlines designed to ensure that Nassau met these goals.

Nassau failed to meet a number of the Decree's deadlines and paid more than a million dollars in penalties. Judge Mishler, however, denied the United States' motion to hold Nassau in contempt because Nassau paid the stipulated penalties contained in the Decree for its failure to comply with Decree's deadlines.

Over the government's objection, Judge Mishler ultimately approved Nassau's plan to ship its sludge to West Virginia, as opposed to treating it at proposed plants on Long Island. While Nassau had initially agreed to build these local plants, the objections of many Nassau

residents to the construction of sewage-treatment plants in their neighborhoods led Nassau to seek other options. In ruling in favor of Nassau, Judge Mishler held that Nassau had a rational basis for opting to ship its sludge to West Virginia and that it was not his responsibility to evaluate whether this was “the best or even a good decision.”

***Aiello v. Town of Brookhaven* (Judge Block)**

Judge Block presided over environmental litigation brought by a group of individuals residing in the immediate vicinity of the Holtsville Landfill, which was located in the southwest portion of the Town of Brookhaven (the “Town”) on Long Island. Plaintiffs sued the Town under the Resource Conservation and Recovery Act of 1976 (the “RCRA”) and the Federal Water Pollution Control Act of 1972, which is also known as the Clean Water Act. Plaintiffs based their claims on their assertion that the Landfill contaminated a creek and pond that were in close proximity to their homes.

The RCRA and Clean Water Act claims were tried before Judge Block without a jury. Judge Block ruled in favor of plaintiffs on the RCRA claim, which governs the treatment, storage and disposal of solid and hazardous waste. Judge Block found that the Town disposed of solid waste in the Landfill and that this solid waste contaminated the surface of the creek and pond. Judge Block held that the Town was liable under RCRA because the contamination “present[ed] an imminent and substantial endangerment to the environment.”

Conversely, Judge Block ruled in favor of the Town on the Clean Water Act claim. Judge Block rejected plaintiffs’ assertion that the Town violated the Clean Water Act by discharging toxic and other pollutants into a navigable waterway from a point source without first obtaining a permit. Judge Block held that the Clean Water Act does not permit citizen suits for wholly past violations and concluded that the Town’s violations fell into this category upon finding that the migration of residual contamination from a previous release of pollutants does not constitute an ongoing discharge.

Family Law

***Elyashiv v. Elyashiv* (Judge Block)**

Judge Block presided over a father’s suit seeking the return of his three children to Israel under the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Recovery Act. The children’s mother, with whom they had been living in New York, opposed their return to Israel, claiming that returning them to Israel would put them at grave risk of physical or psychological harm.

After a trial, Judge Block found that the father had established a *prima facie* case of child abduction under the Convention and the Act. However, he concluded that the mother had proved

that the children would be at grave risk of harm if they were sent back to Israel, and thus had established one of the affirmative defenses listed in the Act.

Judge Block found that, throughout their marriage, the children's father had verbally and physically abused his wife, and that he had done so in the presence of the children. The mother's expert testified that children's knowledge of abuse of their mother is "tantamount to being abused themselves" and that "[t]here is a wide-developed, well-researched literature that [being] a witness to domestic violence as a child is just as deleterious as if they were themselves the victims."

As a result of witnessing the abuse of their mother and being physically abused themselves, both older children suffered from post-traumatic stress disorder ("PTSD"). The oldest child was suicidal. The Court found that regardless of whether the children would have contact with their father, their PTSD symptoms would be triggered by returning to Israel. As a matter of first impression within the Second Circuit, Judge Block also found that the youngest child was at risk of grievous harm (even though she had not been directly abused) because of the father's uncontrollable temper, threats, and past abuse of his wife and the other children. Judge Block also found that the separation of the older children from the youngest child would result in psychological harm to the youngest child.

Nicholson ex rel. Barnett v. Giuliani (Judge Weinstein)

Judge Weinstein presided over several class action, civil rights lawsuits against the City of New York and State of New York concerning their policies toward battered mothers and their children. The claims against the City challenged the policy of the New York City Administration for Children's Services of removing children from the custody of their mothers solely or primarily because the mothers were victims of domestic violence. The City's policy, which was based upon the fact that witnessing domestic violence is traumatic for children, branded the victims of that violence as neglectful parents because of their status as victims. Plaintiffs' claims against the State challenged the State's failure to provide adequate assistance of counsel to battered mothers who were charged with child neglect in the Family Court.

After a 44-day trial, Judge Weinstein issued a preliminary injunction against the City. According to Judge Weinstein, "[t]he preliminary injunction can be summed up in plain language: the government may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children; nor may children be separated from the mother, in effect visiting upon them the sins of their mother's batterer." In addition to enjoining the City from removing children from battered mothers and prosecuting the mothers for child neglect in the Family Court, Judge Weinstein ordered that the rates paid to attorneys who represent the mothers and children in Family Court be increased to \$90 per hour for both in-court work and preparation.

This case was the first case in the country to squarely address the constitutionality of removing children from non-offending battered mothers. Judge Weinstein held that the City's actions violated the Fourteenth Amendment by intruding upon the liberty right to familial integrity enjoyed by both mothers and children without substantive and procedural due process. The Court held that a battered mother is entitled to equal protection of the law and that separating her from her children merely because she has been abused, a characteristic irrelevant to her right to keep her children, treats her unequally from other parents who are not abused. Judge Weinstein also held that the City's actions violated the children's Fourth Amendment right to be free from unreasonable seizure.

The parties subsequently settled the claims for money damages, which resulted in a total of 23 battered mothers, plus their children, receiving monetary damages from the City. In addition, the City changed its policies to prohibit the removal of children from their mothers on the ground that the children had witnessed their mothers being beaten.

First Amendment

***Brooklyn Institute of Arts and Sciences v. City of New York and Rudolph Giuliani* (Judge Gershon)**

Judge Gershon presided over an action for injunctive relief brought by the Brooklyn Institute of Arts and Sciences (the "Museum") against the City of New York and Mayor Rudolph Giuliani. The suit arose after the Mayor withheld funds already appropriated to the Museum for operating expenses and maintenance based on his objection to the Museum's temporary exhibit known as "Sensation." Specifically, the Mayor decided that the works in this exhibit were "sick" and "disgusting" and that one work in the exhibit entitled "The Holy Virgin Mary" was offensive to Catholics and an attack on religion. The Museum sought a preliminary injunction barring the imposition of penalties as a violation of the Museum's First Amendment rights. The City and the Mayor opposed the motion and moved to dismiss the portion of the suit seeking declaratory and injunctive relief. Judge Gershon denied the City's and Mayor's motion to dismiss and granted the Museum's motion for a preliminary injunction.

In moving to dismiss, the City and Mayor argued that the Court should abstain from exercising jurisdiction based on a state court action that they filed two days after commencement of this action. The state action sought to eject the Museum from the City-owned land and building in which the Museum's collections had been housed for over one hundred years. The Court held that *Younger* abstention principles did not apply for multiple reasons, including because there was no ongoing state proceedings when the Museum filed this suit and the state ejectment action would not give the Museum the kind of opportunity to present its constitutional claims that *Younger* required. The Court also found that abstention did not apply because the City and Mayor initiated the state proceedings in bad faith, opining that:

The ejectment action *is* “punishment for something else”—the Museum’s refusal to stop the Exhibit—and it *is* a “sham intended to deter future speech.” The undisputed record demonstrates that the Mayor and other senior City officials were offended by the content of the Exhibit, as they stated from the beginning, and then sought to find a basis in the pertinent legal instruments which could plausibly justify their determination to compel the Museum to remove certain offending works from the Exhibit or cancel the Exhibit, or, failing that, to deprive the Museum of funding and seek replacement of its Board.

In granting the Museum’s motion for a preliminary injunction, the Court held that the Museum demonstrated that it would suffer irreparable harm if the City and Mayor were not enjoined and that it would likely succeed on the merits on its First Amendment claim. The Court stated that “where the denial of a benefit, subsidy or contract is motivated by a desire to suppress speech in violation of the First Amendment, that denial will be enjoined. That is all that is involved here.” The Court also rejected the City’s and Mayor’s argument that they had a duty to withdraw support because the Museum desecrated religion in a public building, opining that:

The Brooklyn Museum contains art from all over world, from many traditions and many centuries. No objective observer could conclude that the Museum’s showing of the work of an individual artist which is viewed by some as sacrilegious constitutes endorsement of anti-religious views by the City or the Mayor, or for that matter, by the Museum, any more than that the Museum’s showing of religiously reverential works constitutes an endorsement by them of religion. The suggestion that the Mayor and the City have an obligation to punish the Museum for showing the [alleged sacrilegious] work turns well-established principles developed under the Establishment Clause on their head. If anything, it is the Mayor and the City who by their actions have threatened the neutrality required of government in the sphere of religion.

***Commack Self-Service Kosher Meats, Inc. v. Rubin* (Judge Gershon)**

Judge Gershon presided over an action by Long Island-based merchants of kosher food challenging the constitutionality of the New York State laws aimed at protecting kosher food consumers against fraud. As construed by New York State courts, the challenged laws prohibited the sale of food labeled as “kosher” unless it was “prepared in accordance with orthodox Hebrew religious requirements.” They also provided for the Commissioner of the State Department of Agriculture and Markets to appoint a nine-person “advisory board on kosher law enforcement” (the “Kosher Law Advisory Board”) to advise the State on the enforcement of the challenged laws. Plaintiffs asserted that the challenged laws violated, *inter alia*, the Establishment Clause of the First Amendment to the United States Constitution.

Judge Gershon granted plaintiffs’ motion for summary judgment, holding that the challenged laws violated the Establishment Clause under the test first adopted by the United States Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under *Lemon*, a law will fail

a facial challenge where (1) it does not have a secular purpose; (2) it has a “primary effect” of either advancing or inhibiting religion; and (3) it fosters “excessive state entanglement with religion.” Judge Gershon held that the challenged laws failed both the second and third prongs of *Lemon*.

As to the effects prong, the Court held that the laws, by their nature, reflected an impermissible advancement of religion. The Court stated that “[b]ecause [the laws] work both as a constraint and as an inducement on merchants who must abide by them, and consumers who cannot avoid them, the primary, if not exclusive, effect of the regulatory process necessarily is to advance particular religious tenets.” The Court also held that the challenged laws violated the excessive entanglement prong because “they require[d] the sponsorship, financial support and active involvement of New York State in daily monitoring of the compliance of vendors of kosher products with a set of religious and dietary laws . . . which necessarily require[d] state officials to refer to and rely upon religious doctrines.”

Intellectual Property

***In re BitTorrent Adult Film Copyright Litigation* (Judges Hurley, Seybert, Spatt and Wexler, and Magistrate Judge Brown)**

Judges Hurley, Seybert, Spatt and Wexler presided over four cases that were “part of a nationwide blizzard of civil actions” alleging copyright infringement against unknown individuals who allegedly used a computer protocol known as BitTorrent to illegally download pornography. The putative defendants in these cases were 80 John Doe defendants who the complaints identified only by Internet Protocol (“IP”) addresses. Plaintiffs in three of the actions moved for immediate discovery in the form of Federal Rule of Civil Procedure 45 subpoenas to non-party internet service providers seeking identifying information about the subscribers to the named IP addresses. The Court referred these motions to Magistrate Judge Brown.

In deciding the motion, Judge Brown stated that the Federal Rules of Civil Procedure prevent a party from seeking discovery from any source before the conference required by Federal Rule of Civil Procedure 26(f) absent a showing of good cause. Judge Brown evaluated whether plaintiffs made such a showing under the following five factors: (1) the concreteness of plaintiffs’ showing of a prima facie case of actionable harm; (2) the specificity of the discovery request; (3) the absence of alternative means to obtain the subpoenaed information; (4) the need for the subpoenaed information to advance the claim; and (5) the objecting party’s expectation of privacy. Judge Brown concluded that several factors supported the motion, including the first factor because plaintiffs alleged that they were the owners of valid copyrights for the pornographic films at issue and the third factor because plaintiffs established that they could not identify the infringers by alternate means. Judge Brown also concluded that it was unclear whether plaintiffs could satisfy the second and fifth factors because of the uncertainty that the requested discovery would actually lead to the identity of the defendants who downloaded the

films.

Judge Brown granted plaintiffs' discovery requests in part. The Court held that plaintiffs were entitled to the names and addresses of subscribers, but not their email addresses or phone numbers. Judge Brown also limited the discovery to the defendants designated as John Doe 1 in the three actions, concluding that plaintiffs' "swarm joinder" of the defendants in these actions was inappropriate because it "complicate[d] these actions resulting in a waste of judicial resources." Judge Brown further held that plaintiffs would receive the identifying information at a status conference, with each John Doe 1 present, giving them an opportunity to be heard and to obtain counsel or, if appropriate, request appointment of pro bono counsel.

In addition, Judge Brown recommended that all putative defendants except for John Doe 1 be dismissed from these actions. Judge Wexler and Judge Spatt adopted Judge Brown's report and recommendation in its entirety. As to the two other actions, plaintiffs voluntarily dismissed all defendants other than John Doe 1 from one action and voluntarily dismissed the other action in its entirety.

Applied Information Management, Inc. v. Icart (Judge Ross)

Judge Ross presided over a suit brought by Applied Information Management, Inc. ("AIM"), a designer of custom computer systems, against Daniel P. Icart and Brownstone Agency, Inc. ("Brownstone"), a user of AIM's software, alleging copyright infringement, unfair competition, misappropriation of trade secrets, and breach of contract claims. AIM's claims were based on a Systems Purchase Agreement ("the Agreement") under which it provided software to Brownstone. Brownstone argued that the Agreement constituted an actual sale of the software, while AIM argued that the software was merely licensed to Brownstone.

In ruling on Brownstone's motion for summary judgment, the primary question before the Court was whether the Agreement gave Brownstone the rights of an owner under the Copyright Act, which allows the "owner of a copy of a computer program" to copy and adapt the program without infringing the copyright for the program.

The Court rejected Brownstone's argument that it owned AIM's software because the Agreement gave it a perpetual license. The Court concluded that Brownstone was not an "owner" under the Copyright Act because the Agreement gave it a license for a copyright, as opposed to an actual copy, and required it to make multiple payments to AIM. The Court therefore denied Brownstone's motion for summary judgment on the copyright infringement claim. The Court also denied Brownstone's motion for summary judgment on the breach of contract claim, finding that the terms of the Agreement were ambiguous.

As to the remaining claims, the Court granted Brownstone's motion for summary judgment on AIM's misappropriation of trade secrets claim because AIM failed to provide any

proof that Brownstone disclosed the alleged trade secrets or intended to compete with AIM. Further, since Brownstone did not attempt to confuse or deceive any third party regarding AIM's product and only used the product for itself, the Court determined there was no misappropriation and dismissed the unfair competition claim.

In Re Ciprofloxacin Hydrochloride Antitrust Litigation (Judge Trager)

Judge Trager presided over patent litigation brought by direct and indirect purchasers of the antibiotic ciprofloxacin hydrochloride—which is commercially known as Cipro—against the brand name and generic manufacturers of the drug. Plaintiffs alleged, *inter alia*, that the brand name manufacturer, Bayer AG (“Bayer”), entered into an anticompetitive agreement with several generic pharmaceutical companies, including Barr Pharmaceuticals, in violation of the Sherman Act. Defendants moved for summary judgment.

In granting defendants' motion, the Court determined that the agreement was not a *per se* antitrust violation and applied a three-step process in considering whether the payments required by the agreement met the “anti-competitive conduct” requirement of the Sherman Act under a rule of reason analysis. Under this analysis, plaintiff must first prove that the action had an actual adverse effect on competition as a whole in the “relevant market”; the burden then shifts to defendants to show “pro-competitive redeeming virtues” of the agreement; if defendant succeeds, the burden shifts to plaintiff to show that the pro-competitive effects could be achieved through less burdensome means.

In evaluating the first prong of the analysis, the Court concluded the relevant market in this case was the market specifically for ciprofloxacin and that Bayer had market power within that market. In evaluating “actual adverse effect,” the Court stated that “[t]he ultimate question—and this is the crux of the matter—is not whether Bayer and Barr had the power to adversely affect competition for ciprofloxacin as a whole, but whether any adverse effects on competition stemming from the Agreements were outside the exclusionary zone of [the patent at issue].” The Court ruled that plaintiffs failed to demonstrate any adverse effect of this type.

The Court also rejected plaintiffs' assertion that the exclusionary power of the patent for purposes of the anti-competitive effects analysis should be tempered by the patent's potential invalidity. After looking to the approaches taken by others circuits on this issue, as well as the approach of Judge Glasser in *In re Tamoxifen Citrate Antitrust Litigation*, 277 F. Supp. 2d 121 (E.D.N.Y. 2003), the Court held that

it is inappropriate for an antitrust court, in determining the reasonableness of a patent settlement agreement, to conduct an after-the-fact inquiry into the validity of the underlying patent. Such an inquiry would undermine any certainty for patent litigants seeking to settle their disputes. In addition, exposing the parties to a patent settlement agreement to treble antitrust damages simply because the patent is later found to be invalid would overstep the bright-line rule adopted by

the Supreme Court in *Walker Process*, first elaborated upon by Justice Harlan in his concurrence and relied upon by the patent bar for the past forty years.

The Court therefore found that plaintiffs had not satisfied the first prong of the rule-of-reason analysis and granted defendants' motion for summary judgment on plaintiffs' Sherman Act claim.

Site Pro-1, Inc. v. Better Metal, LLC, (Magistrate Judge Reyes)

Plaintiff brought suit for trademark infringement, unfair competition, and dilution under the Lanham Act and New York state law. Plaintiff contended that defendant impermissibly used plaintiff's trademark in the "metadata" or "metatags" of its website. Defendant moved to dismiss the complaint on the ground that it did not "use" the mark in commerce under the Lanham Act. The parties consented to final disposition of this motion by Judge Reyes.

Plaintiff alleged that defendant, a competitor, improperly directed internet users toward the defendant's website. Defendant admitted that it purchased a sponsored search from Yahoo! so that a search engine user combining the keywords that constituted plaintiff's trademark would link to defendant's website in the sponsored search results. However, the actual trademark was not displayed in the sponsored search results.

The Court analyzed whether the "use of another company's registered trademark in metadata or as part of a sponsored search constitutes use of a trademark in commerce under the Lanham Act." The Court acknowledged that other circuits have sustained such claims, although they were rejected in the Second Circuit. The Court stated that the "key question is whether the defendant placed plaintiff's trademark on any goods, displays, containers, or advertisements, or used plaintiff's trademark in any way that indicates source or origin."

The Court concluded that there was no allegation that defendant ever displayed the plaintiff's trademark on any of its goods or advertisements. The link to the defendant's website and surrounding text did not mention plaintiff's name or the trademark, and the metadata or metatags were not displayed to consumers.

The Court also dismissed plaintiff's "initial source confusion" argument. Plaintiff contended that defendant's actions in improperly diverting internet traffic to defendant's website, through either the use of metadata or a sponsored search, created initial source confusion actionable under the Lanham Act. Judge Reyes specifically noted that this "argument was flatly rejected by the Second Circuit" and granted defendant's motion to dismiss.

International Law

Arar v. Ashcroft (Judge Trager)

Judge Trager presided over a civil suit seeking declaratory and monetary relief based on the United States' rendition of plaintiff to Syria. Plaintiff, a Syrian native and a dual citizen of Syria and Canada, arrived from Switzerland at John F. Kennedy International Airport to catch a connecting flight to Montreal. Immigration officials stopped plaintiff at the border and identified him as a member of Al Qaeda, a group designated by the Secretary of State as a foreign terrorist organization. Defendants, all United States officials, held plaintiff virtually incommunicado at the border for 13 days and then deported him to Syria, allegedly for the express purpose of detention and interrogation under torture by Syrian officials. Plaintiff was detained in Syria for approximately ten months. Syria ultimately released plaintiff into the custody of the Canadian embassy without filing any charges. Plaintiff brought suit under the Torture Victim Protection Act of 1991 ("TVPA") and the Fifth Amendment to the United States Constitution.

Judge Trager dismissed the portions of plaintiff's claims seeking declaratory relief, finding that plaintiff lacked standing to obtain such relief "because the challenged activity is neither ongoing nor likely to impact him in the future." The Court also dismissed plaintiff's claim under the TVPA. The Court held that the TVPA does not provide a private right of action for individuals improperly removed to countries practicing torture. The Court also held that plaintiff failed to state a TVPA claim because he failed to establish that defendants acted under color of "foreign law." In so doing, the Court rejected plaintiff's assertion that United States officials acted under color of foreign law by conspiring with Syrian officials and found that the United States officials' actions were taken under United States law.

Judge Trager also dismissed plaintiff's claims alleging violations of the Fifth Amendment and seeking damages pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Ruling on an issue of first impression, Judge Trager found that plaintiff's *Bivens* claim was foreclosed by an exception barring *Bivens* relief that would "trammel[] upon matters best decided by coordinate branches of government." The Court held that the foreign policy and national security issues raised by plaintiff's claims should be left for the Executive and Legislative branches of government. The Court stated:

[T]here is a fundamental difference between courts evaluating the legitimacy of actions taken by federal officials in the domestic arena and evaluating the same conduct when taken in the international realm. In the former situation . . . judges have not only the authority vested under the Constitution to evaluate the decision-making of government officials that goes on in the domestic context, whether it be a civil or a criminal matter, but also the experience derived from living in a free and democratic society, which permits them to make sound judgments. In the international realm, however, most, if not all, judges have neither the experience nor the background to adequately and competently define and adjudge the rights

of an individual vis-à-vis the needs of officials acting to defend the sovereign interests of the United States, especially in circumstances involving countries that do not accept our nation's values or may be assisting those out to destroy us.

A panel of the Second Circuit affirmed Judge Trager's dismissal of all counts in a split decision, although it found that a private right of action existed under the TVPA. The panel's decision was affirmed on rehearing *en banc*.

In re Air Crash near Peixoto de Avezeda, Brazil (Judge Cogan)

Judge Cogan presided over multi-district litigation involving wrongful death claims brought by the surviving family members of the passengers of Gol Linhas Inteligentes S.A. Flight 1907. Flight 1907 crashed in the Amazon rainforest in Brazil on September 29, 2006, killing all on board. Plaintiffs alleged that the crash was caused when Flight 1907 collided with a Legacy jet that subsequently made an emergency landing at a Brazilian military base. Plaintiffs, all of whom were Brazilian residents, brought their claims against the Legacy jet's United States-based designer, United States-based operator, and pilots—both of whom were United States citizens. Plaintiffs also named as defendants other United States-based entities responsible for the radar systems used by the Brazilian government and the Legacy jet. Defendants moved to dismiss on forum non conveniens grounds.

In deciding defendants' motion, the Court applied the three-step analysis set forth in *Iragorri v. United Technologies Corp.*, 274 F.3d 65 (2d Cir. 2001), which requires the Court to (1) determine the degree of deference properly accorded plaintiffs' choice of forum; (2) decide whether defendants' proposed alternative forum is available and adequate; and (3) balance the private and public interests involved in the choice of forum. Judge Cogan held that plaintiffs' choice of the United States was not entitled to a high-degree of deference because plaintiffs were Brazilian citizens bringing suit based on events that primarily took place abroad. The Court also found that defendants' proposed forum, Brazil, was available because most of the defendants agreed to submit to the jurisdiction of the Brazilian courts and that "it [wa]s a near certainty" that Brazil would exercise jurisdiction over the remaining defendants. The Court also rejected plaintiffs' arguments that the Brazilian forum was not adequate because it would cause the litigation to be fragmented and protracted. In balancing the interests, Judge Cogan concluded that the lack of jurisdiction in the United States over potentially liable parties and the lack of compulsory process over witnesses and evidence in Brazil, as well as other considerations, "swing the balance sufficiently to make this forum 'genuinely inconvenient' and a Brazilian forum 'significantly preferable.'" The Court therefore granted defendants' motion subject to several conditions, including allowing the plaintiffs to reopen this case if the Brazilian courts refused to exercise jurisdiction over defendants.

Headley-Omber v. Holder (Judge Kuntz)

Judge Kuntz presided over a suit filed by an alien against the United States government

for judicial review of the administrative denial of his application for a certificate of citizenship and seeking a declaratory judgment of United States nationality. Ruling on an issue that had not been addressed by the Supreme Court or the Second Circuit, Judge Kuntz held that the Court lacked subject-matter jurisdiction over this action.

Plaintiff was born in Panama and was subsequently admitted to the United States as a lawful permanent resident. In 1991, plaintiff was convicted of first-degree assault in New York state court and sentenced to a term of imprisonment of one-and-one-half to four-and-one-half years. While plaintiff was serving his sentence, the Immigration and Naturalization Service placed plaintiff in removal proceedings, charging him with removability as an alien convicted of an aggravated felony. In the removal proceedings, plaintiff claimed that his mother's petition for citizenship was approved before his eighteenth birthday and that, as a result, he had derivative United States citizenship. Based on plaintiff's failure to produce evidence to support this claim, the Immigration Judge ordered plaintiff removed from the United States. The Board of Immigration Appeals upheld the Immigration Judge's decision and dismissed plaintiff's appeal. Plaintiff's subsequent motion to reopen his appeal was also denied.

Upon completion of plaintiff's criminal sentence, United States Immigration and Customs Enforcement took plaintiff into custody in order to remove him from the United States. Prior to his removal, plaintiff filed this case in the Southern District of New York. The case was transferred to the Eastern District of New York.

The Court construed plaintiff's petition as a being filed under 8 U.S.C. § 1503(a), which vests a district court with jurisdiction to grant a declaration of citizenship to any person who is denied a right or privilege as a national of the United States on the ground that he is not a national of the United States. Section 1503(a) contains two exceptions, one of which divests the district court of jurisdiction where the issue of the person's status as a national "arose by reason of, or in connection with any removal proceeding."

Judge Kuntz held that this jurisdictional exception required dismissal of plaintiff's petition. The Court concluded that the plain meaning of Section 1503(a) is clear: "An alien who has raised a nationality claim in a past or pending removal proceeding is barred from bringing a declaratory judgment action under Section 1503(a)." Judge Kuntz concluded that this exception precluded the Court from exercising jurisdiction because plaintiff raised derivative citizenship as a defense during the removal proceedings.

***Aguirre v. Best Care Agency, Inc.* (Judge Brodie)**

Judge Brodie presided over a forced labor and involuntary servitude case brought by a Filipino national against her employers. Plaintiff brought claims under the Trafficking Victims Protection Reauthorization Act and New York common law. Defendants counterclaimed for defamation.

Plaintiff named as defendants Best Care Agency, Inc. (“Best Care”), a nursing employment agency, and its two owners. Plaintiff alleged that the owners of Best Care offered her employment to perform accounting-related work at Best Care and that they agreed to sponsor her for an H1-B immigration visa. Plaintiff alleged that, after she agreed to work for Best Care, she was assigned non-accounting administrative tasks and was paid less than defendants had promised her. She further claimed that defendants took advantage of their sponsorship of her because they knew that she would become unlawfully present in the United States if they withdrew their H1B petition. Plaintiff also alleged that, after her H1B petition was approved, defendants offered to sponsor her for a green card and told her that she would not receive the wage rate that they promised her until she received her green card. Ultimately, the United States government denied plaintiff’s work petition on the ground that Best Care did not have the financial capacity to pay the wage represented in the immigration and labor documents. Plaintiff thereafter ended her employment with Best Care and the United States government initiated removal proceedings against her.

Plaintiff alleged that, by their actions, defendants subjected her to forced labor by abusing the immigration law and immigration sponsorship process. Defendants based their counterclaim on statements that plaintiff made in several interviews with the press in which she discussed the allegations contained in her complaint.

Judge Brodie denied plaintiff’s motion for summary judgment on her claims and defendants’ motion for judgment on the pleadings, finding that there were fact issues as to each of plaintiff’s claims. Judge Brodie granted plaintiff’s motion for summary judgment on the defamation counterclaim, finding that the statements on which this claim was based fell within the privilege set forth in Section 74 of the New York Civil Rights Law that applied to fair and true reports of any judicial proceedings. Following Judge Brodie’s decision, the parties settled the case shortly before the trial was scheduled to begin.

Securities Litigation

In re KeySpan Corporation Securities Litigation (Judge Ross and Magistrate Judge Go)

Judge Ross presided over a putative class action brought by shareholders of KeySpan Corporation (“KeySpan”) asserting various securities claims in connection with KeySpan’s acquisition of certain companies. Plaintiffs alleged, *inter alia*, that defendants concealed the negative consequences of KeySpan’s acquisition of Roy Kay, Inc. (“Roy Kay”), which had the effect of artificially inflating KeySpan’s stock price. Based on these allegations, plaintiff alleged that KeySpan and a number of its senior officers and directors violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

Defendants moved to dismiss the complaint, claiming, *inter alia*, that the statements at

issue were inactionable general statements of corporate optimism and forward-looking statements. Judge Ross dismissed the portion of plaintiffs' claims based on the Roy Kay acquisition, but allowed plaintiffs to replead. Plaintiffs thereafter filed an amended complaint.

Defendants moved to dismiss the amended complaint or, in the alternative, to strike certain allegations. Defendants again claimed that the alleged misstatements were inactionable fraud by hindsight and expressions of optimism and forward-looking statements. The Court disagreed, concluding that the amended complaint "allege[d] facts demonstrating with particularity that defendants were aware of severe financial and operational difficulties at Roy Kay. . . ." Judge Ross found that despite defendants' clear knowledge otherwise, the complaint alleged that KeySpan "continued to present an unvarnished public image of itself. . . ." The Court did, however, grant the defendants' motion to strike certain statements as inactionable expressions of optimism or forward-looking statements.

Following decisions on these motions, the parties sought preliminary approval of a settlement of the class action claims. Judge Ross granted this motion and referred the plaintiffs' counsel's application for an award of attorneys' fees and expenses to Magistrate Judge Go. Judge Go recommended an award of \$2.75 million in attorneys' fees plus \$516,000 in expenses to class counsel. The award of \$2.75 million represented 20% of the settlement fund. Judge Ross so ordered Judge Go's recommendation in September 2005.

In re Apple REIT Litigation (Judge Matsumoto)

Judge Matsumoto presided over a \$6 billion putative consolidated class action brought by six individuals who, based on defendants' solicitations, invested in non-traded, public real estate investment trusts. Defendants structured the REITs as blind pool offerings, in which plaintiffs committed to invest before knowing what properties the REITs would purchase with the net offering proceeds. Plaintiffs alleged that, after FINRA filed a complaint against the REITs, they learned that defendants misrepresented the REITs' investment objectives, their dividend payment policy and the value of plaintiffs' investments.

The Court granted defendants' motion to dismiss the complaint for failure to state a cause of action on multiple grounds including because plaintiffs failed to allege an actionable misrepresentation. In addition, while loss causation is an affirmative defense, the Court nevertheless dismissed plaintiffs' Securities Act claims because the complaint failed to allege any loss or damages attributable to the defendants. The Court found that the complaint conceded that the REITs redeemed shares in a manner consistent with the redemption policy set forth in the prospectus and that plaintiffs failed to allege that they did not consistently receive the promised monthly distributions on their shares. The Court therefore found that "Plaintiffs' belabored Complaint appears only to confirm that the Apple REITs are currently functioning in exactly the manner that was anticipated and disclosed in the REITs prospectuses and other offering documents."

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<i>Aiello v. Town of Brookhaven</i> (Judge Block)	2005 WL 1397202 (E.D.N.Y. June 13, 2005)
<i>Air Cargo Industry Antitrust Litigation</i> (Judge Gleeson)	2009 WL 3077396 (E.D.N.Y. Sept. 25, 2009)
<i>Applied Information Mgmt., Inc. v. Icart</i> (Judge Ross)	976 F. Supp. 149 (E.D.N.Y. 1997)
<i>Arar v. Ashcroft</i> (Judge Trager)	414 F. Supp. 2d 250 (E.D.N.Y. 2006) , <i>aff'd</i> 532 F.3d 157 (2d Cir. 2008), <i>vacated and superseded on rehearing en banc</i> , 585 F.3d 559 (2d Cir. 2009)
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<i>Bodner v. Banque Paribas, et al.</i> (Judge Johnson and Magistrate Judge Go)	114 F. Supp. 2d 117 (E.D.N.Y. 2000)
<i>Brooklyn Heights Assoc., Inc. v. Nat'l Park Svc.</i> (Judge Vitaliano)	818 F. Supp. 2d 564 (E.D.N.Y. 2011), <i>et al.</i>
<i>Brooklyn Inst. Of Arts and Sciences v. City of New York and Rudolph Giuliani</i> (Judge Gershon)	64 F. Supp. 2d 184 (E.D.N.Y. 1999)
<i>Candelaria v. Spurlock</i> (Judge Cogan)	888 F. Supp. 2d 317 (E.D.N.Y. 2012)

²² This Index provides citations, or docket numbers where applicable, to matters discussed in the section of the Retrospective entitled “1990-2014: Notable Cases, Trials and Decisions.” Citations or docket numbers are provided in alphabetical order of the case title ascribed to them in the Retrospective. Where the Retrospective refers to a series of cases, a citation or docket number to only one of the cases is provided.

<i>City of New York v Beretta U.S.A. Corp.</i> (Judge Weinstein)	401 F. Supp. 2d 244 (E.D.N.Y. 2005), <i>rev'd in part</i> 524 F.2d 384 (2d Cir. 2008)
<i>Cityspec, Inc. v. Smith</i> (Judge Wexler)	617 F. Supp. 2d 161 (E.D.N.Y. 2009)
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<i>Elyashiv v. Elyashiv</i> (Judge Block)	353 F. Supp. 2d 394 (E.D.N.Y. 2005)
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<i>In re Air Crash near Peixoto de Avezeda, Brazil</i> (Judge Cogan)	574 F. Supp. 2d 272 (E.D.N.Y. 2008)
<i>In re Apple REIT Litig.</i> (Judge Matsumoto)	2013 WL 1386202 (E.D.N.Y. Apr. 3, 2013)
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<i>In Re Ciprofloxacin Hydrochloride Antitrust Litig.</i> (Judge Trager)	363 F. Supp. 2d 514 (E.D.N.Y. 2005)
<i>In re Dorothy J, et al., v. City of New York</i> (Judge Korman)	749 F. Supp. 2d 50 (E.D.N.Y. 2010)
<i>In re Frito-Lay North America, Inc. All Natural Litig.</i> (Judge Mauskopf)	2013 WL 4647512 (E.D.N.Y. Aug. 29, 2013)
<i>In re Holocaust Victim Assets Litig.</i> (Judges Block and Korman and Magistrate Judge Orenstein)	105 F. Supp. 2d 139 (E.D.N.Y. 2000), <i>et al.</i>
<i>In re KeySpan Corp. Sec. Litig.</i> (Judge Ross and Magistrate Judge Go)	383 F. Supp. 2d 358 (E.D.N.Y. 2003)
<i>In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.</i> (Magistrate Judge Orenstein)	2007 WL 121426 (E.D.N.Y. Jan. 12, 2007)
<i>In re Simon II Litigation</i> (Judge Weinstein)	233 F.R.D. 123 (E.D.N.Y. 2006), <i>et al.</i>
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<i>Linde v. Arab Bank</i> (Magistrate Judge Pohorelsky)	262 F.R.D. 136 (E.D.N.Y. 2009)
<i>Louima v. City of New York</i> (Judge Johnson and Magistrate Judge Pollak)	2004 WL 2359943 (E.D.N.Y. Oct. 5, 2004)

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<i>Reid v. Ingerman Smith LLP</i> (Magistrate Judge Go)	2012 WL 6720752 (E.D.N.Y. Dec. 27, 2012)
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<i>Shady Grove Orthopedic Assocs. v. Allstate Ins.</i> (Judge Gershon)	466 F. Supp. 2d 467 (E.D.N.Y. 2006), <i>aff'd</i> 549 F.3d 137 (2d Cir. 2008), <i>rev'd</i> 559 U.S. 393 (2010)
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<i>The Computer Associates Prosecutions</i> (Judge Glasser)	2006 WL 6589865 (E.D.N.Y. Feb. 21, 2006)

<i>The Golden Venture Prosecutions</i> (Judge Raggi)	2002 WL 398810 (E.D.N.Y. 2002), <i>et al.</i>
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<i>Turkmen v. Ashcroft</i> (Judge Gleeson and Magistrate Judge Gold)	2006 WL 1662663 (June 14, 2006), <i>aff'd in part</i> 589 F.3d 542 (2009)
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<i>United States v. David Brooks</i> (Judge Seybert)	2013 WL 5522856 (E.D.N.Y. Oct. 3, 2013), <i>et al.</i>
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<i>United States v. Eleutario Granados-Hernandez</i> (Judge Matsumoto)	Criminal Docket No. 11-0297
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<i>United States v. HSBC Bank USA, N.A. and HSBC Holdings PLC</i> (Judge Gleeson)	2013 WL 3306161 (E.D.N.Y. July 1, 2013)
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<i>United States v. Louis Eppolito and Stephen Caracappa</i> (Judge Weinstein)	436 F. Supp. 2d 532 (E.D.N.Y. 2006), <i>rev'd</i> 543 F.3d 25 (2d Cir. 2008), <i>et al.</i>
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<i>United States v. Ronell Wilson, et al.</i> (Judge Garaufis)	967 F. Supp. 2d 673 (E.D.N.Y. 2013), <i>et al.</i>
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<i>United States v. Vincent “Chin” Gigante</i> (Judges Dearie, Nickerson, and Weinstein)	52 F. Supp. 2d 274 (E.D.N.Y. 1999), <i>et al.</i>

<i>United States v. Vittorio “Vic” Amuso</i> (Judge Nickerson)	Criminal Docket No. 90-446
<i>United States v. Vyacheslav Ivankov</i> (Judge Amon)	Criminal Docket Nos. 96-420 (CBA), 95-562 (CBA)
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<i>Unites States v. Alphonse Persico</i> (Judges Johnson and Seybert)	2009 WL 1689298 (E.D.N.Y. Jun. 17, 2009), <i>et al.</i>
<i>Vitamin C Antitrust Litigation</i> (Judges Cogan and Trager)	584 F. Supp. 2d 546 (E.D.N.Y. 2006);
<i>Zimmerman v. Poly Prep Country Day School</i> (Judge Block and Magistrate Judge Pollak)	888 F. Supp. 2d 317 (E.D.N.Y. 2012), <i>et al.</i>

In Memoriam

This section acknowledges the contributions of the judges who served on the Court during the 1990-2014 period and who are now deceased.

United States District Judges

Hon. John R. Bartels (1897-1997)

Judge Bartels was born in 1897 in Baltimore, Maryland. He graduated from Johns Hopkins University (A.B., 1920) and Harvard Law School (LL.B., 1923). He served in the United States Army in 1918. He was in private practice of law in New York City from 1925 to 1959. During that time, Judge Bartels was also a member of the New York State Law Review Commission from 1945 to 1950 and from 1952 to 1957, and a Justice of the State of New York Supreme Court for Brooklyn from 1950 to 1951. He was appointed to the Eastern District by President Eisenhower in 1959. He assumed senior status on December 31, 1973, and heard cases until his death in 1997. At the time of his death, Judge Bartels was the oldest living federal judge.

Hon. Henry Bramwell (1919-2010)

Judge Bramwell was born in 1919 in Brooklyn, New York. He graduated from Brooklyn Law School (LL.B., 1948). He served in the United States Army from 1941 to 1945. He was an Assistant United States Attorney for the Eastern District of New York from 1953 to 1961. He was then an associate counsel to the New York State Rent Commission from 1961 to 1963. He was a special hearing officer for conscientious objectors from 1965 to 1966. He was a judge of the Civil Court of the City of New York in 1966 and again from 1969 to 1975. He was an assistant administrative judge in Brooklyn, New York from 1974 to 1975. He was appointed to the Eastern District by President Ford in 1974. He assumed senior status in 1987, and served in that capacity until his death in 2010.

Hon. Mark A. Costantino (1920-1990)

Judge Costantino was born in 1920 in Staten Island, New York. He graduated from Brooklyn Law School (LL.B., 1947). Judge Costantino served as a Private in the U.S. Army from 1942 to 1946. He then served as a Special Deputy State Attorney General of New York from 1947 to 1951. He was in private practice in Staten Island from 1951 to 1956. He was a judge of the City Court of New York City from 1956 to 1966, and of the New York Civil Court from 1966 through 1971. Throughout this time, he was an acting judge of the New York Supreme Court, Second Judicial Department. He was appointed to the Eastern District by President Nixon in 1971. He assumed senior status in 1987 and served until his death in 1990.

Hon. Joseph M. McLaughlin (1933-2013)

Judge McLaughlin was born in 1933 in Brooklyn, New York. He graduated from Fordham College (A.B., 1954), Fordham University School of Law (LL.B., 1959), and New York University

School of Law (LL.M., 1964). He was in private practice of law in New York City from 1959 to 1961. He taught as a law professor at Fordham University School of Law from 1961 to 1971. In 1971, Judge McLaughlin became Dean of Fordham Law School, a position he held for ten years. He was appointed to the Eastern District by President Reagan in 1981. On July 10, 1990, President George H.W. Bush nominated Judge McLaughlin to a seat on the United States Court of Appeals for the Second Circuit. He assumed senior status in 1998 and served until his death in 2013. During his time on the bench, Judge McLaughlin also taught as an adjunct professor of law at St. John's University School of Law and Fordham University School of Law.

Hon. Jacob Mishler (1911-2004)

Judge Mishler was born in 1911 in New York, New York. He graduated from University Heights College, New York University (B.S., 1931) and New York University School of Law (J.D., 1933). Judge Mishler worked in private practice in Long Island City from 1934 to 1959; he then became a Justice of the Supreme Court of New York in 1959. He was appointed to the Eastern District by President Eisenhower in 1960. He served as Chief Judge of the Eastern District from 1969 to 1980 and assumed senior status on April 30, 1980. He served until his death on January 26, 2004.

Hon. Edward R. Neaher (1912-1994)

Judge Neaher was born in 1912 in Brooklyn, New York. He graduated from the University of Notre Dame (A.B., 1937) and Fordham University School of Law (LL.B., 1943). He served as the United States Attorney for the Eastern District of New York from 1969 to 1971. He was appointed to the Eastern District by President Nixon in 1971. He assumed senior status on May 28, 1982, and continued his judicial service until his death in 1994.

Hon. Eugene H. Nickerson (1918-2002)

Judge Nickerson was born in 1918 in Orange, New Jersey. He graduated from Harvard University (B.A., 1941) and Columbia Law School (LL.B., 1943). He began his legal career as a law clerk for Hon. Augustus N. Hand of the United States Court of Appeals for the Second Circuit from 1943 to 1944; then he became a law clerk for Chief Justice Harlan F. Stone of the Supreme Court of the United States from 1944 to 1946. Judge Nickerson then moved to private practice in New York City from 1946 to 1961 and again from 1971 to 1977. He also served as Nassau County Executive from 1962 to 1970. He was appointed to the Eastern District of New York by President Carter in 1977. He assumed senior status in the Eastern District on July 1, 1994, and continued his judicial service until his death in 2002.

Hon. Charles P. Sifton (1935- 2009)

Judge Sifton was born in 1935 in New York, New York. He graduated from Harvard College (B.A., 1957) and Columbia Law School (LL.B., 1961). He was also a Fulbright Scholar at the University of Göttingen in Göttingen, Germany from 1957 to 1958. Judge Sifton worked as an attorney in private practice in New York City from 1961 to 1962 and as staff counsel to the U.S. Senate Committee on Foreign Relations from 1962 to 1964. He returned to private practice from

1964 to 1966, and again from 1969 to 1977. From 1966 to 1969, Judge Sifton served as an Assistant United States Attorney for the Southern District of New York. He was appointed to the Eastern District by President Carter in 1977. He served as Chief Judge from 1995 to 2000, assuming senior status on March 18, 2000. He continued his judicial service until his death in 2009.

Hon. David G. Trager (1937-2011)

Judge Trager was born in 1937 in Mount Vernon, New York. He graduated from Columbia University (B.A., 1959) and Harvard Law School (LL.B., 1962). Judge Trager worked in private practice in New York City from 1963 to 1967. He then was a law clerk for the Hon. Kenneth B. Keating of the New York State Court of Appeals from 1968 to 1969 and to Hon. Stanley H. Fuld, Chief Judge of the Court of Appeals, in 1969. Judge Trager then became an Assistant United States Attorney for the Eastern District of New York. He served as the United States Attorney for the Eastern District of New York from 1974 to 1978. He then worked at Brooklyn Law School as a Professor of Law from 1978 to 1993 and served as Dean from 1983 to 1993. He also chaired a Temporary State Commission on Investigations, New York State from 1983 to 1990, and was a member of the New York City Mayor's Committee on the Judiciary from 1981 to 1989. He was appointed to the Eastern District by President Clinton in 1993. Judge Trager assumed senior status in 2006 and served until his death in 2011.

United States Magistrate Judges

Hon. John L. Caden (1943-2000)

Judge Caden was born in 1943. He graduated from St. Peter's College (B.S., 1964), Brooklyn Law School (LL.B, 1967) and New York University School of Law (LL.M. 1973). Judge Caden served in the United States Army as a Judge Advocate Captain from 1969 to 1972. Judge Caden then served as an Assistant United States Attorney for the Eastern District of New York from 1972 to 1977. Judge Caden was appointed to the Eastern District in 1977 and served as a Magistrate Judge until his death in 2000.

Hon. A. Simon Chrein (1933-2005)

Judge Chrein was born in 1933 in Brooklyn, New York. He graduated from the Wharton School of Finance and Commerce of the University of Pennsylvania with a degree in economics and New York University Law School. Judge Chrein served with the Federal Defender's Office in the Eastern District of New York from 1968 to 1976, holding the position of Attorney-in-Charge at the time he left that Office. Judge Chrein served as a Magistrate Judge from 1976 until his death in 2005. Judge Chrein was the first Chief Magistrate Judge in the United States. He was a member of the Executive Committee of the Commercial and Federal Litigation Section of the New York State Bar Association from 1985 to 1993. He also served from 1984 to 1985 on the Committee on the Pretrial Phases of Civil Litigation of the Judicial Council of the Second Circuit and from 1982 to 1984 on the Committee on Effective Discovery in Civil Cases for the Eastern District of New York.

United States Bankruptcy Judges

Hon. Conrad B. Duberstein (1915-2005)

Judge Duberstein was born in the Bronx, New York in 1915. He graduated from Brooklyn College (B.A., 1938) and St. John's University Law School (J.D., 1942). Judge Duberstein began his legal career in Brooklyn as a bankruptcy lawyer in the firm of Schwartz, Rudin & Duberstein. In 1971, he joined Otterbourg, Steindler, Houston & Rosen as a partner, where he remained until his appointment to the bench. Judge Duberstein was appointed to the Bankruptcy Court on April 1, 1981. Judge Duberstein became Chief Bankruptcy Judge on August 8, 1984, a position he held until his death on November 18, 2005. In 2008, the historic courthouse at 271 Cadman Plaza East was officially designated the Conrad B. Duberstein United States Bankruptcy Courthouse.

Hon. Cecelia H. Goetz (1917-2004)

Judge Goetz graduated from New York University School of Law (J.D., 1940, LL.M, 1958). Judge Goetz began her career as an attorney with the Department of Interior, Washington, D.C., and then became a Special Assistant to the Attorney General in the Civil & Tax Divisions of the Department of Justice. After World War II, she went to Nuremberg, Germany with the Office of Chief of Counsel for War Crimes to serve as a prosecutor in the Nuremberg War Crimes trial. During the Korean War, she served as Assistant Chief Counsel in the Office of Price Stabilization. Judge Goetz worked in private practice as a partner in Goetz & Goetz, an associate with Weisman, Celler, Allan, Spett & Sheinberg and Kaye, Scholer, Fierman, Hays & Handler and a partner in Herzfeld & Rubin, P.C. Judge Goetz was appointed to the Bankruptcy Court on August 1, 1978, and served until her retirement February 28, 1993. Judge Goetz passed away in 2004.

Hon. Robert John Hall (1931-2013)

Judge Hall was born in Brooklyn, New York in 1931. He graduated from St. John's University Law School (J.D., 1955). Judge Hall began his career as a criminal trial lawyer for the Legal Aid Society of the City of New York. He maintained a private practice in Ridgewood, Queens for many years. He served as Assistant Attorney General to Louis Lefkowitz for the New York State Attorney General's Office, Securities Bureau, prosecuting stock fraud cases in the criminal and civil courts. Judge Hall served two terms as New York State Assemblyman for the 23rd Assembly District, and went on to be Republican State Committeeman and District Leader for the 27th Assembly District in Queens and for the 33rd Assembly District. He served as Law Chairman for the Republican Party in Queens, a delegate to the Queens County Coordinator and as Campaign Manager in Nelson Rockefeller's 1970 run for Governor. Judge Hall was appointed to the Bankruptcy Court on November 22, 1976, and served until his retirement on September 3, 1996. Judge Hall passed away August 21, 2013.

Hon. Marvin A. Holland

Prior to his appointment, Judge Holland was a partner in Holland & Zinker. Judge Holland was appointed to the Bankruptcy Court on September 10, 1985, and served until his retirement on September 9, 1999. Judge Holland passed away November 16, 2013.

Hon. Dennis E. Milton (1951-2010)

Judge Milton was born in Staten Island, New York in 1951. He graduated from Columbia College and the Fordham University School of Law. Prior to his appointment, Judge Milton practiced in a broad variety of areas, which included criminal defense, criminal prosecution as an Assistant United States Attorney for the Eastern District of New York, municipal law as Chief Deputy County Attorney for the County of Suffolk, bankruptcy, intellectual property and labor law. Judge Milton was appointed to the Bankruptcy Court on April 30, 2001, and served until his death on May 31, 2010.

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²³ The Report Subcommittee wishes to thank Douglas Palmer, Clerk of Court for the Eastern District of New York for the photographs used herein, and the Hon. Carla E. Craig, Chief Bankruptcy Judge, and Robert A. Gavin, Jr., Clerk of Court for the United States Bankruptcy Court for the Eastern District of New York, for providing drafts of the portions of this Report relating to the Bankruptcy Court. In addition to the members of the Report Subcommittee, Miriam Alinikoff, Vincent Chang, Clement Colucci, Jennifer Crumley, Bryan Dolin, Ken Huang, Fred Isquith, Zeynel Karcioglu, David Lansner, Marissa Litwin, Brett McMahon, Andrew Russo, Alisha Siqueira, Richard Slack, Stuart White, and Josh Wolkoff drafted portions of this Report. The Report Subcommittee further wishes to thank Elliot Wales for his contribution.

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APPENDIX

Chief Judges of the U.S. District Court for the Eastern District of New York

The following are the Chief Justices who presided over the Court from 1948 to the present:

Dates	Chief Judge
1948–1958	Hon. Robert Alexander Inch
1958–1959	Hon. Mortimer W. Byers
1959–1962	Hon. Walter Bruchhausen
1962–1969	Hon. Joseph Carmine Zavatt
1969–1980	Hon. Jacob Mishler
1980–1988	Hon. Jack B. Weinstein
1988–1995	Hon. Thomas C. Platt, Jr.
1995–2000	Hon. Charles P. Sifton
2000–2007	Hon. Edward R. Korman
2007–2011	Hon. Raymond J. Dearie
April 3, 2011–present	Hon. Carol B. Amon

The Court's Chief Judges have overseen an ever increasing docket and range of responsibilities as the areas constituting the District grew in population and business activity. Approximately 20 years ago, the federal judiciary decentralized its governance structure and shifted the administrative responsibilities to each court to manage its own finances, personnel, property and other matters. As a result, the responsibility for ensuring that the Court is administered effectively and efficiently now falls on the Chief Judge. The Chief Judge works with the Board of Judges, committees of the Court, the District Executive, the Clerk of Court, and other Court unit executives to set goals and make decisions for the Eastern District.

Active Judges of the U.S. District Court for the Eastern District of New York²⁴

Hon. Carol B. Amon

Judge Amon was born in 1946 in Richmond, Virginia. She received her undergraduate degree from the College of William and Mary (B.S., 1968) and her law degree from the University of Virginia School of Law (J.D., 1971). Judge Amon began her legal career as a staff attorney at the Communications Satellite Corporation in Washington, D.C. from 1971 to 1973. She then went to work with the Narcotics Task Force at the U.S. Department of Justice as a Trial Attorney from 1973 to 1974. From 1974 through 1986, she was an Assistant United States Attorney for the Eastern District of New York, and served as the Chief of the Fraud Section from 1978 to 1980, the Chief of the General Crimes Section from 1981 to 1982, and Senior Litigation Counsel from 1984 to 1986. Judge Amon served as a United States Magistrate Judge for the Eastern District of New York from 1986 to 1990. In 1990, she was appointed to the Eastern District in 1990 by President George H.W. Bush. She was a member of the Codes of Conduct Committee of the Judicial Conference from 1991 to 2001 and was Chair from 1998 to 2001. She served on the Judicial Conference of the United States from 2011 to 2013. Judge Amon has served as the Chief Judge for the Court from 2011 to the present. In 2009 and 2010, Judge Amon also was an Adjunct Professor of Law at Brooklyn Law School where she taught a seminar in federal sentencing.

Hon. Joan M. Azrack

Judge Azrack graduated from Rutgers University (B.S., 1974) and New York Law School (J.D., 1979). She served in the Criminal Division of the U.S. Department of Justice under its Honors Program from 1979 to 1981. In 1981, she became an Assistant United States Attorney in the Eastern District of New York. During her tenure as an Assistant United States Attorney, she served as Deputy Chief of the Narcotics Section, Chief of the Business and Securities Fraud Section, and Deputy Chief of the Criminal Division. She was also a Visiting Instructor at the National Institute for Trial Advocacy at Harvard Law School. She served as a Magistrate Judge for the Eastern District of New York from 1990 to 2014 and was the Chief Magistrate Judge from 2000 to 2005. Judge Azrack was appointed to the Eastern District in 2014 by President Barack Obama.

Hon. Joseph F. Bianco

Judge Bianco was born in 1966 in Flushing, New York. He received his undergraduate degree from Georgetown University (B.A., 1988) and his law degree from Columbia University School of Law (J.D., 1991). He began his legal career as a Law Clerk for the Honorable Peter K. Leisure, United States District Judge for the Southern District of New York from 1992 to 1993. Both before and after his clerkship, Judge Bianco worked as a litigation associate at Simpson Thacher & Bartlett. From 1994 to 2003, Judge Bianco served as an Assistant United States

²⁴ Information for the judicial biographies that follow are drawn primarily from two sources: the Federal Judicial Center (www.fjc.gov) and the Second Circuit Redbook series published by the Federal Bar Council. The Committee wishes to thank the Federal Bar Council for providing this valuable resource.

Attorney in the Southern District of New York where he held the positions of Deputy Chief and then Chief of the Organized Crime and Terrorism Unit. In 2003, Judge Bianco left the Department of Justice and moved to private practice with Debevoise & Plimpton. He then worked as the Deputy Assistant Attorney General in the Criminal Division in Washington, D.C., where he supervised the Counterterrorism Section, Fraud Section, Appellate Section, and Capital Case Unit. Judge Bianco has taught classes at Fordham Law School, and is currently an adjunct professor at St. John's University School of Law, Hofstra University School of Law, and Touro Law Center. He was appointed to the Eastern District in 2006 by President George W. Bush.

Hon. Margo K. Brodie

Judge Brodie was born in 1966 in St. John's, Antigua. She graduated from St. Francis College (B.A., 1988) and the University of Pennsylvania Law School (J.D., 1991). Judge Brodie served as an Assistant Corporation Counsel at the New York City Law Department, Real Estate Litigation Division from 1991 to 1994, and then moved to private practice in New York City from 1994 to 1999. She then became an Assistant United States Attorney in the Eastern District of New York from 1999 to 2012, serving as Deputy Chief of General Crimes from 2006 to 2007, Chief of General Crimes from 2007 to 2009, counselor to the Criminal Division from 2009 to 2010, and Deputy Chief of the Criminal Division from 2010 to 2012. She was appointed to the Eastern District by President Barack Obama in 2011. From 2009 to the present, Judge Brodie has been an adjunct professor at Brooklyn Law School.

Hon. Pamela K. Chen

Judge Chen was born in 1961 in Chicago, Illinois. She graduated from the University of Michigan (B.A., 1983) and the Georgetown University Law Center (J.D., 1986). Judge Chen worked in private practice in Washington, D.C. from 1986 to 1991. She then served as a Trial Attorney, Special Litigation Section, Civil Rights Division of the United States Department of Justice from 1991 to 1998. She then served as an Assistant United States Attorney for the Eastern District of New York from 1998 to 2007 and from 2008 to 2013. During her time in the United States Attorney's Office, she served as the Chief of the Civil Rights Litigation Unit from 2003 to 2006, the Deputy Chief of the Public Integrity Section from 2006 to 2007 and the Chief of the Civil Rights Section from 2006 to 2007 and 2008 to 2013. Between her two periods of service in the United States Attorney's Office, she served as the Deputy Commissioner for Enforcement for the New York State Division of Human Rights. Judge Chen was appointed to the Eastern District by President Barack Obama in 2012.

Hon. Brian M. Cogan

Judge Cogan was born in 1954 in Chicago, Illinois. He graduated from the University of Illinois at Champaign-Urbana (B.A., 1975) and Cornell Law School (J.D., 1979). Judge Cogan began his legal career as a Law Clerk for the Honorable Sidney M. Aronovitz in the United States District Court for the Southern District of Florida. He then entered private practice at Stroock & Stroock & Lavan, where he spent his entire career before his appointment to the bench. He became a partner at that firm in 1988 and General Counsel to the firm in 2004. Judge Cogan is

the co-author of *Bankruptcy Code Impact on Civil Litigation in the Federal Courts* and author of *Practice in the Commercial Division*. Before his appointment to the Court, Judge Cogan served as Vice-Chairman of the Mayor's Committee on the Appointment of City Marshals and was a member of the Appellate Division, First Department, Departmental Disciplinary Committee. He was appointed to the Eastern District by President George W. Bush in 2006.

Hon. Sandra J. Feuerstein

Judge Feuerstein was born in 1946 in New York, New York. She graduated from the University of Vermont (B.S., 1966) and the Benjamin N. Cardozo School of Law (J.D., 1979). After graduating from law school, Judge Feuerstein served as a Law Clerk with the New York Supreme Court Law Department from 1980 to 1985. She then clerked for the Hon. Leo H. McGinley, New York State Appellate Division from 1985 to 1987. Judge Feuerstein then worked as a Nassau County District Court Judge from 1987 to 1994, a Justice at the New York Supreme Court, Tenth Judicial District from 1994 to 1999, and an Associate Justice at the New York Supreme Court Appellate Division Second Judicial Department from 1999 to 2003. She was appointed to the Eastern District by President George W. Bush in 2003.

Hon. John Gleeson

Judge Gleeson was born in 1953 in Bronx, New York. He graduated from Georgetown University (B.A., 1975) and the University of Virginia School of Law (J.D., 1980). Judge Gleeson then served as a Law Clerk for the Hon. Boyce F. Martin, Jr. in the United States Court of Appeals for the Sixth Circuit from 1980 to 1981. He then moved to private practice, working as a litigation associate at Cravath, Swaine & Moore from 1981 to 1985. In 1985, Judge Gleeson became an Assistant United States Attorney in the Eastern District of New York. While in the United States Attorney's Office, he served as Chief of Appeals, Chief of Special Prosecutions, Chief of Organized Crime and Chief of the Criminal Division. He was appointed to the Eastern District by President Clinton in 1994. Judge Gleeson has been an Adjunct Professor of Law at New York University School of Law since 1995. From 1990 to 1997, he was an adjunct professor at Brooklyn Law School. In 1994, he served as the John A. Ewald, Jr., Distinguished Visiting Professor of Law at the University of Virginia School of Law. Judge Gleeson was a member of the Defender Services Committee of the Judicial Conference of the United States from 1999 to 2008, and was Chair of that Committee from 2005 to 2008.

Hon. Dora L. Irizarry

Judge Irizarry was born in 1955 in San Sebastian, Puerto Rico. She graduated from Yale University (B.A., 1976) and Columbia University School of Law (J.D., 1979). Judge Irizarry began her legal career as an Assistant District Attorney in the Appeals Bureau of the Bronx County District Attorney's Office from 1979 to 1981, then became an Assistant District Attorney at the Office of the Special Narcotics Prosecutor of the Bronx County District Attorney's Office from 1981 to 1987. She then became an Assistant District Attorney of the Office of the Special Narcotics Prosecutor of the New York County District Attorney's Office from 1987 to 1995 before becoming a Judge in the New York City Criminal Court from 1995 to 1997. Judge

Irizarry was the Acting Justice of the Kings County Supreme Court, Court of Claims from 1997 to 1998, and then an Acting Justice of the New York County Supreme Court, Court of Claims from 1998 to 2002. She then worked in private practice in New York City. She was appointed to the Eastern District by President George W. Bush in 2003.

Hon. William F. Kuntz

Judge Kuntz was born in 1950 in New York, New York. He graduated from Harvard College (A.B., 1972), Harvard University (M.A., 1974 and Ph.D., 1979), and Harvard Law School (J.D., 1977). Judge Kuntz worked in private practice in New York City from 1978 to 2011 and was also an Adjunct Associate Professor at Brooklyn Law School from 1987 to 2003. He was appointed to the Eastern District by President Barack Obama in 2011.

Hon. Kiyo A. Matsumoto

Judge Matsumoto was born in 1955 in Raleigh, North Carolina. She graduated from the University of California at Berkeley (B.A., 1976) and Georgetown University Law Center (J.D., 1981). Judge Matsumoto entered private practice in Seattle, Washington from 1981 to 1983 before serving as an Assistant United States Attorney for the Eastern District of New York from 1983 to 2004, where she served as Deputy Chief, First Deputy Chief, and Chief of the Civil Division. She was also an Adjunct Professor of Law at New York University School of Law from 1998 to 2004. She served as a United States Magistrate Judge for the Eastern District of New York from 2004 to 2008. She was appointed to the Eastern District by President George W. Bush in 2008.

Hon. Roslynn R. Mauskopf

Judge Mauskopf was born in 1957 in Washington, DC. She graduated from Brandeis University (B.A., 1979) and Georgetown University Law Center (J.D., 1982). Judge Mauskopf served as an Assistant District Attorney in the New York County District Attorney's Office from 1982 to 1995. During her tenure, she served as Chief of the Frauds Bureau, and Deputy Chief of the Special Prosecutions Bureau. In 1995, Judge Mauskopf was appointed Inspector General of the State of New York. In 1999, and concurrent with her continued service as State Inspector General, Judge Mauskopf served as Chair of the Moreland Act Commission on New York City Schools. From 2002 to 2007, Judge Mauskopf served as the United States Attorney for the Eastern District of New York. She was appointed to the Eastern District bench by President George W. Bush in 2007.

Hon. Sandra L. Townes

Judge Townes was born in 1944 in Spartanburg, South Carolina. She graduated from Johnson C. Smith University (B.A., 1966) and Syracuse University College of Law (J.D., 1976). Judge Townes began her career as an Assistant District Attorney at the Onondaga County, New York District Attorney's Office from 1977 to 1983. She then became a Senior Assistant District Attorney in the Onondaga County, New York District Attorney's Office from 1983 to 1986. From 1986 to 1987, she served as the Chief Assistant District Attorney in Onondaga County

District Attorney's Office. She then became an Adjunct Professor at Syracuse University College of Law from 1987 to 1995, before becoming a Judge for the City Court of Syracuse, New York from 1988 to 1999. Judge Townes was also an Adjunct Professor at the Onondaga Community College during this time, from 1992 to 2001. She then became a Justice of the Fifth Judicial District of the New York State Supreme Court from 2000 to 2004, and an Associate Justice for the Appellate Division, Second Judicial Department of the New York State Supreme Court from 2001 to 2004. She was appointed to the Eastern District by President George W. Bush in 2003.

Hon. Eric N. Vitaliano

Judge Vitaliano was born in 1948 in Staten Island, New York. He graduated from Fordham College (B.A., 1968) and New York University School of Law (J.D., 1971). Judge Vitaliano began his legal career as a Law Clerk for the Hon. Mark A. Costantino of the United States District Court for the Eastern District of New York from 1971 to 1972. He then entered private practice in New York from 1972 to 1979, and again from 1981 to 1985, and 1999 to 2001. From 1979 to 1981, he was the Chief of Staff for U.S. Representative John M. Murphy, before becoming a member of the New York State Assembly from 1983 to 2002. He served as a Judge for the New York State Unified Court System from 2002 to 2005. He was appointed to the Eastern District by President George W. Bush in 2005. Judge Vitaliano also teaches as an Adjunct Professor of Law at the Brooklyn Law School.

Senior Judges of the U.S. District Court for the Eastern District of New York

Hon. Frederic Block

Judge Block was born in 1934 in Brooklyn, New York. He received his undergraduate degree from Indiana University (A.B., 1956) and his law degree from Cornell Law School (LL.B., 1959). Judge Block started his career as a Clerk for the Supreme Court of the State of New York, Appellate Division from 1959 to 1961. He then spent 33 years in private practice working in Patchogue (1961-1962), Port Jefferson (1962-1968, 1974-1977, 1979-1981, 1983-1985), Centereach (1968-1974), and Smithtown (1977-1979, 1981-1983, 1985-1994), all in New York. Judge Block also became an Adjunct Professor at Touro Law School in 1992. He was appointed to the Eastern District by President Clinton in 1994. He assumed senior status in 2005.

Hon. Raymond J. Dearie

Judge Dearie was born in 1944 in Rockville Center, New York. He graduated from Fairfield University (B.A., 1966) and St. John's University School of Law (J.D., 1969). Judge Dearie began his legal career in private practice, working in New York City from 1969 to 1971. He then joined the United States Attorney's Office for the Eastern District of New York as Chief, Appeals Division from 1971 to 1974, then Chief, General Crimes Section from 1974 to 1976, and Chief, Criminal Division from 1976 to 1977. Judge Dearie then became the Executive Assistant to the United States Attorney in 1977. He then moved to private practice in New York City once again from 1977 to 1980. From 1980 to 1982, he served as Chief Assistant United States Attorney for the Eastern District of New York. He served as the United States Attorney for the Eastern District of New York from 1982 to 1986. He was appointed to the Eastern District by President Reagan in 1986. Judge Dearie served as Chief Judge from 2007 to 2011, and assumed senior status in 2011.

Hon. Nicholas G. Garaufis

Judge Garaufis was born in 1948 in Paterson, New Jersey. He graduated from Columbia College (B.A., 1969) and Columbia University School of Law (J.D., 1974). After receiving his B.A. degree, Judge Garaufis taught in New York City Public Schools from 1969 to 1971. He began his legal career as an associate at Chadbourne & Parke, and then served as an Assistant Attorney General in the Litigation Bureau of the New York State Attorney General's Office. Judge Garaufis served as counsel to Queens Borough President Claire Shulman from 1986 to 1995. He then served as the Chief Counsel of the Federal Aviation Administration in Washington, D.C. as a part of the Clinton Administration from 1995 to 2000. He was appointed to the Eastern District by President Clinton in 2000.

Hon. Nina Gershon

Judge Gershon was born in 1940 in Chicago, Illinois. She graduated from Cornell University (B.A., 1962) and Yale Law School (LL.B., 1965). She was a Fulbright Scholar at the London School of Economics/Hampstead Clinic from 1965 to 1966. Judge Gershon began her

legal career as a Staff Attorney, Appellate Division of the Supreme Court of the State of New York, Mental Health Information Service, from 1966 to 1968, and then became an Assistant Corporation Counsel, Appeals Division, New York City Law Department, from 1968 to 1969 and again from 1970 to 1972. Judge Gershon then became a Professor of Law and Political Science at the University of California, San Diego, from 1969 to 1970. She worked at the New York City Law Department from 1972 to 1976, serving as the Chief of Federal Appeals from 1972 to 1975 and the Chief of the Consumer Protection Division from 1975 to 1976. She served as a United States Magistrate Judge for the Southern District of New York from 1976 to 1996. During that time, Judge Gershon also taught as an adjunct professor of law at the Benjamin N. Cardozo School of Law from 1986 to 1988. She was appointed to the Eastern District by President Clinton in 1995. Judge Gershon assumed senior status in 2008.

Hon. I. Leo Glasser

Judge Glasser was born in 1924 in New York, New York. He graduated from the College of the City of New York (B.A., 1943) and Brooklyn Law School (LL.B., 1948). Judge Glasser was a U.S. Army Technician from 1943 to 1946, and became a Professor of Law at Brooklyn Law School from 1948 to 1969. He then became a Judge of the Family Court of the State of New York from 1969 to 1977, followed by service as the Dean of Brooklyn Law School from 1977 to 1981. He was appointed to the Eastern District by President Reagan in 1981. Judge Glasser assumed senior status in 1993.

Hon. Denis R. Hurley

Judge Hurley was born in 1937 in Baldwin, New York. He graduated from the University of Pennsylvania (B.S., 1959), Columbia University (M.B.A., 1962), and Fordham University School of Law (J.D., 1966). Judge Hurley began his career as a court bailiff for the Hon. John M. Cannella, in the Southern District of New York, from 1963 to 1966. He then moved to private practice in Syracuse, New York from 1966 to 1968. He became a Principal Assistant District Attorney in Suffolk County, New York from 1968 to 1970. Judge Hurley returned to private practice once again in Riverhead, New York from 1970 to 1983. During that time, he also served as a special prosecutor for Suffolk County, New York from 1974 to 1975, a member of the Suffolk County Legislature from 1978 to 1979, and a senior assistant county attorney in Suffolk County, New York from 1980 to 1981. He then became a Judge for the New York State Family Court from 1983 to 1987, and an Acting Justice for the New York State Supreme Court from 1987 to 1988. He served as a Judge in the New York State County Court for Suffolk County from 1988 to 1991. He was appointed to the Eastern District by President George H. W. Bush in 1991. Judge Hurley assumed senior status in 2004.

Hon. Sterling Johnson, Jr.

Judge Johnson was born in 1934 in Brooklyn, New York. He graduated from Brooklyn College (B.A., 1963) and Brooklyn Law School (LL.B., 1966). Judge Johnson was in the United States Marine Corps from 1952 to 1955 before becoming a New York City Police Officer from 1956 to 1967. He then became an Assistant United States Attorney for the Southern District of

New York from 1967 to 1970, followed by service as the Executive Director of the Civilian Complaint Review Board for the New York City Police Department from 1970 to 1974. Judge Johnson was an Executive Liaison Officer for the Drug Enforcement Administration in 1975, and then served as a Special Narcotics Prosecutor for New York City from 1975 to 1991. During this time, Judge Johnson was also a Captain in the United States Naval Reserve as a Judge Advocate General from 1974 to 1991. He was appointed to the Eastern District by President George H.W. Bush in 1991. Judge Johnson also served as the Commissioner of the United States Sentencing Commission from 1999 to 2002. He has delivered lectures around the world as well as at nine schools in the United States. Judge Johnson assumed senior status in 2003.

Hon. Edward R. Korman

Judge Korman was born in 1942 in New York, New York. He graduated from Brooklyn College (B.A., 1963), Brooklyn Law School (LL.B., 1966) and New York University Law School (LL.M., 1971). Judge Korman was a Law Clerk for the Hon. Kenneth B. Keating of the New York Court of Appeals from 1966 to 1968 and then an associate at the firm of Paul Weiss Rifkind Wharton & Garrison from 1968 to 1970. He then served as an Assistant United States Attorney for the Eastern District of New York from 1970 to 1972 and as an Assistant to the Solicitor General of the United States from 1972 to 1974. Judge Korman then returned to the United States Attorney's Office for the Eastern District of New York and served as Chief Assistant United States Attorney from 1974 to 1978 and as the United States Attorney from 1978 to 1982. He then moved back to private practice, becoming a partner with the law firm of Stroock & Stroock & Lavan from 1982 to 1984 and of counsel from 1984 to 1985. Judge Korman was a Professor of Law at Brooklyn Law School from 1984 to 1985. He was also a member of the Temporary Commission of Investigation of the State of New York and Chairman of the Mayor's Committee on New York City Marshals from 1983 until his appointment as a United States District Judge. He was appointed to the Eastern District by President Reagan in 1985. He served as Chief Judge from 2000 to 2007. Judge Korman assumed senior status in 2007.

Hon. Thomas C. Platt, Jr.

Judge Platt was born in 1925 in New York, New York. He graduated from Yale University (B.A., 1947) and Yale Law School (LL.B., 1950). Judge Platt was in the United States Naval Reserve from 1943 to 1946. He began his legal career in private practice in New York City from 1950 to 1953 before becoming an Assistant United States Attorney in the Eastern District of New York from 1953 to 1956. Judge Platt then re-entered private practice in New York City from 1956 to 1974, working as an Attorney for the Village of Laurel Hollow, New York from 1958 to 1974, and an Acting Police Justice of the Village of Lloyd Harbor, New York from 1958 to 1963. He was appointed to the Eastern District by President Nixon in 1974. He served as Chief Judge from 1988 to 1995. Judge Platt assumed senior status in 2001.

Hon. Allyne R. Ross

Judge Ross was born in 1946 in New York, New York. She graduated from Wellesley

College (B.A., 1967) and Harvard Law School (J.D., 1970). Judge Ross was a Staff Attorney at the Boston Legal Assistant Project from 1970 to 1971, and then moved to private practice in New York City from 1971 to 1976. She then served as an Assistant United States Attorney for the Eastern District of New York from 1976 to 1986, holding the position of Chief of the Appeals Division from 1983 to 1986. Judge Ross served as a United States Magistrate for the Eastern District of New York from 1986 to 1994. She was appointed to the Eastern District by President Clinton in 1994. She assumed senior status in 2011.

Hon. Joanna Seybert

Judge Seybert was born in 1946 in Brooklyn, New York. She graduated from the University of Cincinnati (B.A., 1967) and St. John's University School of Law (J.D., 1971). Judge Seybert started her legal career as a Trial Attorney for the Legal Aid Society in New York City from 1971 to 1973, and then became a Senior Trial Attorney with the Federal Defender Services for the Legal Aid Society of Brooklyn from 1973 to 1975. She then moved to private practice in Woodbury, New York in 1976. Judge Seybert moved back to the Legal Aid Society, becoming a Senior Staff Attorney for Nassau County from 1976 to 1979. In 1979, Judge Seybert entered private practice again in Woodbury, New York, and then moved to become Bureau Chief of the Major Litigation Bureau at the Nassau County Attorney's Office from 1980 to 1987. She became a Judge for the Nassau County District Court from 1987 to 1991 and a Judge for the Nassau County Court from 1992 to 1993. She was appointed to the Eastern District by President Clinton in 1993. She assumed senior status in 2014.

Hon. Arthur D. Spatt

Judge Spatt was born in 1925 in Brooklyn, New York. Judge Spatt attended the Ohio State University and interrupted his studies to serve in the United States Navy during World War II. He graduated from Brooklyn Law School (LL.B., 1949). Judge Spatt entered private practice in New York City from 1949 to 1978. He then became a Justice of the Tenth Judicial District of the Supreme Court of New York from 1978 to 1982, followed by service as an Administrative Judge of Nassau County from 1982 to 1986, and an Associate Justice for the Appellate Division of the Second Judicial Department of the State of New York from 1986 to 1989. He was appointed to the Eastern District by President George H.W. Bush in 1989. Judge Spatt assumed senior status in 2004.

Hon. Jack B. Weinstein

Judge Weinstein was born in 1921 in Wichita, Kansas. He graduated from Brooklyn College (B.A., 1943) and Columbia Law School (LL.B., 1948). Judge Weinstein was a U.S. Navy Lieutenant from 1943 to 1946, and started his legal career as a lecturer at Columbia University Law School from 1948 to 1949. He was then a Law Clerk for the Hon. Stanley Fuld of the New York State Court of Appeals from 1949 to 1950. He then worked in private practice in New York City from 1950 to 1952. Judge Weinstein became a faculty member at Columbia University Law School from 1952 to 1967, serving as a Professor of Law from 1956 to 1967, and as an Adjunct Professor from 1967 to 1998. He remains an Adjunct Professor at Brooklyn

Law School, a position which he has held since 1987. He was appointed to the Eastern District of New York by President Lyndon B. Johnson in 1967. Judge Weinstein served as Chief Judge from 1980 to 1988. He assumed senior status in 1993.

Hon. Leonard D. Wexler

Judge Wexler was born in 1924 in Brooklyn, New York. He graduated from Indiana University (B.S., 1947) and New York University School of Law (J.D., 1950). Before his law career began, Judge Wexler served in the United States Army from 1943 to 1945. He began his legal career in private practice in Bay Shore, New York from 1950 to 1956, and continued in private practice in Smithtown, New York from 1956 to 1983. Judge Wexler also worked as an Administrator for the New York State Assigned Counsel Plan from 1966 to 1983. He was appointed to the Eastern District of New York by President Reagan in 1983. Judge Wexler assumed senior status in 1994.

Magistrate Judges of the U.S. District Court for the Eastern District of New York

Hon. Steven M. Gold (Chief Magistrate Judge)

Judge Gold graduated from Wesleyan University (B.A., 1977) and Yale Law School (J.D., 1980). He was a Law Clerk to United States District Judge Hon. Herbert F. Murray of the District of Maryland from 1980 to 1981. From 1981 until 1985, he was an associate with the law firm of Orans, Elsen & Lupert. Judge Gold became an Assistant United States Attorney for the Eastern District of New York in 1985, rising to Deputy Chief of the Criminal Division. He left in 1990 to become General Counsel for the Department of Investigation of the City of New York, a position which he held until his judicial appointment in 1993. Judge Gold became Chief Magistrate Judge in 2007.

Hon. Lois Bloom

Judge Bloom graduated from the State University of New York at Stony Brook (B.A., 1981) and from the State University of New York at Buffalo Law School (J.D., 1985). Following law school, she was a Staff Attorney at the West Side SRO Law Project, part of Goddard-Riverside Community Center on the upper west side of Manhattan, representing indigent tenants. She then served for 13 years as the Senior Staff Attorney in the Pro Se Office in the United States District Court for the Southern District of New York. She was appointed to the bench in the Eastern District of New York in 2001.

Hon. Gary R. Brown

Judge Brown graduated from Columbia College (B.A., 1985) and Yale Law School (J.D., 1988). After graduating law school, he worked as a Law Clerk to United States District Judge Jacob Mishler in the Eastern District of New York from 1988 to 1989. He next served as an Assistant United States Attorney in the Eastern District of New York for more than 15 years, most recently as the Chief of the Long Island Criminal Division. Judge Brown has taught as an adjunct professor at New York Law School and has lectured at Fordham University School of Law, Hofstra Law School and Touro Law School. Prior to his appointment to the bench in 2011, he was Chief Counsel for Litigation and Chief Compliance Officer at CA Technologies, Inc.

Hon. Marilyn D. Go

Judge Go graduated from Radcliffe College (B.A., 1973) and Harvard Law School (J.D., 1977). Upon her law school graduation, she clerked for the Hon. William Marutani of the Court of Common Pleas in Philadelphia, followed by service as an Assistant United States Attorney for the Eastern District of New York in the Civil Division from 1978 until 1982. She then joined the New York law firm of Baden Kramer Huffman Brodsky & Go, first as an associate and beginning in 1984 as a partner. She was appointed to the bench in 1993.

Hon. Robert M. Levy

Judge Levy graduated from Harvard College (B.A., 1972) and New York University Law School (J.D., 1975). Judge Levy began his law career serving briefly as a staff attorney with the Juvenile Rights Division of the Legal Aid Society before joining the New York Civil Liberties Union, where he was Director of the Mental Health Law Project and Senior Staff Attorney. Prior to his appointment to the bench in 1995, he was General Counsel to New York Lawyers for the Public Interest. After his judicial appointment, Judge Levy was appointed to oversee the Eastern District's Alternative Dispute Resolution programs. Judge Levy is an Adjunct Professor of Law at Columbia, New York University and Brooklyn Law Schools.

Hon. Arlene R. Lindsay

Judge Lindsay graduated from the University of Dayton (B.A., 1968) and New York University Law School (J.D., 1975). She served as an Assistant Bronx District Attorney from 1975 to 1978. Judge Lindsay then served as an Assistant United States Attorney for the Eastern District of New York from 1978 to 1983; Deputy Suffolk County (NY) Attorney from 1983 to 1988; and Town Attorney for Huntington, New York from 1988 to 1990. She was appointed Chief of the White Collar Crime and Complex Litigation Section of the Suffolk County District Attorney's Office in 1990. She then re-joined the United States Attorney's Office for the Eastern District of New York as Chief of the Long Island Division in 1990. She remained in that position until her appointment to the bench in 1994. Judge Lindsay is an Adjunct Professor at Touro Law School.

Hon. Steven I. Locke

Judge Locke graduated from Tufts University (B.A., 1989; M.A., 1990) and Hofstra University Law School (J.D., 1993). Upon graduation, he joined the law firm of Fox and Grove, Chartered in Chicago from 1993 to 1995. He then served as a law clerk to the Hon. Arthur D. Spatt in the Eastern District of New York from 1995 to 1997. Upon completion of his clerkship, he worked for the law firm of Morgan Lewis & Bockius LLP from 1997 to 1999. From 1999 to 2014, he worked in private practice at his own firm. Judge Locke was appointed to the bench in 2014.

Hon. Roanne L. Mann

Judge Mann graduated from Yale College (B.A., 1972) and Stanford Law School (J.D., 1975). Following law school graduation, she joined the Appeals Bureau in the New York County District Attorney's Office, and then served as a Law Clerk for the United States Court of Appeals for the District of Columbia Circuit. From 1977 to 1978, she was a Special Assistant to the Assistant Attorney General in charge of the Civil Division of the United States Department of Justice. She then moved to the United States Attorney's Office for the Southern District of New York, where she served until 1986, holding the positions of Appeals Unit Chief, Senior Litigation Counsel, and Deputy Chief of the Criminal Division. In 1986, she joined the New York law firm

of Stein, Zauderer, Ellenhorn, Frischer & Sharp as counsel, becoming a partner the following year. She was appointed to the bench in 1994.

Hon. James Orenstein

Judge Orenstein graduated from the United Nations International School, Harvard University (B.A., 1984) and New York University School of Law (J.D., 1987). Upon graduating law school, he served as a Law Clerk to United States Circuit Judge James Hunter, III. Following his clerkship, Judge Orenstein worked in private practice from 1988 until 1990. From 1990 until 2001, he was an Assistant United States Attorney for the Eastern District of New York. During that period, he received several appointments, first as a Special Attorney to the United States Attorney General to serve as a member of the prosecution team in the Oklahoma City bombing trials from 1996 to 1998; then as an Attorney-Advisor in the Justice Department's Office of Legal Counsel from 1998 to 1999; and finally as Associate Deputy Attorney General from 1999 to 2001. From 2001 to 2004, Judge Orenstein was a partner in the New York City office of Baker & Hostetler. He was appointed to the bench in 2004. Judge Orenstein is also an adjunct professor at the New York University School of Law.

Hon. Viktor V. Pohorelsky

Judge Pohorelsky graduated from Tulane University (B.A., 1971) and Tulane Law School (J.D., 1980). In the summer of 1980, he was Law Clerk to United States District Judge Earl Veron of the Western District of Louisiana. He then worked as law clerk for United States Circuit Judge John Minor Wisdom of the Fifth Circuit. From 1981 until 1984, he was an associate with the New York law firm of Debevoise & Plimpton. From 1984 until 1991, he served as an Assistant United States Attorney for the Southern District of New York, where he was appointed Deputy Chief of the Criminal Division in 1989. From 1991 to 1995, he worked in private practice at Gold & Wachtel. He was appointed to the bench in 1995.

Hon. Cheryl L. Pollak

Judge Pollak graduated from Princeton University (B.A., 1975) and the University Of Chicago Law School (J.D., 1978). Following graduation from law school, Judge Pollak served as a Law Clerk to the Hon. William H. Timbers on the United States Court of Appeals for the Second Circuit. Thereafter, from 1979 to 1986, she was an associate at Davis Polk & Wardwell in New York. In 1986, Judge Pollak became an Assistant United States Attorney for the Eastern District of New York, where she served as Chief of the Narcotics/OCDETF Unit from 1991 to 1994, and Deputy Chief of the Criminal Division from 1994 to 1995. She also served as the International Affairs and National Security Coordinator for the United States Attorney's Office. She was appointed to the bench in 1995.

Hon. Ramon E. Reyes, Jr.

Judge Reyes graduated from Cornell University (B.S., 1988), Brooklyn Law School (J.D., 1992), and New York University School of Law (LL.M., 1993). Judge Reyes worked as an associate in the New York office of O'Melveny & Myers LLP, a Law Clerk to the Hon. David G.

Trager, United States District Judge for the Eastern District of New York, a legislative attorney for the New York City Council and an Assistant United States Attorney in the Southern District of New York where he served as a Deputy Chief of Civil Appeals. From 2000 to 2003, he served as a member of the United States Magistrate Judge Merit Selection Panel for the Eastern District of New York. He was appointed to the bench in 2006. Judge Reyes is an Adjunct Professor of Clinical Law at Brooklyn Law School. Judge Reyes is an Adjunct Professor of Clinical Law at Brooklyn Law School, and is a recipient of the United States Department of the Army's Commander's Award for Civilian Service.

Hon. Vera M. Scanlon

Judge Scanlon graduated from Columbia College with a degree in history (A.B., 1990) and Yale Law School (J.D., 1995). Prior to her appointment to the bench in August 2012, she was a partner at Beldock Levine & Hoffman. She also previously worked at Hughes Hubbard & Reed and clerked for judges in Brooklyn and Puerto Rico.

Hon. A. Kathleen Tomlinson

Judge Tomlinson graduated from Rutgers University (B.A., 1972), Long Island University (M.A., 1975), and St. John's University Law School (J.D., 1987). For 14 years, Judge Tomlinson served as an academic administrator at Long Island University and rose to the position of Assistant University Dean for the Faculty of Arts and Sciences with responsibilities spanning the six campuses of L.I.U. She was also an adjunct faculty member in the English Department. After graduating from law school, Judge Tomlinson joined the Appeals Bureau of the Nassau County Legal Aid Society. She then served as a Law Clerk to United States District Judge Arthur D. Spatt in the Eastern District of New York from 1991 to 1993. In 1993, Judge Tomlinson entered private practice at Farrell Fritz, P.C. in Uniondale, New York where she became a partner in 1998 and served as Chair of the firm's Pro Bono Committee. Judge Tomlinson previously served as counsel to the Eastern District's Board of Judges Grievance Committee and the Magistrate Judge Merit Selection Panel for the District. She was appointed to the bench in 2006.

Bankruptcy Judges of the U.S. District Court for the Eastern District of New York

Hon. Carla E. Craig

Judge Craig graduated from Williams College (B.A., 1976) and University of Michigan Law School (J.D., 1979). Prior to her appointment, Judge Craig was a partner in the firm of Brown Raysman Millstein Felder & Steiner LLP, where she headed the firm's bankruptcy practice. Before joining Brown Raysman, Judge Craig was a partner in the firm of Hertzog, Calamari & Gleason. Judge Craig was appointed to the Bankruptcy Court on February 28, 2000. She became Chief Bankruptcy Judge on March 1, 2007.

Hon. Robert S. Grossman

Judge Grossman was born in 1948 in New York, New York. He graduated from Rider University and Brooklyn Law School (J.D., 1973). Judge Grossman began his career at the Securities and Exchange Commission in the Division of Enforcement. After leaving the SEC, Judge Grossman founded and served as general counsel to a large financial services company that focused on acquiring and operating distressed assets. Judge Grossman also was the chair of the restructuring practice group at Arent Fox, and practiced in the area of corporate law, business reorganization and litigation at Duane Morris. Judge Grossman was appointed to the Bankruptcy Court on April 18, 2008.

Hon. Nancy H. Lord

Judge Lord started her legal career as a legal intern to U.S. Bankruptcy Judge Joseph V. Costa while in law school. She then worked as a clerk for Bankruptcy Judge Saul Seidman in the Eastern District of New York. From 1981 to 1983, she was the first law clerk for Bankruptcy Judge Conrad B. Duberstein. Judge Lord was a member of the Manhattan firm of Herzfeld & Rubin, P.C., where she specialized in all aspects of commercial bankruptcy, creditors' rights and debtor-creditor bankruptcy litigation. She served as a Chapter 7 Panel Trustee for the U.S. Bankruptcy Court in Poughkeepsie, New York, from 1992 to 1995. Judge Lord also served as an Assistant Attorney General with the New York State Office of the Attorney General where she launched and headed up a separate Bankruptcy Unit in the Office's Litigation Bureau, following a stint as Section Chief of the General Recoveries Unit of the Civil Recoveries Bureau. Judge Lord was appointed to the Bankruptcy Court on February 29, 2012.

Hon. Louis A. Scarcella

Judge Scarcella graduated from Providence College and Hofstra University School of Law. Judge Scarcella worked in private practice as a partner in the law firm of Phillips Nizer LLP, where he served as chair of the bankruptcy and creditors' rights practice group, and a shareholder in the law firm of Farrell Fritz, P.C., where he was the Bankruptcy Practice Group Leader. Judge Scarcella was appointed to the Bankruptcy Court on May 16, 2014.

Hon. Elizabeth S. Stong

Judge Stong graduated from Harvard University (B.A., 1978) and Harvard Law School (J.D., 1982). Judge Stong began her legal career as a law clerk to Honorable A. David Mazzone, U.S. District Judge for the District of Massachusetts. Judge Stong also worked as an associate at Cravath, Swaine & Moore and a litigation partner at Willkie Farr & Gallagher in New York. Judge Stong was appointed to the Bankruptcy Court on September 2, 2003.

Hon. Alan S. Trust

Judge Trust was born in Monticello, New York in 1960. He graduated from Syracuse University (B.A., 1981) and New York University School of Law (J.D., 1984). Prior to his appointment, Judge Trust practiced law in Dallas, Texas. He opened his own law firm, Trust Law Firm, P.C., in December 1994 and managed that firm until his appointment to the bench. Judge Trust was appointed to the Bankruptcy Court on April 2, 2008.

**Former Judges of the U.S. District Court for the
Eastern District of New York (1990 to 2014)**

Hon. Reena Raggi

Judge Raggi was born in 1951 in Jersey City, New Jersey. She graduated from Wellesley College (B.A., 1973) and Harvard Law School (J.D., 1976). Following her graduation from law school in 1976, she served for a year as a law clerk to the Hon. Thomas E. Fairchild of the United States Court of Appeals for the Seventh Circuit. She then joined the New York law firm of Cahill Gordon & Reindel until her appointment as an Assistant United States Attorney for the Eastern District of New York in 1979. She served in that capacity until her appointment in 1986 as Interim United States Attorney for the Eastern District of New York. Later that year, she returned to private law practice at the New York law firm of Windels, Marx, Davies, and Ives. She was appointed to the Eastern District by President Reagan in 1987. President George W. Bush appointed Judge Raggi to the Second Circuit in 2002.

**Former Magistrate Judges of the U.S. District Court for the
Eastern District of New York (1990 to 2014)**

Hon. E. Thomas Boyle

Judge Boyle graduated from Holy Cross College (B.S. 1961) and the University of Virginia School of Law (LL.B., 1994). From 1965 to 1966, Judge Boyle was an associate with Mendes & Mount in New York City. From 1966 to 1971, he was an attorney with the Criminal Division of the Legal Aid Society of Suffolk County, serving as trial counsel and later as chief assistant. From 1972 to 1975, he was appellate counsel in the Appeals Unit of the Federal Defender Services in Manhattan. He held counsel positions with the Minority Leader of the New York State Senate and Speaker of the New York State Assembly from 1977 to 1980, while also engaged in private practice. Between 1988 and 1992, Judge Boyle served as the County Attorney of Suffolk County. From 1992 to 1995, he was in private law practice with the firm of Boyle, Shea & Nornes in Hauppauge, New York. Judge Boyle served as a Magistrate Judge for the Eastern District of New York from 1995 to 2012.

Hon. Andrew L. Carter, Jr.

Judge Carter graduated from the University of Texas (B.A., 1991) and Harvard Law School (J.D., 1994). From 1994 to 1996, he worked as a Program Assistant at the Ford Foundation in New York City. Judge Carter next served as a Staff Attorney with the New York City Legal Aid Society, working in the Criminal Defense Division from 1996 to 2000 and the Federal Defenders Division from 2000 to 2009. Judge Carter served as a Magistrate Judge for the Eastern District of New York from 2009 to 2011. Judge Carter was nominated by President Obama to serve as a United States District Judge for the Southern District of New York in 2011.

Hon. Robert F. Jordan

Judge Jordan was born in 1928 in New York, New York. He graduated from Princeton University (A.B., 1950) and New York University School of Law (J.D., 1953 and LL.M., 1970). Judge Jordan served in the United States Army as a Lieutenant in the U.S. Army Infantry from 1954 to 1957. He then served as a clerk with the United States Court of Appeals for the Second Circuit from 1957 to 1959, working as the Chief Deputy Clerk from 1958 to 1959. Judge Jordan worked in private practice from 1959 to 1969 before joining the Suffolk District Attorney's Office as an Assistant District Attorney in 1969. Judge Jordan remained in that Office until 1975 when he joined the Appellate Division of the New York Supreme Court as a Staff Attorney. He left that position to serve as the Corporation Counsel for the City of Newburgh where he worked from 1976 to 1978. Judge Jordan was appointed to the Eastern District in 1978 and served as a Magistrate Judge until his retirement in 1993.

Hon. Michael L. Orenstein

Judge Orenstein graduated from Cornell (B.A., 1961) and New York University School of Law (J.D., 1965). Judge Orenstein served in the United States Army before

attending law school. He began his legal career as a law assistant for the Nassau County Court from 1966 to 1973. He became Principal Law Clerk there in 1974, and was appointed Chief Clerk in 1985. Judge Orenstein served as a Magistrate Judge for the Eastern District of New York from 1991 to 2005.

Hon. William D. Wall

Judge Wall graduated from Rutgers University (A.B., 1971) and Fordham University School of Law (J.D., 1977). From 1977 to 1979, Judge Wall served as a Special Assistant New York Attorney General for the Office of the State Prosecutor. From 1979 to 2000, he was with the New York law firm of Farrell Fritz, where his practice included the defense of individuals and corporations charged with violations of environmental and other regulatory laws. Judge Wall served as a Magistrate Judge for the Eastern District of New York from 2000 to 2014.

**Former Bankruptcy Judges of the U.S. District Court for the
Eastern District of New York (1990 to 2014)**

Hon. Stan Bernstein

Judge Bernstein began his career as a bankruptcy lawyer in Detroit at Honigman, Miller, Schwartz & Cohn until his appointment as a United States Bankruptcy Judge for the Eastern District of Michigan in November 1982. He resigned from the Michigan bench in September 1984 and returned to private practice where he worked at firms in California, Arizona and Boston. Judge Bernstein was appointed to the Bankruptcy Court on November 1, 1996, and served until 2007 when he left the bench to join the faculty at John Marshall School of Law in Atlanta, Georgia.

Hon. Melanie L. Cyganowski

Judge Cyganowski began her legal career as a law clerk to the Honorable Charles L. Brieant, United States District Judge for the Southern District of New York. Thereafter, she was an associate at Sullivan & Cromwell until she joined Millbank, Tweed, Hadley & McCloy as a Senior Attorney in litigation. Judge Cyganowski was appointed to the Bankruptcy Court on March 1, 1993, and became Chief Bankruptcy Judge on November 29, 2005. She served in that capacity until the completion of her judicial term on February 28, 2007, when she returned to private practice.

Hon. Dorothy T. Eisenberg

Judge Eisenberg began her career in 1950 as an associate at Otterbourg, Steindler, Houston & Rosen. She left Otterbourg in December 1951 to raise her four children. In 1970, Judge Eisenberg returned to practice as an associate at Goldman, Horowitz & Chernow. In 1975, she was appointed a Panel Trustee in the Eastern District of New York. After a brief stint as a solo practitioner, Judge Eisenberg joined Shaw, Licitra, Eisenberg, Esernio & Schwartz, P.C. Judge Eisenberg was appointed to the Bankruptcy Court on March 28, 1989, and served until her retirement on March 27, 2014.

Hon. Jerome Feller

Judge Feller graduated from Yeshiva University and New York Law School. Prior to his appointment, Judge Feller served as Assistant Regional Administrator for the United States Securities and Exchange Commission in New York City. Judge Feller was appointed to the Bankruptcy Court on September 23, 1985, and served until his retirement on June 30, 2013.

Hon. Laura Taylor Swain

Judge Swain was born in Brooklyn, New York in 1958. She graduated from Harvard-Radcliffe College (B.A., 1979) and Harvard Law School (J.D., 1982). Judge Swain began her career as a law clerk to the Hon. Constance Baker Motley, then the Chief Judge of the United States District Court for the Southern District of New York. Thereafter, Judge Swain practiced

law with Debevoise & Plimpton, concentrating in employee benefits, ERISA, employment law and related litigation until her appointment to the bench. Judge Swain was appointed to the Bankruptcy Court on November 1, 1996, and served until her elevation to the United States District Court for the Southern District of New York on July 11, 2000.