

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Steven Andrew Engel

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

Assistant Attorney General, Office of Legal Counsel

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

Dechert LLP
1900 K Street NW
Washington, DC 20006

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

June 29, 1974
New Hyde Park, New York

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

Yale Law School. 9/97 to 6/00. JD (June 2000).
Cambridge University. 9/96 to 6/97. M. Phil. (August 1997).
Harvard College. 9/92 to 6/96. A.B. (June 1996).

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

2009-Present
Dechert LLP
1900 K Street NW
Washington, DC 20006

Partner
Paid

2006-2009
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Deputy Assistant Attorney General (2007-2009)
Counsel to the Assistant Attorney General (2006-2007)
Paid

2002-2006
Kirkland & Ellis LLP
655 Fifteenth Street NW
Washington, DC 20005
Associate
Paid

2001-2002
Justice Anthony M. Kennedy
U.S. Supreme Court
1 First St NE
Washington, DC 20543
Law Clerk
Paid

2000-2001
Judge Alex Kozinski
U.S. Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, CA 91105
Law Clerk
Paid

1999
Cravath, Swaine and Moore
825 Eighth Avenue
New York, NY 10019
Summer Associate
Paid

1998
United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East

Summer Law Intern
Unpaid

1998
Civil Appellate Section
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Summer Law Intern
Unpaid

1998-1999
Professor Judith Resnik
The Yale Law School
129 York Street
New Haven, CT 06511
Research Assistant
Paid

1996
Dayton History Project
U.S. Department of State
2201 C Street NW
Washington, DC 20520
Research Associate
Unpaid

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

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

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

Paul D. Schreiber High School Valedictorian
National Merit Scholar
Phi Beta Kappa
Harvard College *summa cum laude*
John Harvard Scholar
Thomas Temple Hoopes Prize for Undergraduate Thesis
Frank Knox Memorial Fellowship
Yale Law Journal, Essays Editor

Benjamin N. Cardozo Prize
Israel H. Peres Prize
Thurman Arnold Appellate Competition Prize
William K.S. Wang Prize
Secretary of Defense Medal for Exceptional Service
Named Rising Star by *Super Lawyers* in Washington, DC
Named Rising Star by *New York Law Journal*
Ranking in the Legal 500 and Benchmark Litigation

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

American Bar Association (Litigation Section)

10. **Bar and Court Admission:**

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

New York Bar (Second Department): 3/19/03 to present
District of Columbia Bar: 1/09/04 to present

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

Supreme Court of the United States (4/17/06)
United States District Court for the District of Columbia (10/4/04)
United States District Court for the Southern District of New York (3/1/05)
United States Court of Appeals for the Second Circuit (6/16/05)
United States Court of Appeals for the Fourth Circuit (8/17/04)
United States Court of Appeals for the Seventh Circuit (6/23/03)
United States Court of Appeals for the Ninth Circuit (4/9/03)
United States Court of Appeals for the Eleventh Circuit (4/9/04)
United States Court of Appeals for the District of Columbia Circuit (12/15/05)

11. **Memberships:**

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

Trump-Pence Presidential Transition Team (2016 to 2017)
Member of the Department of Justice Landing Team

Federalist Society for Law and Public Policy (2002 to present)
Executive Committee member for the International and National Security
Law practice group since 2009
Executive Committee member for the Federalism and Separation of
Powers practice group since 2010

Washington Hebrew Congregation (member) (from 2015 to present)

Edward Coke Appellate Inn of Court (associate from 2004 to about 2010;
barrister from about 2010 to 2015)

Harvard Club of New York (member until end of 2000)

Phi Beta Kappa (member since 1992)

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

None.

12. Published Writings and Public Statements:

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

I have done my best to identify all published material I have contributed to, including through a review of my personal files and searches of publicly available electronic databases. Despite these efforts, there may be other materials that I have been unable to identify, locate, or remember. I have attached a list of the responsive items, including academic articles, case updates, opinion pieces, and publications in the *Harvard Crimson* during college and have also included copies of each item.

The United States Supreme Court Will Review the Scope of Federal Preclusion of State Securities Claims, CLS Blue Sky Blog (Feb. 12, 2013) (with Neil Steiner and James Wald). This article was also published on Dechert's website on Jan. 23, 2013.

SEC Conflict Minerals & Resource Extraction Rules Are Legally Suspect,
Washington Legal Foundation (Oct. 3, 2012) (with Katherine Wyman)

'Stay' for Awhile: CPLR 5519(c) Stay Applications in the First Department,
N.Y.L.J. (Aug. 27, 2012) (with Jim McGuire)

The Economic Case Against Obamacare's Constitutionality, *The Huffington Post*,
(Mar. 23, 2012)

The Supreme Court Delivers a Ringing Endorsement for Bilateral Consumer Arbitrations in AT&T Mobility LLC v. Concepcion, *Dechert OnPoint* (May 2, 2011) (with several co-authors)

"Statistically Significant" Standard Suffers an Adverse Event: Matrixx Initiatives, Inc. v. Siracusano, *Dechert OnPoint* (Mar. 23, 2011) (with several co-authors)

Letter to Editor, *Bush v. Gore Magazine Article*, *Legal Times* (Sep. 27, 2004)
(with multiple co-authors)

Recapturing Madison's Constitution: Federalism Without the Blank Check, James Madison and the Future of Limited Government (Samples, ed. 2002) (with Alex Kozinski)

The Public's Vicinage Right: A Constitutional Argument, 75 *N.Y.U. L. Rev.* 1658 (2000)

Note, *The McCulloch Theory of the Fourteenth Amendment: City of Boerne v. Flores and the Original Understanding of Section Five*, 109 *Yale L.J.* 115 (1999)

The Sources of Federalist Foreign Policy, 1793-94, M. Phil. Dissertation (June 1997)

The Self-Assertion of Harvard University, *Harvard Crimson* (June 6, 1996)

Learning From Diversity, *Harvard Crimson* (Apr. 17, 1996)

The Legacy of American Hegemony: A Theory of Institutional Change, Undergraduate Thesis (March 1996).

Leading Without Direction, *Harvard Crimson* (Feb. 28, 1996)

Sex, Lies and Valentine, *Harvard Crimson* (Feb. 14, 1996)

And in This Corner . . ., *Harvard Crimson* (Jan. 12, 1996)

Thoughts On a New Year, Harvard Crimson (Jan. 10, 1996)

Members Only, In Drag, Harvard Crimson (Dec. 6, 1996)

A Victory For Peace, Harvard Crimson (Nov. 22, 1995)

The Killer's Mind, Harvard Crimson (Nov. 8, 1995)

GOP Needs Powell, Harvard Crimson (Nov. 3, 1995)

Why We Go Into Bosnia, Harvard Crimson (Oct. 25, 1995)

Rebels Without Applause, Harvard Crimson (Oct. 11, 1995)

Just Go Home, Harvard Crimson (Sep. 27, 1995)

Winthrop's New and Newer Drinking Age, Harvard Crimson (Sep. 23, 1995)

The Militias Hit the Big Time, Harvard Crimson (July 11, 1995)

Too Late for Choice, Harvard Crimson (May 24, 1995)

Gandhi, Chavez and You, Harvard Crimson (May 3, 1995)

The Wall Must Tumble Down, Harvard Crimson (Apr. 25, 1995)

Who Was That Girl, Anyway?, Harvard Crimson (Apr. 19, 1995)

A Tale of Two Strikes, Harvard Crimson (Apr. 5, 1995)

Toward A Warm Peace, Harvard Crimson (Mar. 15, 1995)

Harvard's Newest Ministry, Harvard Crimson (Mar. 1, 1995)

The End Of the Melting?, Harvard Crimson (Feb. 15, 1995)

U.S. Shouldn't Send Troops, Harvard Crimson (Nov. 30, 1994)

Widner, Oi Denied Tenure In Govt, Harvard Crimson (Nov. 2, 1994)

Preserve Confidentiality, Harvard Crimson (Oct. 31, 1994)

Foundation Move To Thayer Sparks Student Protests, Harvard Crimson (Oct. 18, 1994)

At Harvard, Dead Live Gratefully, Harvard Crimson (Oct. 1, 1994)

For Accounting Basics, Students Head to MIT, Harvard Crimson (Sep. 24, 1994)

Harvard Perfects Its ROTC Dance Step: Delay-Delay-Delay, Harvard Crimson (June 9, 1994)

Racial Harassment Charged by Kilson, Harvard Crimson (May 27, 1994)

A New Agenda in Congress, Harvard Crimson (May 18, 1994)

Rudenstine: ROTC Talks Are On, Harvard Crimson (Apr. 28, 1994)

His First Taste of Activism, Harvard Crimson (Apr. 22, 1994)

ROTC Talks Said To Be Stalled, Harvard Crimson (Apr. 20, 1994)

Student Theater Debated, Harvard Crimson (Mar. 2, 1994)

College, House Life Committees to Meet Jointly, Harvard Crimson (Nov. 4, 1993)

Behind the Curve?, Harvard Crimson (Oct. 22, 1993)

Alcohol Warnings Are Rare, Harvard Crimson (Oct. 19, 1993)

College Defines New Policy on Date Rape, Harvard Crimson (June 10, 1993)

Non-Ordered Choice Confirmed, Promotes More Diverse Houses, Harvard Crimson (June 10, 1993)

Wherefore Art Thou, Drama Support Line?, Harvard Crimson (May 14, 1993)
(with Melissa Lee)

Long-Awaited Guide to The Ad Board is Ready, Harvard Crimson (Apr. 17, 1993)

AALARM Posters Create Stir, Harvard Crimson (Apr. 17, 1993)

House Transfer Debate Renewed, Harvard Crimson (Apr. 9, 1993)

New Hillel Inaugurated, Harvard Crimson (Mar. 18, 1993)

Date Rape Debate Ends, Controversy to Continue, Harvard Crimson (Mar. 8, 1993)

Jewett Will Ask Council For New Date Rape Policy, Harvard Crimson (Feb. 23, 1993)

Card Key Resolution Draws Near, Harvard Crimson (Feb. 19, 1993) (with Nan Zheng)

College to Tighten Gender Ratio in Houses, Harvard Crimson (Feb. 13, 1993)
Jewett Reaffirms Housing Lottery, Harvard Crimson (Feb. 12, 1993)
Ogletree to Moderate 'Liberators' Panel, Harvard Crimson (Feb. 8, 1993)
Move to Weld Causes Stress, Harvard Crimson (Dec. 2, 1992)
Northeastern Suspect Tied to CFIA Theft, Harvard Crimson (Nov. 21, 1992)
Anti-Abortion Group Targets UHS, Harvard Crimson (Nov. 20, 1992)
Lottery Revamp Questioned, Harvard Crimson (Nov. 19, 1992)
Historians Analyze Clinton, Harvard Crimson (Nov. 12, 1992)
GOP Lock on Youth Slips, Harvard Crimson (Nov. 10, 1992)
Expelled Officer Hails Clinton, Harvard Crimson (Nov. 6, 1992)
Council Endorses Tobacco Question, Harvard Crimson (Oct. 27, 1992)
CRLS Students Decry Media, Harvard Crimson (Oct. 23, 1992)
Youth Released on Bail in Stabbing Case, Harvard Crimson (Oct. 22, 1992)
Local Nabbed on Drug Charge, Harvard Crimson (Oct. 19, 1992)
Woman Hospitalized After Drug Overdose, Harvard Crimson (Oct. 16, 1992)

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

I do not recall having prepared or contributed to any reports, memorandum or policy statements for a bar association, committee, conference, or organization.

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

I have done my best to identify all published material I have contributed to, including through a review of my personal files and searches of publicly available electronic databases. Despite these efforts, there may be other materials that I have been unable to identify, locate, or remember. I have attached a list of all responsive documents that I was able to identify, including testimony before committees of Congress and legal opinions signed as a Deputy Assistant Attorney

General in the Office of Legal Counsel and have also included copies of each item.

Letter to Chairman Leahy and Ranking Member Grassley re: the Nomination of Michelle Friedland to the U.S. Court of Appeals for the Ninth Circuit (Oct. 2, 2013) (with others)

Letter to Chairman Leahy and Ranking Member Grassley re: the Nomination of Vince Chhabria to the U.S. District Court for the Northern District of California (Sep. 22, 2013) (with others)

Testimony before the Committee on the Judiciary, U.S. House of Representatives, "Protecting U.S. Citizens' Constitutional Rights During the War on Terror" (May 22, 2013)

The video of the hearing is available at:

<https://judiciary.house.gov/hearing/protecting-u-s-citizens-constitutional-rights-during-the-war-on-terror-0/>

Letter to Majority Leader Reid, Minority Leader McConnell, Chairman Leahy, and Ranking Member Grassley re: the Nomination of Paul Watford to the U.S. Court of Appeals for the Ninth Circuit (May 17, 2012) (with others)

Letter to Chairman McKeon re: the FY13 National Defense Authorization Act (May 9, 2012) (with others)

Testimony before the Committee on Armed Services, United States House of Representatives, *Ten Years After the 2001 AUMF: Current Status of Legal Authorities, Detention, and Prosecution in the War on Terror* (July 26, 2011)

The video of the hearing is available at:

<https://www.youtube.com/watch?v=Kgy7QTW7fV0&feature=youtu.be>

Letter to Chairman Leahy and Ranking Member Grassley re: the Nomination of Ali Nathan to the U.S. District Court for the Southern District of New York (June 6, 2011) (with others)

Letter to Chairman Leahy and Ranking Member Grassley re: the Nomination of Virginia Seitz for Assistant Attorney General, Office of Legal Counsel (Mar. 15, 2011) (with others)

Testimony before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, Committee on the Judiciary, United States House of Representatives, *Proposals for Reform of the Military Commission System* (July 30, 2009)

Memorandum Opinion for the General Counsel, Department of Veterans Affairs, and the Solicitor, Department of Labor, *Payments of Back Wages to Alien Physicians Hired Under the H-1B Visa Program*, 32 Op. O.L.C. 47 (2008)

Memorandum Opinion for the Acting General Counsel, Environmental Protection Agency, *Authority of the Environmental Protection Agency to Hold Employees Liable for Negligent Loss, Damage, or Destruction of Government Personal Property*, 32 Op. O.L.C. 79 (2008)

Testimony before the Subcommittee on Terrorism, Technology and the Homeland Security, Committee on the Judiciary, United States Senate, *Hearing on the Legal Rights of Guantanamo Detainees*, Dec. 11, 2007

The video of my testimony is available at:

<https://www.c-span.org/person/?stevenengel>

Memorandum Opinion for the Acting General Counsel, Social Security Administration, *Whether the Defense of Marriage Act Precludes the Nonbiological Child of a Member of a Vermont Civil Union From Qualifying for Child's Insurance Benefits Under the Social Security Act*, 31 Op. O.L.C. 243 (2007)

Memorandum Opinion for the Assistant Attorney General, Civil Division, *Responsibility of Agencies to Pay Attorney's Fee Awards Under the Equal Access to Justice Act*, 31 Op. O.L.C. 229 (2007)

Memorandum Opinion for the Deputy Counsel to the President, *Whether the Office of Administration Is an "Agency" for Purposes of the Freedom of Information Act*, 31 Op. O.L.C. 200 (2007)

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

I have done my best to identify all published material I have contributed to, including through a review of my personal files and searches of publicly available electronic databases. Despite these efforts, there may be other materials that I have been unable to identify, locate, or remember. I have attached a list of all

responsive documents that I was able to identify, including speeches, remarks, and panel discussions, and where available I have provided links to available recordings of those events.

“A Term in Review: An Overview of Key Supreme Court Decisions from the 2015 Term & Thoughts about the Upcoming Term,” Dechert CLE Presentation (Washington, DC, Nov. 29, 2016)

I participated in a panel discussion at Dechert LLP summarizing recent decisions of the Supreme Court and previewing key cases for the OT 2016 term. I do not have any transcript or recording of these remarks, but I have included a copy of the written outline of my presentation.

“What is the Future of Guantanamo Bay?” Federalist Society International & National Security Law Practice Group Podcast (May 16, 2016)

The attached link includes an audio recording of the podcast:

<http://www.fed-soc.org/multimedia/detail/what-is-the-future-of-guantanamo-bay-podcast>

“Final Pretrial Matters,” Dechert CLE Seminar (New York, Dec. 10, 2015). This CLE seminar addressed the final stages of preparation that need to be done in advance of trial, including the pretrial order, summary judgment briefs, and motions in limine. I presented it largely to an audience of Dechert associates. I have not been able to identify any transcript or recording of the remarks or a written outline of the presentation.

“What Every Lawyer Needs to Know About Recent Supreme Court Cases,” Dechert CLE Presentation (New York, NY Sep. 16, 2015)

I participated in a panel discussion at Dechert LLP summarizing recent decisions of the Supreme Court and previewing key cases for the OT 2015 term. I do not have any transcript or recording of these remarks, but I have included a copy of the written outline of my presentation.

“The Future of Guantanamo Bay,” Duke Law School Federalist Society (Durham, NC Mar. 17, 2015)

I participated in a panel discussion with Professor Madeline Morris at Duke Law School concerning the future of the detention facility at

Guantanamo Bay. I have attached a copy of the questions asked to the panelists, but have not been able to locate a transcript or outline of the presentation.

“What Every Lawyer Needs to Know About Recent Supreme Court Cases,”
Dechert CLE Presentation (New York, NY Apr. 30, 2014)

I participated in a panel discussion at Dechert LLP summarizing recent decisions of the Supreme Court and previewing key cases for the OT 2013 term. I have not been able to locate a transcript or outline of these remarks.

Panel Discussion, “Criminal Law Trends at the Supreme Court,” the Pennsylvania Association of Criminal Defense Lawyers (Philadelphia, PA, Nov. 14, 2013).

This panel discussion was presented to an audience of white collar practitioners in Philadelphia and addressed recent Supreme Court cases involving criminal procedure. I do not have any transcript or recording of these remarks, but I have included a copy of the written outline of my presentation.

Panel Discussion, “The Affordable Care Act Turns 2 . . . Will It Turn 3?,”
American Action Forum (Washington, DC, Mar. 13, 2012)

I participated in a panel discussion sponsored by the American Action Forum concerning the potential ways that the Supreme Court could decide *Sebelius v. State for Florida*, the constitutional challenge to the Affordable Care Act, and the impact the decision might have. The moderator was Alexander Burns of Politico. The other panelists were John Bash and Douglas Holtz-Eakin. I have not been able to find a transcript or any written outline of my remarks.

“What Every Lawyer Needs to Know About Recent Supreme Court Cases,”
Dechert CLE Presentation (New York, NY Nov. 19, 2012)

I participated in a panel discussion at Dechert LLP summarizing recent decisions of the Supreme Court and previewing key cases for the OT 2012 term. I do not have any transcript or recording of these remarks, but I have included a copy of the written outline of my presentation.

Panel Discussion, "Guantanamo Without End," the Constitution Project (New York, NY, Mar. 4, 2011)

I participated in a panel discussion in New York concerning the future of the Guantanamo Bay detention facility and the ongoing habeas litigation brought by detainees there. The moderator was Mason Clutter, and the panelists included Jonathan Hafetz, Hon. James Robertson, Eugene Fidell, and Nancy Soderberg. I have not been able to find a transcript of my remarks, but my presentation is available on youtube at the following link:

https://www.youtube.com/watch?v=5svXjAaso_Q

In addition, the panel's discussion and Q&A with the audience can be found at:

<https://www.youtube.com/watch?v=DR0HwRc9QnY>

Moderator, Panel Discussion, "Legislating the War on Terror," Federalist Society's International & National Security Law Practice Group (Washington, DC, Apr. 19, 2010)

I moderated a panel discussion that considered whether Congress should pass new laws to address the legal issues that had arisen since 9/11. The panelists were Christopher Anders, Gregory Katsas, Stuart Taylor, and Benjamin Wittes. I have not been able to locate a transcript of the discussion, but I attach a copy of the written outline of my remarks.

Merck v. Reynolds – *Post-Decision SCOTUS case*, Federalist Society (June 8, 2010)

The attached link includes an audio recording of the podcast:

<http://www.fed-soc.org/multimedia/detail/merck-v-reynolds-post-decision-scotuscast>

Merck v. Reynolds – *Post-Argument SCOTUS case*, Federalist Society (Jan. 12, 2010)

The attached link includes an audio recording of the podcast:

<http://www.fed-soc.org/multimedia/detail/merck-v-reynolds-post-argument-scotuscast>

Panel Discussion, "Litigating the War on Terror: Where Are We? Where Are We Not? Where Do We Go from Here?", Federalist Society and Center for Law and Counterterrorism (Washington, DC, Jan. 27, 2010)

I participated in a panel discussion in Washington, DC concerning the status and future of litigation arising out issues in the War on Terror. The moderator was Neomi Rao, and the panelists included Neal Katyal, David Rivkin, and Stephen Vladeck. I have not been able to find a transcript or any written outline of my remarks, but my presentation is available on youtube at the following link:

<https://www.youtube.com/watch?v=B-11wUnUauQ>

In addition, the entire panel discussion can be viewed through this link:

<http://www.fed-soc.org/multimedia/detail/the-war-on-terror-where-are-we-now-where-do-we-go-from-here-event-audiovideo>

Panel Discussion, "Closing Guantanamo: Challenges and Opportunities Faced by the Obama Administration," Columbia Law School Panel Discussion (New York, NY Mar. 30, 2009)

I participated in a panel discussion at Columbia Law School in New York concerning the prospects for closing Guantanamo Bay in the Obama Administration. The moderator was Matthew Waxman, and the panelists included Hina Shamsi, Richard Zabel, and James Benjamin. I have not been able to find a transcript or any written outline of my remarks.

The conference was covered in an Internet post by Amy Miller for the Columbia Law School. I attach a copy of that post.

Panel Discussion, "*Boumediene v. Bush*: Habeas and the War on Terror," Yale Law School Federalist Society (New Haven, CT Mar. 25, 2008)

I participated in a panel discussion at the Yale Law School concerning the then-pending case of *Boumediene v. Bush*. The other panelists were Harold Koh and Matthew Waxman. I have not been to find a transcript or any written outline of my remarks.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews I have given, including through a review of my personal files and searches of publicly available electronic databases. Throughout my career, I have spoken with reporters informally and my comments during those interviews were not transcribed, except insofar as they were quoted in a published source. Therefore, despite my best efforts, there may be other materials that I have been unable to identify, locate or remember. I have attached a list of the responsive items and have included copies of the articles or links to the videos of the appearances where available.

NY village, town to pay Hasidim over discrimination, Jewish Telegraph Agency, Oct. 27, 2016

Stephanie Russell-Kraft, *Trial Ace: Dechert's Andrew Levander*, Law360, Aug. 5, 2015

Attorneys React to Supreme Court's ACA Save, Law360, June 25, 2015

Bloomingsburg Suit by Hasidic Discrimination Clears Legal Hurdle, Legal Monitor Worldwide, June 11, 2015

Jonathan Stempel, *Hasidic Jews may sue NY towns they say discriminate-judge*, Reuters, June 9, 2015

Larry Neumeister, *Judge says New York village can face lawsuit's claims it discriminated against Hasidic Jews*, Canadian Press, June 9, 2015

Kurt Orzeck, *2nd Circ. Remands NYC Stop-And-Frisk Suits Amid Deal*, Law360, Feb. 21, 2014

Eric Hornbeck, *Firing Voids Mortgage Lender's Noncompete, Judge Says*, Law360, Nov. 22, 2013

Richard Wolf, *Kennedy: His 'must-have' vote leaves its mark*, USA Today, June 28, 2013

Alex Witt, MSNBC, *Supreme Court will soon decide on several landmark cases*, June 2, 2013

My interview on this television program is available at the following link:

<http://www.nbcnews.com/video/alex-witt/52075565#52075565>

David McAfee, *Appeals Court Backs RE Mogul in Nursing Home Buyout Row*, Law360, May 21, 2013

Alison Frankel, *The next target for Dodd-Frank haters: SEC 'conflict minerals' rule*, Reuters, Oct. 2, 2012

Judy Greenwald, *High court takes on class actions: Outcome could restrict forum shopping options*, Bus. Insurance, Sept. 17, 2012

Jake Simpson, *Ex-Troutman Atty Can Appeal Ruling on Nursing Home Deals*, Law360, Sep. 12, 2012

Eric Hornbeck, *Ex-Troutman Atty's \$120M Claim Can't Stop Nursing Home Deal*, Law360, Sep. 7, 2012

Chris Mondics, *Upholding of health care law demonstrates Court's ability to keep politics out of its cases*, Philadelphia Inquirer, July 3, 2012

O'Reilly Factor re: the Affordable Care Act in the Supreme Court, June 29, 2012.

My interview on this television program is available at the following link:

https://www.youtube.com/watch?v=T3uTcj_1enk

Interview, CNN. I appeared on CNN on June 28 or 29, 2012 to discuss the pending challenge to the Affordable Care Act. I have not been able to locate any video of the interviews and did not have any written notes.

Keith Goldberg, *High Court Limits on Medicaid Expansion May Be Moot*, Law360, June 28, 2012

Margot Sanger-Katz, *What's the Supreme Court Doing This Week? Proofreading, Mostly*, Nat'l L. J., June 25, 2012.

Lou Dodds, Fox Business News. I appeared on the Fox Business News in late June 2012 to discuss the pending challenge to the Affordable Care Act. I have not been able to locate any video of the interviews and did not have any written notes.

Karlee Weinmann, *Investor Trumps Ex-Troutman Atty in \$100M Loan Contract Suit*, Law360, May 22, 2012

Alex Witt, MSNBC. I appeared on Alex Witt's program on MSNBC about three times between March and June 2012 to discuss the pending challenge to the Affordable Care Act and other pending Supreme Court decisions. I have not been able to locate any video of the interviews and did not have any written notes.

Lee Williams, *On health care law, swing vote an enigma*, Sarasota Herald Tribune, Apr. 1, 2012.

Richard Wolf, *Supreme Court Likely to Vote on Health Care Law Friday*, USA Today, Mar. 29, 2012

David Hogberg, *ObamaCare: All or Nothing Seen Likely for Supreme Court*, Investor's Business Daily, Mar. 29, 2012.

Sarah Kliff, *Supreme Court and Obamacare: What happens next*, Wash. Post, Mar. 28, 2012.

Brett Kendall, *Kennedy Leaves Both Sides Hopeful*, Wall Street J., Mar. 27, 2012

Chris Mondics, *Health-care reform on the docket*, Phila. Inquirer, Mar. 25, 2012

Terry Baynes, *With friends like these*, Reuters, Mar. 17, 2012

Jake Simpson, *Schron Triumphs Over Ex-Troutman Sanders Real Estate Atty*, Law360, Mar. 16, 2012

Richard Wolf, *Health care challenge: Matter of mandates*, U.S.A. Today, Mar. 15, 2012

FDA Trade Groups Press High Court to Limit Adverse Event Reporting, FDA Week, Sep. 3, 2010.

Richard Vanderford, *Dechert Snags Bush-Era Deputy Assistant AG*, Law360, June 8, 2009

William Glaberson, *U.S. Won't Label Terror Suspects as 'Combatants'*, N.Y. Times, Mar. 13, 2009

Arlington Killer's Execution Slated, Richmond Times-Dispatch, Oct. 12, 2005

Execution date set for man convicted in scissor killing, Associated Press, Oct. 11, 2005

Frank Green, *Execution Is on Again for Lovitt*, Richmond Times-Dispatch, Oct. 4, 2005

Pete Yost, *Court refuses to hear Virginia death penalty case*, Associated Press, Oct. 3, 2005

Kristen Gelineau, *Execution set for Virginia death row inmate whose evidence was destroyed*, Associated Press, July 11, 2005

Kristen Gelineau, *Convicted Scissor killer faces execution*, Associated Press, July 8, 2005

Kristen Gelineau, *Death row inmate's lawyers request stay of execution*, Associated Press, June 28, 2005

Kristen Gelineau, *Execution date set for Virginia man convicted in scissor killing*, Associated Press, May 20, 2005

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

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

Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice. Appointed on February 4, 2007 by Attorney General Gonzalez.

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

In 2004, I represented Bush-Cheney 04, Inc. in connection with certain election law matters, including *Bush-Cheney 04, Inc. v. FEC*, No. 04-CV-016127 (EGS), in the U.S. District Court for the District of Columbia. That case challenged the FEC's failure to regulate 527 organizations. My law firm was compensated for those services.

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

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

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

I clerked for Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit from June 2000 to June 2001.

I clerked for Justice Anthony M. Kennedy of the U.S. Supreme Court from July 2001 to July 2002.

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

I never practiced law alone.

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

1998
Civil Appellate Section
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530
Summer Law Intern

1998
United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East
Summer Law Intern

1999
Cravath, Swaine and Moore
825 Eighth Avenue
New York, NY 10019
Summer Associate

2002-2006
Kirkland & Ellis LLP
655 Fifteenth Street NW
Washington, DC 20005
Associate

2006-2009
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Deputy Assistant Attorney General (2007-2009)
Counsel to the Assistant Attorney General (2006-2007)

2009-Present
Dechert LLP
1900 K Street NW
Washington, DC 20006
Partner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

After serving as a law clerk to Judge Kozinski and Justice Kennedy, I joined Kirkland & Ellis LLP in 2002. Initially, my practice focused upon appellate litigation in the federal circuit courts and the U.S. Supreme Court. Over time during my work at Kirkland, I expanded my practice and took on a broader range of commercial litigation matters.

In 2006, I joined the Office of Legal Counsel at the Department of Justice. I first joined as Counsel to the Assistant Attorney General and then became Deputy Assistant Attorney General in February 2007. At the Office of Legal Counsel, I provided legal advice to the Attorney General, the White House Counsel, and other Executive Branch clients on a wide variety of legal matters, including matters related to national security, separation of powers, and legislative oversight.

In 2009, I joined Dechert as a partner, and I have been there ever since. Initially, I was a member of Dechert's white collar and securities litigation group. After the practice groups were reorganized, I became a member of the complex commercial litigation group. I am affiliated with both the Washington, DC and New York offices at the firm. My practice generally involves commercial litigation and appellate litigation in the federal and state courts around the country. I have also handled bankruptcy, products liability, antitrust, and white collar matters.

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

At Kirkland & Ellis LLP (2002 to 2006), I had a wide variety of clients including individuals and corporations, such as financial services firms, energy companies, and pharmaceutical companies.

At the Office of Legal Counsel, my sole client was the United States

At Dechert LLP, I have a wide variety of clients including individuals and corporations, such as financial services firms, life sciences companies, and real estate companies.

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

i. Indicate the percentage of your practice in:

1. federal courts: 55%
2. state courts of record: 35%
3. other courts: 5%
4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 95%
2. criminal proceedings: 5%

Since graduating law school, my practice has focused upon litigation in the federal and state courts, except for the three years spent in the Office of Legal Counsel at the Department of Justice. As a partner at the Dechert LLP, I have appeared in court frequently in connection with a wide variety of civil litigation matters. I most commonly appears in the federal and state courts in New York, although in recent years, I have appeared recently in federal and state courts in Washington, DC, Virginia, California, and Florida, among other jurisdictions.

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

i. What percentage of these trials were:

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

Two in court (one as chief counsel and the other as associate counsel) and two in arbitration (one as chief counsel and one as associate counsel). This does not include cases that reached judgment or final decision by way of summary judgment or other dispositive motions.

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

During my practice, I have filed 32 briefs in the U.S. Supreme Court. I have been the counsel of record on one petition for certiorari and numerous amicus briefs. I have also appeared as counsel on several cases at the merits stage. I attach a list of those briefs here:

Brief of State Policy Network and 24 State Public Policy Groups as Amici Curiae in Support of Appellant, *Independence Institute v. Federal Election Commission*, No. 16-743 (Jan. 9, 2017)

Brief of Senate Majority Leader Mitch McConnell and 42 Other Members of the United States Senate as Amici Curiae in Support of Respondents, *United States v. Texas*, No. 15-674 (Apr. 4, 2016)

Brief for the National Federation of Independent Business Small Business Legal Center and the National Association of Home Builders as Amici Curiae in Support of Respondents, *Comptroller of the Treasury of Maryland v. Wynne*, No. 13485 (Sep. 26, 2014)

Reply in Support of Petition for Writ of Certiorari, *Lynch v. City of New York*, No. 13-1123 (May 2, 2014)

Petition for Writ of Certiorari, *Lynch v. City of New York*, No. 13-1123 (Mar. 17, 2014)

Brief for Amicus Curiae Cato Institute in Support of Respondents, *Agency for Int'l Development v. Alliance for Open Society Int'l, Inc.* (Apr. 3, 2013)

Brief of Amici Curiae Cato Institute and The National Federation of Independent Business Small Business Legal Center in Support of the Petitioners, *Spirit Airlines, Inc. v. U.S. Dep't of Transportation*, No. 12-656 (Dec. 27, 2012)

Brief for Amici Curiae Current and Former Federal Civil Rights Officials in Support of Petitioner, *Fisher v. University of Texas at Austin*, No. 11-345 (May 29, 2012)

Brief for Amici Curiae Criminal Law Professors in Support of Petition for a Writ of Certiorari, *Bright v. Holder*, No. 11-890 (Feb. 21, 2012)

Brief for Amici Curiae Economists in Support of Respondents Regarding Individual Mandate, *United States Dep't of Health and Human Services v. Florida*, No. 11-398 (Feb. 13, 2012)

Brief for Amici Curiae Economists in Support of State Petitioners Regarding Medicaid Expansion, *State of Florida v. U.S. Dep't of Health and Human Services*, No. 11-400 (Jan. 17, 2012)

Brief for Amici Curiae Economists in Support of Petitioners Regarding Severability, *Nat'l Federation of Independent Business v. Sebelius*, No. 11-393 (Jan. 6, 2012)

Brief for the Advanced Medical Technology Association as Amicus Curiae in Support of Petitioners, *Matrixx Initiatives Inc. v. Siracusano*, No. 09-1156 (Aug. 27, 2010)

Brief for the Washington Legal Foundation as Amicus Curiae in Support of Petitioners, *Merck & Co. Inc. v. Reynolds*, No. 08-905 (Aug. 17, 2009)

Reply to Brief in Opposition, *Credit Suisse First Boston Ltd. v. Billing*, No. 05-1157 (Apr. 19, 2006)

Petition for Writ of Certiorari, *Du Pont v. Commonwealth of Pennsylvania*, No. 05-1150 (Mar. 9, 2006)

Petition for a Writ of Certiorari, *Credit Suisse First Boston Ltd. v. Billing*, No. 05-1157 (Mar. 8, 2006)

Reply Brief For The Petitioner, *Gosselin World Wide Moving, N.V. v. United States*, No. 05-677 (Feb. 14, 2006)

Petition for Writ of Certiorari, *Gosselin World Wide Moving, N.V. v. United States*, No. 05-677 (Nov. 23, 2005)

Petitioner's Supplemental Brief, *Lovitt v. True*, No. 05-5044 (Sep. 22, 2005)

Petitioner's Reply Brief, *Lovitt v. True*, No. 05-5044 (July 8, 2005)

Petition for Writ of Certiorari, *Lovitt v. True*, No. 05-5044 (June 28, 2005)

Reply Brief for the Petitioner, *Rose Acre Farms, Inc. v. United States*, No. 04-1149 (May 16, 2005)

Motion and Brief Amici Curiae of the Honorable John J. Gibbons, the Honorable Timothy K. Lewis, the Honorable William S. Sessions, Thomas P. Sullivan, the Florida Innocence Initiative, and the Center on Wrongful Convictions in Support of Petitioner, *Kelley v. Crosby*, No. 04-1196 (Apr. 8, 2005)

Reply Brief for Motion Picture Studio and Recording Company Petitioners, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480 (Mar. 18, 2005)

Petition for Writ of Certiorari, *Medpointe Healthcare Inc. v. Hi-Tech Pharmacal Co., Inc.*, No. 04-1251 (Mar. 17, 2005)

Petition for Writ of Certiorari, *Rose Acre Farms, Inc. v. United States*, No. 04-1149 (Feb. 24, 2005)

Brief for Motion Picture Studio and Recording Company Petitioners, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480 (Jan. 24, 2005)

Brief of Exxon Mobil Corporation as Amicus Curiae in Support of Petition for Certiorari, *Unitedhealth Group, Inc. v. Klay*, No. 04-522 (Dec. 3, 2004)

Reply Brief, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480 (Nov. 22, 2004)

Petition for a Writ of Certiorari, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480 (Oct. 8, 2004)

Brief for Respondents, *Granholm v. Heald*, No. 03-1116 (Sep. 23, 2004)

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

1. ***Bloomingsburg Jewish Education Center v. Village of Bloomingsburg*, No. 14-cv-07520 (KBF) (S.D.N.Y.)**

In the fall of 2014, I brought civil rights claims as lead counsel on behalf of various Orthodox Jewish plaintiffs against several municipalities in Sullivan County, New York, that had sought to delay and deny municipal approvals to prevent Hasidic Jews from moving into the area.

In the principal case, I represented a real estate developer, a religious school and two Hasidic Jewish women who brought claims under the Fair Housing Act, Section 1983, and RLUIPA to challenge actions by the Village of Bloomingsburg and the Town of Mamakating to obstruct the development of a townhome community, a religious school, and a mikvah. The District Court denied Defendants' motion to dismiss in substantial part and granted leave to replead additional claims. *See* 11 F. Supp. 3d 459 (2015). The case involved a substantial amount of discovery, including 40 depositions and significant motion practice, and up through summary judgment. Shortly before the start of a three-week trial scheduled for November 2016, the parties reached a settlement pursuant to which the municipalities agreed to pay \$2.9 million to the plaintiffs.

In February 2015, in a related case before Judge Forrest, I represented Hasidic Jewish voters in a Section 1983 and voting rights lawsuit against the Sullivan County Board of Education. *See Smilowitz v. Sullivan County Board of Elections*, No. 15-cv-01757 (KBF). Plaintiffs alleged that the Board of Elections had unlawfully sought to cancel

their voter registrations and to nullify their votes because they were Hasidic Jews. The District Court denied the motion to dismiss, and the case proceeded to discovery. In February 2016, the Court entered a consent decree pursuant to which Sullivan Counsel agreed to pay \$575,000 to the plaintiffs and to agree to other conduct remedies, including the appointment of an independent monitor to supervise the voter registration process.

In March 2015, the Town of Mamakating and the Village of Bloomingburg brought a civil RICO action against the real estate developer and its principals, alleging that the municipalities had been tricked into granting approvals for the housing development at issue by fraud and bribery. The District Court dismissed the complaint with prejudice in a published opinion. *See Town of Mamakating v. Lamm*, 111 F. Supp. 3d 459 (2015). That decision was affirmed by the Second Circuit. *See Town of Mamakating v. Lamm*, 651 Fed. Appx. 51 (2d Cir. 2016)

District Judge: Hon. Katherine B. Forrest
United States District Court
Southern District of New York
Court of Appeals: Hall, Lynch, and Chin, Circuit Judges

Co-Counsel: John B. Henry
Whiteman Osterman & Hanna LLP
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Opposing Counsel:	Michael Zarin Zarin & Steinmetz 81 Main Street White Plains, NY 10601 (914) 682-7800	Brian Sokoloff Sokoloff Stern LLP 179 Westbury Avenue Carle Place, NY 11514 (516) 334-4500
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2. *United States v. Texas*, 579 U.S. __ 2016 (S. Ct.)

As counsel of record, I represented the Senator Majority Leader and 42 other members of the United States Senate as amici curiae in support of the challenge that the State of Texas and other States had brought to the Department of Homeland Security's Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program. The States argued that the DAPA program conflicted with the Immigration and Nationality Act, the Administrative Procedure Act, and the President's duty to take care that the laws of Congress are faithfully executed. The District Court had enjoined the DAPA program, and the Court of Appeals for the Fifth Circuit had affirmed that decision on appeal.

On behalf of the 43 Senators, I submitted an amicus brief arguing that DAPA unlawfully infringed upon Congress's authority to regulate immigration, because it conflicted with the detailed statutory provisions that manage the number of aliens lawfully present and

authorized to work in the United States, and because it sought to adopt an immigration policy contrary to the one set out by Congress. The Supreme Court affirmed the Fifth Circuit by an evenly divided Court.

Justices: U.S. Supreme Court

Counsel of Record

for Co-Counsel: Scott A. Keller
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Opposing Counsel: Donald B. Verrilli Jr.
Former Solicitor General
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3. *In re Fundamental Long Term Care, Inc.*, No. 11-BK22258-MGW (Bankr. M.D. Fla.)

In this long-running litigation, I represent Rubin Schron, a New York real estate investor, in defending his interests in a federal bankruptcy court in Florida and related litigation in the Florida state courts. The claims against Mr. Schron in the bankruptcy court have been dismissed, and the District Court has affirmed. Plaintiffs' appeal is currently pending in the Eleventh Circuit.

In the Florida litigation, the estates of several nursing-home residents won massive default judgments against defunct nursing-home companies, at one point totaling over \$2 billion. In 2010, they sued Mr. Schron, GE Capital Company, and a dozen other defendants alleging that they had engineered a 2006 "bust out" transaction to remove an alleged \$2 billion in liabilities from an insolvent corporation and to spin off its valuable assets. Mr. Schron did not have anything to do with the defunct companies or the 2006 transaction, and he had previously done business in the State of Florida. The lawsuits were initially proceeded in state court, but were later consolidated in federal bankruptcy court in the Middle District of Florida.

In March 2014, I won dismissal of all claims against Mr. Schron in an adversary proceeding in the federal bankruptcy court. *See In re Fundamental Long Term Care, Inc.*, 507 B.R. 359 (Bankr. M.D. Fla. 2014). Plaintiffs had sued Mr. Schron and fifteen other parties, asserting claims on a variety of alter ego, breach of fiduciary duty and fraudulent transfer theories. After Plaintiffs re-pled, Mr. Schron again prevailed on a

motion to dismiss, this time with prejudice. *See In re Fundamental Long Term Care, Inc.*, 512 B.R. 690 (Bankr. M.D. Fla. 2014). In view of the many lawsuits that plaintiffs had brought against Mr. Schron, the Bankruptcy Court granted a permanent injunction to prevent them from pursuing Mr. Schron in any other court. *See In re Fundamental Long Term Care, Inc.*, 2016 WL 2638192 (Bankr. M.D. Fla. May 5, 2016). The District Court affirmed these orders on appeal, and the Eleventh Circuit appeal is currently pending.

In related state litigation, we succeeded in vacating two state court orders that had purported to add Mr. Schron to judgments against the defunct companies. On February 5, 2014, Florida's Second District Court of Appeal vacated an order adding Mr. Schron to a \$200 million judgment in a proceeding supplementary, due to the trial court's lack of personal jurisdiction. *See Schron v. Nunziata*, 136 So.3d 684 (Fla. Dist. App. 2014). On February 14, 2014, the same appellate court reversed a post-trial ruling that purported to add Mr. Schron and the fifteen other parties to a \$1.1 billion judgment, because none of the parties had been served with process or represented at trial. *See General Elec. Capital Corp. v. Shattuck*, 132 So.3d 908 (Fla. Dist. App. 2014).

Judges:	Hon. Michael Williamson U.S. Bankruptcy Court Middle District of Tampa	Hon. Elizabeth Kovachevich U.S. District Court Middle District of Tampa
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Co-Counsel: Joseph H. Varner
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100 North Tampa Street #4100
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Opposing Counsel: James L. Wilkes II
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4. *In re Nord Capital Advisors LLC*, CFTC Docket No. CRAA 15-01

In this action, I represented Nord Capital Advisors ("NCA") as lead counsel in connection with proceedings before the National Futures Association ("NFA") and the CFTC. The matter presented a number of substantial legal issues concerning the extraterritorial reach of the NFA and CFTC's jurisdiction, as well as the due process rights of parties subject to administrative disciplinary proceedings. The case was ultimately settled while the main appeal was pending before the CFTC, and therefore, the issues never reached federal court.

In July 2014, the NFA summarily froze NCA's \$8 million in assets on the ground that NCA could not produce foreign bank records concerning foreign transactions by a foreign affiliate. The NFA did not identify any specific legal obligation on NCA's part to maintain such records, and it did not provide NCA with any process before issuing the freeze order. NCA was nonetheless obliged to seek a post-depriving hearing before a NFA Hearing Panel in an effort to unblock the assets. NCA received few rights before the Hearing Panel. The NFA was not required to, and did not, disclose exculpatory evidence to NCA or any other evidence except what it chose to use. It was permitted to present evidence through the testimony of its own investigator who described hearsay reports from foreign witnesses who were not present. The Hearing Panel refused to receive video testimony from NCA's owner, who was a resident of Moscow, but drew an adverse inference against him for his failure to appear in Chicago. Following that two-day hearing, the Hearing Panel ruled against NCA. NCA filed an appeal to the CFTC in December 2014. The CFTC did not take any action on that appeal for over eight months and the money remained frozen. In September 2015, the NFA and the CFTC jointly settled the matter with NCA, requiring NCA and its principal to shut down their trading business and to pay a fine in return for the release of the \$8 million in frozen assets.

Judges: The Commodities Future Trading Commission
 National Future Association, Business Conduct Committee

Co-Counsel: Joshua D. N. Hess
 Dechert LLP
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Opposing Counsel: Cynthia Cain Ioannacci
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 National Futures Association
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5. *Floyd v. City of New York*, 770 F.3d 1051 (2d Cir. 2014)

In this action, I represented as lead counsel the Patrolmen's Benevolent Association of New York and two other New York City police unions in challenging a federal district court's injunction against the NYPD's "stop and frisk" policies. In the underlying class action, the district court used statistical sampling to purportedly review the constitutionality of millions of individual *Terry* stops conducted by the NYPD. While the court found that 94% of those stops were presumptively lawful, the district court concluded that the remaining portion presented too great a risk of unlawful conduct. In addition, the court concluded, again based upon statistics, that race appeared to be a factor in the stops. The District Court granted a permanent injunction that would place

the NYPD under court supervision indefinitely. Following the bench trial, the police unions appeared in the action for purposes of appeal.

The Second Circuit permitted me to appear and argue on behalf of the police unions. *See Ligon v. City of New York*, 736 F.3d 118 (2d Cir. 2013). After that hearing, the Second Circuit granted the City's motion for an emergency stay on the ground that the City had shown a sufficient likelihood of success on the merits, and further ordered the district judge to be disqualified because her conduct had created a doubt as to her impartiality.

While the district court's judgment was on appeal, the City of New York, under newly elected Mayor DiBlasio, moved to withdraw it. The police unions moved to intervene in order to allow the Court of Appeals to review the legal issues on the merits. The District Court denied the motion to intervene as untimely in a lengthy opinion. On appeal of the motion to intervene, the Second Circuit held that the injunction should be treated as a consent decree that did not involve any finding of wrongdoing against police officers and held that it should be time limited. In addition, the court held that the injunction could not trump the police unions' bargaining right. Based on those conclusions, the Second Circuit affirmed the denial of the motion to intervene. *See Floyd v. City of New York*, 770 F.3d 1051 (2d Cir. 2014).

Judges:	Hon. Analisa Torres U.S. District Court Southern District of New York	Hon. Shira Scheindlin U.S. District Court Southern District of New York
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Court of Appeals: Walker, Cabranes and Parker, Circuit Judges
U.S. Court of Appeals for the Second Circuit

Co-Counsel: Anthony Coles
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Opposing Counsel:	Baher Azmy Center for Constitutional Rights 666 Broadway, 7th Floor New York, NY 10012 (212) 614-6464	Richard Dearing Assistant Corporate Counsel 100 Church Street New York, NY 10007 (212) 356-100
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6. *Schron v. Grunstein*, No. 650702/2010 (N.Y. Sup. Ct.)

In this complex commercial litigation, I represented Rubin Schron, a New York real estate investor, and affiliated companies, in a series of disputes arising from a billion-dollar deal in 2004 involving nursing-home companies and related real estate. Mr. Schron and his companies brought suit against their one-time counsel and investment banker for pervasive self-dealing in connection with the transactions. Mr. Schron also

sought to exercise an option to acquire SavaSeniorCare, a national nursing-home company, as well as to exercise options on two other companies.

In August 2012, following a two-week bench trial, my clients won a \$157 million judgment. *See Schron v. Grunstein*, 36 Misc.3d 1238 (N.Y. Sup. Ct. N.Y. County 2012). That decision was affirmed on appeal. *See Schron v. Grunstein*, 105 A.D.3d 430 (1st Dep't 2013). In addition, the litigation produced several important decisions concerning New York contract law, including two from the Court of Appeals. *See Schron v. Troutman Sanders*, 20 N.Y.3d 430, 986 N.E.2d 430 (N.Y. 2013); *Fundamental Long Term Care Holdings, LLC v. Cammeby's Funding LLC*, 20 N.Y.3d 438, 985 N.E.2d 893 (N.Y. 2013). The case also involved several additional appeals that were handled either by my partner, Andy Levander, or myself. *See, e.g., Schron v. Troutman Sanders LLP*, 97 A.D.3d 87 (1st Dep't 2012); *Cammeby Holdings LLC v. Mariner Health Care, Inc.*, 106 A.D.3d 563 (1st Dep't 2013).

Following the successful appeal of the trial victory, Mr. Schron's designee succeeded in taking over Sava, and the remaining claims settled in late 2013.

Judge: Hon. O. Peter Sherwood
Commercial Division
New York Supreme Court, New York County

Appellate Judges: Various members of the First Department on multiple appeals

Co-Counsel: Andrew J. Levander
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Opposing Counsel: Anthony Coles
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Allen Reiter
Arendt Fox LLP
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7. *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012)

I represented the American Action Forum and over 100 economists in the landmark case involving the constitutional challenge to the Affordable Care Act. The Economists' briefs were cited in the opinions of the Eleventh Circuit and the Supreme Court.

Before the Eleventh Circuit, the Economists submitted a brief to rebut the Government's argument that the individual mandate could be justified as a means of preventing free riders from imposing uncompensated health care costs on others. The Economists demonstrated that the individuals subject to the mandate had very few uncompensated healthcare costs. The mandate was created not to stop cost-shifting, but to compel millions of American to pay more for health insurance than they would receive in benefits so as to subsidize the voluntarily insured. The Eleventh Circuit expressly relied upon the Economists' analysis in holding that the individual mandate could not be justified under the Commerce Clause. *See Florida ex rel. Att'y Gen. v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235, 1299 & nn.108-111, 113 (11th Cir. 2011).

Before the Supreme Court, the Economists filed three separate amicus briefs with respect to the constitutionality of the individual mandate, the voluntariness of the Medicaid expansion, and the severability of the mandate. Each of those briefs addressed arguments relating to the economic assumptions made by the parties. The Economists' briefs were cited at the oral argument and quoted multiple times by the joint dissent in the case. *See Nat'l Federation of Ind. Business v. Sebelius*, 132 S. Ct. 2566, 2664, 2672 (2012) (Scalia, Kennedy, Thomas, Alito, J.J., dissenting).

Justices: U.S. Supreme Court

Court of Appeals: Dubina, Chief Judge, Hull and Marcus, Circuit Judges
U.S. Court of Appeals for the Eleventh Circuit

Co-Counsel: Michael Carvin Paul Clement
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Opposing Counsel: Donald B. Verrilli Jr.
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8. ***Business Roundtable v. Securities and Exchange Commission*, 647 F.3d 1144 (D.C. Cir. 2011)**

In this administrative law petition, I represented the Investment Company Institute and the Independent Directors' Association, the two principal trade associations of the investment company industry. My clients submitted an amicus curiae brief in support of the challenge to Exchange Act Rule 14a-11, the SEC's rule requiring that dissident directors be placed on proxy ballots. The D.C. Circuit vacated the rule as arbitrary and capricious on the ground that the SEC had not thoroughly considered the rule's effect on efficiency, competition, and capital formation, as required under the Exchange Act. The panel opinion gave separate consideration to the arguments of amici, because the rulemaking statement did not effectively consider the distinct corporate structure of investment companies and the special protections for shareholders already provided under the Investment Company Act. The court described the SEC's decision to apply the rule to amici as "unutterably mindless," and held that its justifications for the rule would not apply to investment companies. *See Business Roundtable v. SEC*, 647 F.3d 1144, 1156 (D.C. Cir. 2011).

Court of Appeals: Sentelle, Chief Judge, Ginsburg and Brown, Circuit Judges
U.S. Court of Appeals for the D.C. Circuit

Co-Counsel: Eugene Scalia
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Opposing Counsel: Randall W. Quinn
Assistant General Counsel
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
(202) 551-5048

9. ***Lovitt v. True*, 403 F.3d 171 (4th Cir. 2005)**

I represented Robin Lovitt in connection with his federal habeas petition challenging the death sentence imposed by a Virginia circuit court. In connection with the litigation, Mr. Lovitt won a stay of his execution before the U.S. Supreme Court. While the Court ultimately denied certiorari, then-Governor Mark Warner ultimately commuted the death sentence based upon the matters raised in the litigation

Mr. Lovitt was sentenced to death for murdering a pool hall attendant at his place of employment. The Commonwealth's theory was that Mr. Lovitt had sought to steal the cash box from the register, was surprised by the attendant, and grabbed a nearby pair of scissors to commit the crime. In his habeas petition, Mr. Lovitt argued that the

Commonwealth had deprived him of due process because shortly after trial, the court clerk had destroyed all of the evidence from the trial in violation of state law and thereby prevented him from testing DNA evidence on the pair of scissors. In addition, Mr. Lovitt argued that his defense attorney had rendered constitutionally deficient counsel by failing to investigate and present mitigating evidence on the sentence phase.

Ken Starr served as lead counsel on the matter, and I had the primary responsibility for drafting the briefs before the U.S. District Court, Court of Appeals, and the Supreme Court. The District Court denied the habeas petition in a published opinion. *See Lovitt v. True*, 330 F. Supp. 2d 603 (E.D. Va. 2004). The Fourth Circuit affirmed. *See Lovitt v. True*, 403 F.3d 171 (4th Cir. 2005). On petition for certiorari, the Supreme Court granted a stay of execution for several months. Ultimately, the Court denied certiorari. However, during the stay, we petitioned Governor Warner for clemency. Governor Warner commuted the sentence on the ground that the destruction of evidence had deprived Mr. Lovitt of a full opportunity to challenge his sentence.

District Court: Hon. Henry Hudson
Eastern District of Virginia

Court of Appeals: Wilkinson, Williams, and Traxler
U.S. Court of Appeals for the Fourth Circuit

Co-Counsel: Kenneth W. Starr
Former Partner
Kirkland & Ellis
(254) 644-4970

Opposing Counsel: Katherine Baldwin
Senior Assistant Attorney General
Office of the Attorney General of Virginia
Richmond, VA 23129
(804) 786-2071

10. *Granholm v. Heald*, 544 U.S. 460 (2005)

We represented California wineries in the successful constitutional challenge to a Michigan state law that permitted in-state wineries to directly ship to consumers, but prohibited out of state wineries from doing the same. The out of state wineries were required to sell their wine only through wholesalers at grace expense. The case reached the Supreme Court as one among several challenges to similar laws that had been arising in a number of different courts. In a 5 to 4 decision, the Supreme Court concluded that these laws discriminated against interstate commerce, and that they could not be justified under Section 2 of the 21st Amendment, which preserves state authority over liquor regulation. The counsel of record at the Supreme Court was Kathleen Sullivan, who argued the case as well. Along with one other associate at the firm, I had principal responsibility for drafting the Supreme Court briefs in connection with the matter.

Court: Supreme Court of the United States
Washington, DC

Co-Counsel: Kenneth W. Starr Kathleen Sullivan
Former Partner Quinn Emanuel Urquhart & Sullivan LLP
Kirkland & Ellis 51 Madison Avenue, 22nd Floor
(254) 644-4970 New York, NY 10010
(212) 849-7100

Opposing Counsel: Katherine Baldwin
Senior Assistant Attorney General
Office of the Attorney General of Virginia
Richmond, VA 23129
(804) 786-2071

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

I have never acted as a lobbyist. In private practice, my career has been focused upon litigation, and so, ten of the most significant matters are described above. At the U.S. Department of Justice, I provided a counseling role to senior lawyers in the Executive Branch. My public activities in that regard are reflected in the published legal opinions that I authored during that time, as well as the congressional testimony provided. *See* Appendix 12(c).

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

I have not taught any courses at a law school.

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

I contribute to Dechert LLP's 401K and HR-10 plans, which are maintained by a third-party provider and are intended for retirement benefits at age 65. Those may be rolled over upon my withdrawal from the law partnership. In addition, if I am fortunate enough to be confirmed, I expect to receive the return of my capital contribution and the proportionate share of 2017 earned profits at the time of my withdrawal.

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

No.

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

The current OGE-278 will be delivered directly to the Committee by the Office of Government Ethics.

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

I have completed and attached the financial net worth statement.

22. **Potential Conflicts of Interest:**

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics officer to identify potential conflicts of interest and will follow their guidance if confronted with a potential conflict of interest.

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

I will seek and follow the advice of the Department of Justice's designated agency ethics official if confronted with a conflict of interest in the performance of my duties.

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

I support the pro bono obligations called for by the American Bar Association's Code of Professional Responsibility and similar principles under the Bars of the State of New York and the District of Columbia. In the course of my career, I have been a member of the pro bono panels of both the Second Circuit and the Ninth Circuit. Each year while in private practice, I have represented numerous pro bono clients, including the disadvantaged and others who could not afford legal services. Each year while at my firm, I have devoted at least 25 hours to pro bono matters, and in many years, I have devoted far more. Those pro bono clients have included the following:

- I currently represent Casey McWhorter, who has been convicted of capital murder in the State of Alabama, in connection with his federal habeas petition in the U.S. District Court for the Northern District of Alabama.
- I represent the Independent Schools Association of Greater Washington, the River School, and two of its teachers in connection with a pending Fourth Amendment challenge in the U.S. District Court for the District of Columbia to a District of Columbia ordinance requiring mandatory drug testing of preschool teachers.
- I represented Miguel Cruz, a New York state prisoner, in connection with the appeal to the U.S. Court of Appeals for the Second Circuit of the grant of summary judgment in his civil rights action. The City of New York ultimately settled the claims for substantial compensation shortly before oral argument at the Second Circuit.
- I represented Robin Lovitt, who was convicted of capital murder in the Commonwealth of Virginia, in connection with his federal habeas petition in the Eastern District of Virginia, the Fourth Circuit, and the U.S. Supreme Court. The petition ultimately led to then-Governor Mark Warner's commutation of Mr. Lovitt's death sentence.
- I represented Stephen Burrell, a Nevada state prisoner, in connection with his appeal to the U.S. Court of Appeals for the Ninth Circuit of the grant of summary judgment in his civil rights action.