

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Nelson Stephen Román

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

United States District Judge for the Southern District of New York

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

New York State Supreme Court  
Appellate Division, First Department  
27 Madison Avenue  
New York, New York 10010

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

1960; New York, New York

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

1985 – 1989, Brooklyn Law School; J.D., 1989

1982 – 1984, Fordham School of General Studies, Fordham University; B.A., 1984

1978 – 1981, Fordham College, Fordham University; no degree

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  
New York State Supreme Court

Appellate Division, First Department  
27 Madison Avenue  
New York, New York 10010  
Associate Justice

2003 – 2009  
New York State Supreme Court  
Civil Term, Bronx County  
851 Grand Concourse  
Bronx, New York 10451  
Justice

2003 – 2005  
City University of New York at Lehman College  
250 Bedford Park Boulevard West  
Bronx, New York 10468  
Adjunct Professor

2004  
Monroe College  
One Monroe College Way  
Bronx, New York 10468  
Adjunct Professor

2001 – 2002  
New York City Civil Court, Bronx County  
851 Grand Concourse  
Bronx, New York 10451  
Judge

1998 – 2000  
New York City Civil Court, Bronx Housing Court  
1118 Grand Concourse  
Bronx, New York 10451  
Judge of the Housing Part

1995 – 1998  
New York City Civil Court, New York County  
111 Centre Street  
New York, New York 10013  
Law Clerk to Honorable Jose A. Padilla, Jr.

1994 – 1995; 1989 – 1991  
Kings County District Attorney's Office  
350 Jay Street

Brooklyn, New York 11201  
Assistant District Attorney

1992 – 1994  
Office of the Special Narcotics Prosecutor for the City of New York  
80 Centre Street, 6th Floor  
New York, New York 10013  
Special Narcotics Assistant District Attorney

1986 – 1989  
New York City Police Department  
Office of the Deputy Commissioner for Legal Matters  
One Police Plaza  
New York, New York 10013  
Police Officer

1988  
United States Attorney's Office for the Southern District of New York  
One Saint Andrews Place  
New York, New York 10007  
Litigation Clinic Legal Intern

Summer 1988  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549  
Honors Program Legal Intern

1986  
Hawkins, Delafield & Wood LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Law Clerk

1982 – 1986  
New York City Police Department, 44th Precinct  
1287 Sedgwick Avenue  
Bronx, New York 10453  
Patrol Officer

1981  
Freeman Check Cashing  
94 Eighth Avenue  
New York, New York 10011  
Check Cashier

Other Affiliations (uncompensated):

2003 – 2009

Riverdale Neighborhood House  
5521 Mosholu Avenue  
Bronx, New York 10471  
Board Member

1992 – 1994; 1996 – 1998

Puerto Rican Bar Association  
303 Park Avenue South, #1405  
New York, New York 10010  
President (1997 – 1998)  
President Elect (1996 – 1997)  
Treasurer (1992 – 1994)

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 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.

President's Award for Outstanding Judicial Service, Bronx County Bar Association (2010)

Outstanding (Destacado) Gentlemen, El Diario La Prensa El Awards (2009)

Latino Law Student's Association Alumni Award, Brooklyn Law School (2001)

Outstanding Service Award, Puerto Rican Bar Association (1998)

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.

Bronx County Bar Association

First Judicial Department Judicial Hearing Officer Advisory Committee, New York State Unified Court System

Hispanic National Bar Association

New York City Bar Association  
Committee on Minorities in the Courts, Chairperson (2002 – 2005)

New York State Bar Association  
Committee on Attorney Professionalism, Member (2010 – 2012)

New York State Task Force on Mandatory Retirement of Judges

Puerto Rican Bar Association  
President (1997 – 1998)  
President Elect (1996 – 1997)  
Treasurer (1992 – 1994)

Special Commission on the Future of the New York State Courts

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 Jersey, 1989  
New York, 1990  
Connecticut, 1990

I am retired in New Jersey and Connecticut. Otherwise, there have been no lapses in membership.

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

United States District Court for the Southern District of New York, 1992

There has been no lapse in membership.

11. **Memberships:**

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

Cervantes Society, Fraternal Organization of the New York State Unified Court System, Co-founder and Member (1995 – Present)

Monroe College Criminal Justice Advisory Board (2009 – Present)

Riverdale Neighborhood House  
Board Member (2003 – 2009)

Schuyler Hill Beach Club (Summer 2008)

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

To the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

*Cultivating Leadership for the 21st Century...*, NUESTRA VOZ (Puerto Rican Bar Ass'n), Spring 1998. Copy supplied.

*White House Officials, PRBA and National Latino Bar Leaders Meet in Washington, D.C.*, NUESTRA VOZ (Puerto Rican Bar Ass'n), Winter 1997. Copy supplied.

*PRBA Advocacy on the Federal Front*, NUESTRA VOZ (Puerto Rican Bar Ass'n), Fall 1997. Copy supplied.

*PRBA Poised for Action*, NUESTRA VOZ (Puerto Rican Bar Ass'n), Summer 1997. Copy supplied.

*Puerto Rican Bar Association & the Association of Judges of Hispanic Heritage Sponsor Three Kings Day Celebration in Honor of Newly Elected and Appointed Judges*, NUESTRA VOZ (Puerto Rican Bar Ass'n), Spring 1997. Copy supplied.

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

*Justice Most Local: The Future of Town and Village Courts in New York State*, Special Commission on the Future of the New York State Courts (Sept. 2008). Copy supplied.

*A Court System for the Future: The Promise of Court Restructuring in New York State*, Special Commission on the Future of the New York State Courts (Feb. 2007). Copy supplied.

*Report of the Task Force on Mandatory Retirement of Judges* (June 1999). Copy supplied.

Between 2003 and 2008, during the time that I was on the Board of Directors, the Riverdale Neighborhood House issued annual reports. I did not contribute to these reports, but did vote to approve them. Copies supplied.

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

September 20, 1996: Letter and policy statement to the White House from the Puerto Rican Bar Association regarding H.R. 123, prepared while I was President Elect of the Puerto Rican Bar Association. I had no role in drafting or approving the statement, but list it here in an abundance of caution. Copy supplied.

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



February 29, 2012: Participant in How to Become a Judge panel held at Brooklyn Law School and sponsored by the Dominican Bar Association. I have no notes, transcript, or recording. The address of the Dominican Bar Association is Canal Street Station, P.O. Box 203, New York, NY 10013.

May 11, 2011: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

April 28, 2010: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

March 24, 2010: Annual Dinner of the Bronx County Bar Association. I gave brief remarks when accepting an award from the Bronx County Bar Association. I have no notes, transcript, or recording. The address of the Bronx County Bar Association is Bronx Supreme Court, 851 Grand Concourse, Room 124, Bronx, NY 10451.

January 12, 2010: Participant in Ethics, Dealing with Mentally Incapacitated Clients panel held at the Bronx County Court House and sponsored by the Bronx County Bar Association. I have no notes, transcript, or recording. The address of the Bronx County Bar Association is Bronx Supreme Court, 851 Grand Concourse, Room 124, Bronx, NY 10451.

April 29, 2009: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

April 2, 2009: Remarks at Monroe College in the Bronx, New York. I discussed my career and law school. I have no notes, transcript, or recording, but Monroe College coverage is supplied. The address of Monroe College is 2501 Jerome Avenue, Bronx, NY 10468.

April 30, 2008: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording, but Cardinal Hayes coverage is supplied. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.



February 13, 2008: Panelist at Trying Your First Case, held at the New York State Trial Lawyers Association and sponsored by the New York State Trial Lawyers Institute of the New York State Trial Lawyers Association. I was asked to respond to hypothetical questions related to civil trial practice, including how to prepare for trial, jury selection, direct and cross-examination of witnesses, opening and closing statements, and effective trial techniques. I have no notes, transcript, or recording. The address of the New York State Trial Lawyers Association is 123 Nassau Street, 2nd Floor, New York, NY 10038.

May 3, 2007: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

May 4, 2006: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

June 10, 1997: As President of the Puerto Rican Bar Association, I spoke during a ceremony to mark the publication of the Franklin H. Williams Judicial Commission on Minorities Five-Year Report. I have no notes, transcript, or recording. The address of the Franklin H. Williams Judicial Commission on Minorities is 25 Beaver Street, New York, New York 10004.

- 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.

Chana Garcia, *Hispanic Power Couples*, DIVERSITY & THE BAR (Minority Corp. Counsel Ass'n), Sept./Oct. 2010. Copy supplied.

*El Diario La Prensa El Awards 2009 Outstanding (Destacado) Gentlemen: Hon. Nelson S. Román*, EL DIARIO LA PRENSA, Oct. 25, 2009. Copy supplied.

*Hispanic Heritage Week: Puerto Rican Bar Association Set to Celebrate 50 years*, NY1 NEWS, Oct. 3, 2006. Article and video available at <http://tinyurl.com/prbaarticle>.

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

In June 1998, I was appointed to be a Judge of the Housing Part of the New York City Civil Court, Bronx Housing Court by the Chief Administrative Judge and served in that capacity until December 2000. The Housing Court handles matters of summary nonpayment and holdover proceedings, and actions commenced by governmental agencies relating to residential premises located within New York City.

In November 2000, I was elected to be a Judge of the New York City Civil Court, Bronx County and served in that capacity from January 2001 until December 2002. The Civil Court of the City of New York has jurisdiction over civil cases involving amounts up to \$25,000 and other civil matters referred to it by the Supreme Court. It includes a small claims part for informal dispositions of matters not exceeding \$5,000 and a landlord and tenant/housing part for landlord-tenant matters of unlimited amounts and housing code violations.

In November 2002, I was elected to be a Justice of the New York State Supreme Court, Civil Term, Bronx County and served in that capacity from January 2003 until October 2009. The Bronx Supreme Court handles civil and criminal cases in Bronx County. Although the Supreme Courts in New York have unlimited general jurisdiction over civil matters, they do not generally hear cases with lower monetary claims that are within the powers of a New York state trial court of limited jurisdiction.

On October 9, 2009, I was appointed to be an Associate Justice of the New York State Supreme Court, Appellate Division, First Department by Governor David A. Paterson. The Appellate Division of the Supreme Court, First Judicial Department, is one of four intermediate appellate courts in the State and holds jurisdiction over the Counties of New York and the Bronx. Appeals are taken to the Appellate Division, as a matter of right, in civil and criminal cases, from the Supreme Court, Surrogate's Court, Family Court, and Court of Claims. As a branch of the Supreme Court, the Appellate Division has broad powers to review questions of law and fact, and to make new findings of fact. It serves as the court of original jurisdiction in certain types of matters; other cases reach the Appellate Division after they have been reviewed by the Appellate Term, a lower appellate court. Since appeals to the Court of Appeals, the State's highest court, are by permission only (with few exceptions), the Appellate Division is the court of last resort in the majority of cases.

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

Throughout my entire career I presided over approximately 400 trials of which approximately 45%, or 185 cases, went to verdict.

As a judge on the New York State Supreme Court, Appellate Division, I have not presided over any trials.

Over the course of seven years as a judge in New York State Supreme Court, Bronx County, Civil Term I presided over in excess of 200 jury trials.

Approximately 50% resulted in a judgment and 50% were settled. I also presided over fifty bench trials, including guardianship proceedings. Approximately 70% of the proceedings went to verdict and 30% settled.

As a New York City Civil Court Judge, I presided over in excess of 150 jury and bench trials, including small claims actions and commercial tenancy proceedings. Approximately 50 went to verdict and the remainder were settled prior to verdict.

As a judge of the New York City Civil Court, Housing Part, I presided over several bench trials and all resulted in a settlement.

i. Of these, approximately what percent were:

jury trials:	60%
bench trials:	40%
civil proceedings:	100%
criminal proceedings:	0%

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

During my two and one half years tenure as a Judge of the Housing Part of the New York City Civil Court, I issued in excess of 500 decisions on submitted motions and in resolution of bench trials. These decisions are maintained by the Clerk of the Court but are not generally published. Thus, there are no citations available.

During my two-year tenure as a Judge of the New York City Civil Court, I issued in excess of 800 decisions on motions and in resolution of bench trials. These decisions are maintained by the Clerk of the Court but are generally not published.

During my seven-year tenure as a Judge of the New York State Supreme Court, I issued in excess of 6,950 decisions on motions, hearings, and in resolution of bench trials. These decisions are maintained by the Clerk of the Court but are generally not published. Thus, with the exceptions of the decisions that are listed below, there are no citations available.

All opinions that I have written that were published in an official reporter or that are available on electronic databases are provided in the attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Gomez v. Brill Sec., Inc., 95 A.D.3d 32 (N.Y. App. Div. 2012). The plaintiffs in this case, brokers in the securities industry, brought a class action suit against their employers alleging a host of wage violations. The defendants moved to dismiss the action as barred by an agreement between the parties that required all claims arising out of the employment relationship to be submitted to arbitration and on grounds that the claims were barred by the doctrine of res judicata. The defendants also sought an order compelling arbitration. The court affirmed the trial court's denial of the motion to compel arbitration, because the very agreement between the parties precluded arbitration when claims were brought via a class action suit. The court also found that the res judicata claim, premised on a prior and discontinued action between the parties, lacked merit insofar as the prior case never reached the merits of the action.

Counsel for Appellants:

Robert S. Goodman, Esq.  
Mound Cotton Wollan & Greengrass  
One Battery Park Plaza  
24 Whitehall Street  
New York, New York 10004  
(212) 804-4200

Counsel for Respondents:

Michael D. Palmer, Esq.  
Joseph, Herzfeld, Hester & Kirschenbaum LLP  
233 Broadway, 5th Floor  
New York, New York 10279  
(212) 688-5640

2. People v. Encarnacion, 87 A.D.3d 81 (N.Y. App. Div. 2011). The defendant, who was convicted of murder, attempted murder, and assault in the second degree, appealed his conviction on grounds that the prosecution's use of a witness's grand jury testimony in its case in-chief, without having that witness testify, violated his constitutional right to confront the witness. The defendant also argued that his confrontation clause rights were similarly violated by the prosecution's use of expert testimony linking the defendant to the crime scene notwithstanding that the expert did not personally test all the evidence about which she testified. The court held that the conviction should stand. With respect to the use of a witness's grand jury testimony, the court held that the defendant waived his right to confront the witness when he procured her absence at trial through intimidation. With respect to the expert testimony, the court held that that the reports merely contained raw data that was not

accusatory in nature, and therefore the reports did not implicate the Confrontation Clause of the United States Constitution.

Counsel for Appellant:

Alexis Agathocleous, Esq. (formerly of the Office of the Appellate Defender)  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, New York 10012  
(212) 614-6464

Counsel for Respondent:

Peter D. Coddington, Esq.  
District Attorney's Office, Bronx County  
198 East 161st Street  
Bronx, New York 10451  
(718) 590-2000

3. Rhodes v. Herz, 84 A.D.3d 1 (N.Y. App. Div. 2011). The plaintiff, a nationally syndicated radio talk show host, sued her prior agents and managers, alleging, inter alia, that in acting as unlicensed employment agents on her behalf, they violated Article 11 of New York State's General Business Law. The plaintiff thus sought to void her contract with the defendants and to recover all fees paid to them during the contract's term. The defendants moved to dismiss all causes of action premised on violations of Article 11 of the General Business Law, claiming that this law did not give rise to a private right of action. The court affirmed the trial court's decision dismissing any causes of action premised upon Article 11 of the General Business Law.

Counsel for Appellants:

John R. Sachs, Jr., Esq.  
180 Central Park South, Suite 1237  
New York, New York 10019  
(917) 532-4385

Counsel for Respondents:

Amy D. Carlin, Esq.  
LaRocca Hornik Rosen Greenberg & Blaha LLP  
40 Wall Street  
New York, New York 10005  
(212) 530-4822



4. Matter of Wyche, Index No. 251956/08 (N.Y. Sup. Ct. 2009). In this case, the petitioner sought an order annulling respondent's decision to revoke his parole. The petitioner claimed that his parole revocation hearing was held in his absence and that he had not waived his right to be present. The respondent opposed the relief requested, arguing that petitioner had waived his right to be present by feigning illness. The administrative law judge agreed with the respondent and found that the petitioner had waived his right to be present. I found that determination by the administrative law judge was arbitrary and capricious. In particular, I found that the administrative law judge's conclusion that the petitioner's illness was feigned and pretextual, and thus designed to avoid the hearing, was unsupported by the record at the hearing. Opinion supplied.

The Petitioner was pro se.

Counsel for Respondent:

Inna Reznik, Esq.  
Office of the New York State Attorney General  
120 Broadway, 24th Floor  
New York, New York 10271  
(212) 416-8612

5. Tray Wrap, Inc. v. Pacific Tomato Growers, Ltd., 18 Misc.3d 1122A (N.Y. Sup. Ct. 2008). Prior to the commencement of this suit, several United States Department of Agriculture (USDA) inspectors and an employee of the plaintiff, a produce wholesaler in New York, were indicted and convicted for accepting bribes in order to downgrade the quality of produce shipped by the defendant, an agricultural trade organization, thereby causing a downward price adjustment of the defendant's produce. The defendant commenced an action against the plaintiff USDA, seeking to recover money lost when the price of its tomatoes was adjusted downward. The defendant ultimately discontinued the action before the USDA against the plaintiff, who filed the instant suit in New York claiming malicious prosecution and abuse of process. The defendant moved for summary judgment on grounds that the proceeding it initiated before the USDA was not a proceeding upon which a claim for malicious prosecution could be premised and that it nonetheless had ample probable cause to commence the suit. With regard to plaintiff's abuse of process claim, the defendant argued that it had in no way perverted the USDA process to obtain a collateral advantage. The action, it argued, was commenced solely to recover money it felt it was owed. I found that defendant established entitlement to summary judgment and granted its motion.



Counsel for Plaintiff:

Linda Strumpf, Esq.  
11 John Street, Suite 800  
New York, New York 10038  
(212) 566-6800

Counsel for Defendant:

Michael J. Stuart, Esq.  
Trachtenberg, Rodes & Friedberg, LLP  
545 Fifth Avenue  
New York, New York 10017  
(212) 972-2929

6. Greenberg v. Corpina, Index No. 18142/07 (N.Y. Sup. Ct. 2008). The plaintiff sued defendants, a law firm and its employees, for legal malpractice, alleging that he retained the defendants to determine his legal rights related to brain injury caused by vaccinations he was given when he was an infant. The plaintiff alleged that defendants' failure to initiate a timely action pursuant to the National Vaccine Injury Compensation Act of 1986 was legal malpractice, deprived him of any recovery under the Act and, more importantly, precluded a plenary action against the doctors who administered the vaccine and the vaccine manufacturers. The defendants moved to dismiss the action, arguing that the failure to initiate a timely action under the Act did not deprive plaintiff of any recovery nor did it preclude a plenary action against others. I denied the defendants' motion on grounds that they failed to establish that they committed no legal malpractice nor did they demonstrate, as required, that despite the malpractice, the plaintiff would not have succeeded in an action pursuant to the Act or in a plenary action. Opinion supplied.

Counsel for Plaintiff:

Joseph Awad, Esq.  
Silberstein, Awad & Miklos, PC  
600 Old Country Road, Suite 412  
Garden City, New York 11530  
(212) 233-6600

Counsel for Defendants:

Joshua Sandberg, Esq.  
Kaufman Borgeest & Ryan, LLP  
120 Broadway, 14th Floor  
New York, New York 10271  
(212) 980-9600

7. Rodriguez v. E&P Associates, 20 Misc.3d 1129A (N.Y. Sup. Ct. 2008). The plaintiff sustained injuries while employed at a sporting goods store when an interior window sill upon which he stood collapsed. He sued his employer, the store's lessee, the lessor of the premises within which the store was located, and all contractors involved in the store's construction prior to its occupancy. The plaintiff alleged that all defendants were liable insofar as they failed to build the window sill to bear his weight. This failure, he argued, created a dangerous condition that was the proximate cause of his accident and his resulting injuries. The defendants moved for summary judgment on a host of different grounds. I granted summary judgment to all defendants except plaintiff's employer, reasoning that the failure to build the window sill to bear the plaintiff's weight only constituted a dangerous condition if the defendants were on notice at the time the window sill was being built that it would be stood upon. Here, the record was bereft of any evidence on this point. I denied summary judgment to the plaintiff's employer because the record demonstrated that the employer allowed plaintiff to stand on the window sill knowing that it was not built to support the weight of a person.

Counsel for Plaintiff:

Scott Epstein, Esq.  
Antin & Ehrlich  
49 West 37th Street, 7th Floor  
New York, New York 10016  
(212) 686-5550

Counsel for Defendants/Third Party Plaintiffs:

Andrew Funk, Esq.  
Smith, Mazure, Director, Wilkins, Young & Yagerman, PC  
11 John Street, 20th Floor  
New York, New York 10038  
(212) 964-7400

Counsel for Defendants:

Louis Liotti, Esq.  
Law Office of Lori D. Fishman  
303 South Broadway, Suite 435  
Tarrytown, New York 10591  
(914) 524-5600

Counsel for Defendants:

Anna Lee Cataldo-Barile, Esq.  
Sinnretch & Kosafoff, LLP  
267 Carleton Avenue, Suite 301  
Central Islip, New York 11722  
(631) 650-1200

Counsel for Defendants:

Paul Lawless, Esq.  
Hammill, O'Brien, Croutier, Dempsey & Fender, PC  
6851 Jericho Turnpike, Suite 250  
P.O. Box 1306  
Syosset, New York 11791  
(516) 746-0707

Counsel for Defendants:

Katrine Aliha Beck, Esq.  
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
3 Gannett Drive  
White Plains, New York 10604  
(914) 323-7000

8. Haynes v. Estate of Goldman, 16 Misc.3d 1134A (N.Y. Sup. Ct. 2007). The plaintiff sued for injuries sustained while within premises owned, managed, and maintained by defendants. While within those premises, the plaintiff became involved in a physical altercation with another person. During the scuffle on the fourth floor, the plaintiff was thrust against closed elevator doors. The doors gave way and the plaintiff plunged four stories down the elevator shaft. He alleged that the elevator and, in particular, the fourth floor doors were improperly maintained, that they were defective, and that defendants were aware of the defect. The defendants moved for summary judgment, arguing that while they were on notice about other defects with respect to the elevator, there was no prior notice that the fourth floor doors were defective. I concluded that defendants established an absence of the requisite notice and granted summary judgment in favor of the defendants.

Counsel for Plaintiff:

Richard M. Altman, Esq.  
Law Offices of Richard M. Altman  
3201 Grand Concourse, Suite 1F  
Bronx, New York 10568  
(718) 561-2356

Counsel for Defendant/Third-Party Plaintiff:

John McCarthy, Esq.  
Geringer & Dolan, LLP  
5 Hanover Square, 3rd Floor  
New York, New York 10004  
(212) 682-7050

Counsel for Defendant:

Angela Milch, Esq.  
Smith, Mazure, Director, Wilkins, Young & Yagerman, PC  
11 John Street, 20th Floor  
New York, New York 10038  
(212) 964-7400

Counsel for Defendants:

Stephen Rozensweig, Esq.  
Margaret G. Klein & Associates  
200 Madison Avenue, 6th Floor  
New York, New York 10016  
(212) 683-9700

9. Shea v. Spellman, 4 Misc.3d 1008A (N.Y. Sup. Ct. 2004). The plaintiff sued for injuries she sustained while undergoing ambulatory foot surgery within the defendants' hospital. She alleged that her doctors committed malpractice by improperly performing surgery that necessitated another improperly performed surgery. During the course of discovery, the defendants failed to exchange certain medical records, claiming that they were lost. The plaintiff then moved to strike the defendants' answer on grounds of spoliation. I held that, with respect to the evidence that the defendants could not produce, the sanction of preclusion was warranted. I declined to strike the defendants' answer, however, as the missing evidence did not render the plaintiff incapable of establishing her cause of action.

Counsel for Plaintiff:

Scott F. Morgan, Esq.  
Weiner, Millo & Morgan, LLC  
220 Fifth Avenue, 7th Floor  
New York, New York 10001  
(212) 213-1220

Counsel for Defendants:

Robert Coppersmith, Esq.  
Geisler & Gabriele, LLC  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
(516) 542-1000

Counsel for Defendants:

Bill Gianaris, Esq.  
Garbarini & Scher, P.C.  
432 Park Avenue South  
New York, New York 10016  
(212) 689-1113

10. Drury v. Lucak, Index No. 15105/04 (N.Y. Sup. Ct. 2004). In this medical malpractice case, the plaintiff alleged that her doctor committed malpractice that resulted in the perforation of her colon during a colonoscopy. The plaintiff asserted that the doctor departed from accepted medical standards when she performed the medical procedure and that the doctor did not properly inform her of the risk associated with procedure. The jury returned a defense verdict.

Counsel for Plaintiff:

John V. Henry, Esq.  
44 Church Street  
White Plains, New York 10601  
(914) 948-1450

Counsel for Defendant:

Laura Shapiro, Esq.  
McAloon & Friedman, P.C.  
123 William Street  
New York, New York 10038  
(212) 732-8700

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Gomez v. Brill Securities, Inc., 95 A.D.3d 32 (N.Y. App. Div. 2012).

Counsel for Appellants:

Robert S. Goodman, Esq.  
Mound Cotton Wollan & Greengrass  
One Battery Park Plaza  
24 Whitehall Street  
New York, New York 10004  
(212) 804-4200

Counsel for Respondents:

Michael D. Palmer, Esq.  
Joseph, Herzfeld, Hester & Kirschenbaum LLP  
233 Broadway, 5th Floor  
New York, New York 10279  
(212) 688-5640

2. People v. Encarnacion, 87 A.D.3d 81 (N.Y. App. Div. 2011).

Counsel for Appellant:

Alexis Agathocleous, Esq. (formerly of the Office of the Appellate Defender)  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, New York 10012  
(212) 614-6464

Counsel for Respondent:

Peter D. Coddington, Esq.  
  
District Attorney's Office, Bronx County  
198 East 161st Street  
Bronx, New York 10451  
(718) 590-2000

3. Rhodes v. Herz, 84 A.D.3d 1 (N.Y. App. Div. 2011).

Counsel for Appellants:

John R. Sachs, Jr., Esq.  
180 Central Park South, Suite 1237  
New York, New York 10019  
(917) 532-4385



Counsel for Respondents:

Amy D. Carlin, Esq.  
LaRocca Hornik Rosen Greenberg & Blaha LLP  
40 Wall Street  
New York, New York 10005  
(212) 530-4822

4. Matter of Wyche, Index No. 251956/08 (N.Y. Sup. Ct. 2009). Opinion supplied in response to Question 13(c).

The Petitioner was pro se.

Counsel for Respondent:

Inna Reznik, Esq.  
Office of the New York State Attorney General  
120 Broadway, 24th Floor  
New York, New York 10271  
(212) 416-8612

5. Tray Wrap, Inc. v. Pacific Tomato Growers, Ltd., 18 Misc.3d 1122A (N.Y. Sup. Ct. 2008).

Counsel for Plaintiff:

Linda Strumpf, Esq.  
11 John Street, Suite 800  
New York, New York 10038  
(212) 566-6800

Counsel for Defendant:

Michael J. Stuart, Esq.  
Trachtenberg, Rodes & Friedberg, LLP  
545 Fifth Avenue  
New York, New York 10017  
(212) 972-2929

6. Greenberg v. Corpina, Index No. 18142/07 (N.Y. Sup. Ct. 2008). Opinion supplied in response to Question 13(c).

Counsel for Plaintiff:

Joseph Awad, Esq.  
Silberstein, Awad & Miklos, PC

600 Old Country Road, Suite 412  
Garden City, New York 11530  
(212) 233-6600

Counsel for Defendants:

Joshua Sandberg, Esq.  
Kaufman Borgeest & Ryan, LLP  
120 Broadway, 14th Floor  
New York, New York 10271  
(212) 980-9600

7. Rodriguez v. E&P Associates, 20 Misc.3d 1129A (N.Y. Sup. Ct. 2008).

Counsel for Plaintiff:

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Antin & Ehrlich  
49 West 37th Street, 7th Floor  
New York, New York 10016  
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Counsel for Defendants/Third Party Plaintiffs:

Andrew Funk, Esq.  
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11 John Street, 20th Floor  
New York, New York 10038  
(212) 964-7400

Counsel for Defendants:

Louis Liotti, Esq.  
Law Office of Lori D. Fishman  
303 South Broadway, Suite 435  
Tarrytown, New York 10591  
(914) 524-5600

Counsel for Defendants:

Anna Lee Cataldo-Barile, Esq.  
Sinnretch & Kosafoff, LLP  
267 Carleton Avenue, Suite 301  
Central Islip, New York 11722  
(631) 650-1200

Counsel for Defendants:

Paul Lawless, Esq.  
Hammill, O'Brien, Croutier, Dempsey & Fender, PC  
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P.O. Box 1306  
Syosset, New York 11791  
(516) 746-0707

Counsel for Defendants:

Katrine Aliha Beck, Esq.  
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
3 Gannett Drive  
White Plains, New York 10604  
(914) 323-7000

8. Gilson v. Westchester Square Medical Center, Inc., Index No. 7757/03 (N.Y. Sup. Ct. 2007). Opinion supplied.

Counsel for Plaintiff:

David Horowitz, Esq.  
295 Madison Avenue, 19th Floor  
New York, New York 10017  
(212) 532-2520

Counsel for Defendant:

Edward J. Guardano, Esq.  
Kaufman, Borgeest & Ryan  
200 Summit Lake Drive  
Valhalla, New York 10595  
(914) 449-1000

9. Haynes v. Estate of Goldman, 16 Misc.3d 1134A (N.Y. Sup. Ct. 2007).

Counsel for Plaintiff:

Richard M. Altman, Esq.  
Law Offices of Richard M. Altman  
3201 Grand Concourse, Suite 1F  
Bronx, New York 10568  
(718) 561-2356

Counsel for Defendant/Third-Party Plaintiff:

John McCarthy, Esq.  
Geringer & Dolan, LLP  
5 Hanover Square, 3rd Floor  
New York, New York 10004  
(212) 682-7050

Counsel for Defendant:

Angela Milch, Esq.  
Smith, Mazure, Director, Wilkins, Young & Yagerman, PC  
11 John Street, 20th Floor  
New York, New York 10038  
(212) 964-7400

Counsel for Defendants:

Stephen Rozensweig, Esq.  
Margaret G. Klein & Associates  
200 Madison Avenue, 6th Floor  
New York, New York 10016  
(212) 683-9700

10. Shea v. Spellman, 4 Misc.3d 1008A (N.Y. Sup. Ct. 2004).

Counsel for Plaintiff:

Scott F. Morgan, Esq.  
Weiner, Millo & Morgan, LLC  
220 Fifth Avenue, 7th Floor  
New York, New York 10001  
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Counsel for Defendants:

Robert Coppersmith, Esq.  
Geisler & Gabriele, LLC  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
(516) 542-1000

Counsel for Defendants:

Bill Gianaris, Esq.  
Garbarini & Scher, P.C.

432 Park Avenue South  
New York, New York 10016  
(212) 689-1113

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

None.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

New York Supreme Court Appellate Division reversals wherein I sat as a judicial panel member:

Mirvish v. Mott, 75 A.D.3d 269 (N.Y. App. Div. 2010), rev'd, 18 N.Y.3d 510 (N.Y. 2012). The Appellate Division held that a conversion claim asserted by the petitioner was time barred and that, in any event, evidence vesting ownership of a sculpture with the petitioner was barred by the Dead Man's Statute. The Court of Appeals reversed, holding that the agreement between the parties to have the motion court determine ownership of the sculpture was independent of the time-barred conversion claim. The Court of Appeals also held that the Dead Man's Statute did not bar documentary evidence establishing that the petitioner, by inter vivos gift, had acquired ownership of the sculpture.

Cadichon v. Facelle, 71 A.D.3d 520 (N.Y. App. Div. 2010), rev'd, 18 N.Y.3d 230 (N.Y. 2011). The Appellate Division held that the plaintiff failed to meet her burden of proof with regard to her motion seeking vacatur of a dismissal of her action for failure to prosecute. The Court of Appeals reversed, holding that dismissal of plaintiff's case was never warranted in the first place.

People v. Johnson, 74 A.D.3d 427 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 752 (N.Y. 2011). The Appellate Division concluded that a new trial was unwarranted on grounds that the trial court failed to grant the defendant's cause challenge to a juror. The Court of Appeals reversed, holding that the juror's response expressing a bias against the defense should have prompted more questioning from the trial court and warranted granting defendant's cause challenge.

People v. Acevedo, 75 A.D.3d 255 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 297 (N.Y. 2011); People v. Collado, 73 A.D.3d 608 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 297 (N.Y. 2011). The defendants in both cases sought resentencing of a predicate offense to correct an error in their favor. The Appellate Division held that, because the resentencing took place after the defendants had re-offended, the predicate offense could no longer be used as a sentence enhancement. The Court

of Appeals reversed, holding that a resentencing sought by a defendant to correct an illegally lenient sentence is not effective to alter the underlying conviction's utility as a predicate for enhanced sentencing.

People v. Paulin, 74 A.D.3d 685 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 238 (N.Y. 2011). The Appellate Division held that only those who were in prison on their original sentence could be resentenced under the Drug Law Reform Act of 2009 and that as such, those defendants who were re-incarcerated for parole violations could not apply for resentencing. The Court of Appeals reversed on grounds that the intent of the statute was to benefit those who had been sentenced under the previous Rockefeller Drug Laws and that a defendant incarcerated under a parole violation should benefit from the Drug Law Reform Act.

New York State Supreme Court trial level reversals and modifications:

Tourain v. Bah, Index No. 15637/06 (N.Y. Sup. Ct. 2009), modified, 78 A.D.3d 588 (N.Y. App. Div. 2010). The Appellate Division modified my order granting summary judgment for the defendant and dismissing the complaint on the ground that the plaintiff did not sustain a serious injury as defined by the relevant Insurance Law. The Appellate Division determined that summary judgment was inappropriate because the plaintiff raised a triable issue of fact. My unpublished decision is supplied.

Agosto v. 30th Place Holding, LLC, Index No. 18408/06 (N.Y. Sup. Ct. 2009), rev'd, 73 A.D.3d 492 (N.Y. App. Div. 2010). I denied summary judgment in favor of the defendant, a contractor hired by the owner of a premises to perform work therein, concluding that there existed a question of fact with respect to whether the defendant created a dangerous condition that caused the plaintiff's accident. The Appellate Division reversed, holding that the condition that the defendant created was exactly that for which it was hired and thus did not breach any duty to the plaintiff. My unpublished decision is supplied.

Fofana v. 41 West 34th Street, LLC, Index No. 1186/06 (N.Y. Sup. Ct. 2009), rev'd, 71 A.D.3d 445 (N.Y. App. Div. 2010). I denied the defendants' motion for summary judgment on the grounds that it was untimely and that no good cause had been shown warranting its consideration. The Appellate Division reversed, holding that good cause had been shown and that the defendants' decision not to file the motion earlier was reasonable. The Appellate Division considered the motion and granted summary judgment in favor of defendants. My unpublished decision is supplied.

Caba v. Rai, Index No. 25866/99 (N.Y. Sup. Ct. 2007); 2008 WL 7825580 (N.Y. Sup. Ct. 2008), rev'd, 63 A.D.3d 578 (N.Y. App. Div. 2009). I granted the defendant's motion to vacate a default judgment upon proof that the defendant had never been served with process and had a meritorious defense. The Appellate



Division reversed, holding that the defendant's delay in moving to vacate his default judgment was inexcusable. My unpublished decision is supplied.

DeJesus v. Alba, Index No. 23568/06 (N.Y. Sup. Ct. 2008), rev'd, 63 A.D.3d 460 (N.Y. App. Div. 2009). I denied summary judgment to the defendant in a personal injury action stemming from the negligent operation of a motor vehicle, finding that conflicting versions of the events created issues of fact such that summary judgment was unwarranted. The Appellate Division reversed, holding that the defendant could not be found negligent under any version of the facts. My unpublished decision is supplied.

Krochta v. On Time Delivery Service, Inc., Index no. 301273/07 (N.Y. Sup. Ct. 2008), rev'd, 62 A.D.3d 579 (N.Y. App. Div. 2009). The defendant sought to change the venue of this action from Bronx County to Nassau County as a matter of right and, alternatively, as a matter of discretion. I denied the request as a matter of right, but granted a discretionary venue change insofar as the action did not have ties to Bronx County. The Appellate Division reversed, holding that a discretionary change of venue was unwarranted. My unpublished decision is supplied.

Burgos v. 205 E.D. Food Corp., Index No. 15760/06 (N.Y. Sup. Ct. 2008), modified, 61 A.D.3d 403 (N.Y. App. Div. 2009). The Appellate Division modified my order denying the defendants' motion for summary judgment. The Appellate Division found that the plaintiff had failed to raise an issue of fact as to whether the defendant, an out-of-possession landlord, had a contractual obligation to make repairs or maintain the premises. My unpublished decision is supplied.

Elias v. Mahlah, Index No. 24780/06 (N.Y. Sup. Ct. 2008), modified, 58 A.D.3d 434 (N.Y. App. Div. 2009). In this case, I granted in part and denied in part the defendant's motion for summary judgment and dismissed part of the complaint on the ground that the plaintiffs had failed to establish that they suffered "serious injuries" as defined by the relevant Insurance Laws. The Appellate Division modified my ruling and found that some of the complaint that survived my ruling should have been dismissed. My unpublished decision is supplied.

Espinosa v. Azure Holdings II, LP, Index No. 29562/02 (N.Y. Sup. Ct. 2005), modified, 58 A.D.3d 287 (N.Y. App. Div. 2008). The Appellate Division modified my order granting summary judgment to defendants on all of plaintiff's claims except for one, determining that, consistent with a recent decision, neither side was entitled to summary judgment on the Labor Law § 241(1) claim. The Appellate Division also held that summary disposition of the Labor Law § 200 and common-law negligence claims was inappropriate. My unpublished decision is supplied.

Poree v. Bynum, 2007 WL 6782292 (N.Y. Sup. Ct. 2007), rev'd, 56 A.D.3d 261 (N.Y. App. Div. 2008). I dismissed the plaintiff's action on grounds that he failed

to establish service of process by a preponderance of the evidence. The Appellate Division reversed, holding that defendant's denial of service was uncorroborated and that the testimony of the process server was sufficient to establish service.

Lamanna v. Jankowski, 2007 WL 6623880 (N.Y. Sup. Ct. 2007), rev'd, 52 A.D.3d 340 (N.Y. App. Div. 2008). I denied the plaintiff's motion to set aside a jury verdict as moot and granted defendant's cross-motion for judgment notwithstanding the verdict, finding that plaintiff had not sustained a serious injury as a matter of law. The Appellate Division reversed, finding that the jury verdict was inconsistent and could not stand, thus avoiding the issue of whether plaintiff sustained a serious injury.

Rodriguez v. Killerlane, Index No. 25297/04 (N.Y. Sup. Ct. 2007), modified, 44 A.D.3d 420 (N.Y. App. Div. 2007). In this legal malpractice case, the Appellate Division modified my order denying summary judgment for the defendant attorney and granting plaintiff client's cross-motion for summary judgment on the issue of liability, concluding that the plaintiff's cross-motion should have been denied because a possibility existed that the defendants in the underlying cause of action might have prevailed. My unpublished decision is supplied.

Jimenez v. Hispanic Catholic Charismatic Center of the Archdiocese of New York, 2006 WL 6167050 (N.Y. Sup. Ct. 2006), rev'd, 33 A.D.3d 416 (N.Y. App. Div. 2006). I granted summary judgment in favor of the defendant on the plaintiff's claim that the defendant was negligent in the maintenance of its property by failing to provide a ladder to access bunk beds on the property. I held that a ladder was provided, its presence was uncontroverted, and it was the plaintiff who chose not use the ladder thereby resulting in her accident. The Appellate Division reversed, finding that whether defendant's failure to provide more than one ladder was tantamount to negligence was a question of fact precluding summary judgment.

Mann v. Cooper Tire Co., Index No. 21426/02 (N.Y. Sup. Ct. 2004), modified, 33 A.D.3d 24 (N.Y. App. Div. 2006). In this case, I granted a protective order preventing disclosure of ingredients or components of the defendant's tire formula and the curing process, finding that they were trade secrets and were not discoverable. The Appellate Division modified my ruling, determining that the defendant's conclusory assertions of "irreparable harm" did not satisfy its burden of demonstrating that the information at issue in fact constituted trade secrets. My unpublished decision is supplied.

Velez v. Hunts Point Multi-Service Center, Inc., 24957/02 (N.Y. Sup. Ct. 2004), rev'd, 29 A.D.3d 104 (N.Y. App. Div. 2006). I granted a motion to quash subpoenas served upon non-parties on grounds that the subpoenas failed to provide the notice required under state law. The Appellate Division reversed, holding that notice was provided by the defendants in their opposition to the motion to quash and thus the motion should have been denied. My unpublished decision is supplied.

Spina v. Jack D. Weiler Hospital of the Albert Einstein College of Medicine, Index No. 6787/96 (N.Y. Sup. Ct. 2004), rev'd, 28 A.D.3d 311 (N.Y. App. Div. 2006). I denied defendant's motion for summary judgment dismissing the complaint, or alternatively, for dismissal of the action based upon plaintiff's failure to comply with prior discovery orders. The Appellate Division reversed, holding that because the plaintiff was not a patient of any doctor, no duty of care was owed to her, and her claim of ordinary negligence could not stand. My unpublished decision is supplied.

Villanova Estates, Inc. v. Fieldston Prop. Owners Ass'n, Index No. 24792/03 (N.Y. Sup. Ct. 2004), modified, 23 A.D.3d 160 (N.Y. App. Div. 2005). In this case, the plaintiff developer argued that the defendants, a property owners' association and its members, made false statements about plaintiff during a public hearing. I dismissed eleven of seventeen causes of action asserted in the plaintiff's first amended complaint. The Appellate Division reversed my judgment as to the claim for money damages for the interference with developer's property rights, the claim for interference with sewer rights, and a prima facie tort. My unpublished decision is supplied.

Kasem v. Price-Rite Office and Home Furniture, 2003 WL 25594136 (N.Y. Sup. Ct. 2003), rev'd, 21 A.D.3d 799 (N.Y. App. Div. 2005). I granted summary judgment in favor of the defendant, holding that the plaintiff had failed to controvert the defendant's prima facie showing that the plaintiff was not injured by the defendant's actions. I later denied the plaintiff's request for reconsideration, finding that the evidence submitted in support of that request was untimely. The Appellate Division reversed, holding that the plaintiff's failure to submit previously available records was excusable and warranted renewal. Upon consideration of those records, the Appellate Division concluded that summary judgment should have been denied.

Dickerson v. Health Management Corporation of America, 5 Misc.3d 1011A (N.Y. Sup. Ct. 2004), rev'd, 21 A.D.3d 326 (N.Y. App. Div. 2005). I denied summary judgment on the plaintiff's claim of employment discrimination, finding that questions of fact remained. The Appellate Division reversed, holding that summary judgment should have been granted because defendant proffered nondiscriminatory reasons for the plaintiff's termination and the plaintiff submitted no evidence that those reasons were pretextual.

Colon v. Kempner, Index No. 0022412/02 (Supreme Court, Bronx County 2004), rev'd, 20 A.D.3d 372 (1st Dept. 2005). I denied summary judgment to the defendant on the plaintiff's claim of serious injury as a result of a motor vehicle accident because of the contradictory opinions offered by the plaintiff's doctors. The Appellate Division reversed, holding that, notwithstanding the contradictory medical opinions, plaintiff's substantial gap in medical treatment was fatal to his claims. My unpublished decision is supplied.

DeJesus v. F.J. Sciame Constr. Co., Index No. 82730/01 (N.Y. Sup. Ct. 2004), modified, 20 A.D.3d 354 (N.Y. App. Div. 2005). In this case, I granted the third-party plaintiff's motion for contractual indemnification and denied the third-party defendant's cross-motion for summary judgment. The Appellate Division modified my ruling, concluding that factual issues existed and thus, it was premature to grant the third-party plaintiff's motion for contractual indemnification. My unpublished decision is supplied.

Reyes v. CSX Transportation, Inc., Index No. 24482/01 (N.Y. Sup. Ct. 2004), rev'd, 19 A.D.3d 193 (N.Y. App. Div. 2005). The defendant, owner of a transportation company and trains used in connection with its business, moved for summary judgment over the plaintiff's claims for personal injuries arising from her fall on property abutting tracks used by, but not owned by, defendant. I granted summary judgment, finding that the defendant had no duty to maintain the property abutting the tracks and therefore was not liable to the plaintiff. I also denied the plaintiff's subsequent motion for renewal that argued for the applicability of a statute imposing liability upon the defendant, holding that the statute existed at the time of the plaintiff's original motion and thus was untimely raised. The Appellate Division reversed, holding that I should have granted renewal and imposing liability on the defendant. The Appellate Division also concluded that the defendant did in fact enjoy a special use of the tracks and that such use made it liable for a defect upon the property abutting those tracks. My unpublished decision is supplied.

Gray v. Jaeger, Index No. 16328/03 (N.Y. Sup. Ct. 2004), modified, 17 A.D.3d 286 (N.Y. App. Div. 2005). In this medical malpractice case, the plaintiff moved to strike the defendant's answer due to the defendant's failure to produce the plaintiff's medical records during discovery. I denied that request, but agreed to apply an adverse inference against the defendant. The Appellate Division determined that the defendant's conduct was negligent, that the lack of medical records deprived the plaintiff of the ability to establish a prima facie case, and thus, the appropriate remedy should have been the striking of defendant's answer. My unpublished decision is supplied.

Vicenty v. Cincinnati Inc., Index No. 16891/02 (N.Y. Sup. Ct. 2004), modified, 14 A.D.3d 392 (N.Y. App. Div. 2005). In this case, two of the plaintiff's fingers were amputated in a workplace accident and subsequently reattached. I granted the third-party defendant's motion for summary judgment in part, and the Appellate Division determined that I should have granted it in its entirety because the plaintiff did not permanently lose the use of his fingers. My unpublished decision is supplied.

New York City Civil Court reversals:

Rodriguez v. Ramos, 1 Misc.3d 128A (N.Y. App. Term 2003). I denied the defendant's motion for summary judgment because the medical evidence he



submitted was neither sworn nor affirmed pursuant to state law. I also denied the defendant's motion for renewal where he sought to remedy his prior failure. The Appellate Term reversed, holding that because the defendant proffered an excuse for failing to submit evidence in an admissible form, renewal was warranted and, upon renewal, defendant was entitled to summary judgment. My unpublished opinion is not available.

Bronx Medical Services, P.C. v. Lumbermans Mutual Casualty Co., 2003 WL 21402045 (N.Y. App. Term 2003). I held that under the no-fault law, the defendant, an insurer, was not obligated to pay the plaintiff, a medical provider, for services rendered to the assignor of those benefits, reasoning that the assignor's failure to comply with requests made by the defendant precluded payment of any benefits to the plaintiff. The Appellate Term reversed, holding that the assignor's noncompliance did not preclude payment to the plaintiff under then-existing laws. My unpublished opinion is not available.

Citiwide Communications, Inc. v. Cantor Real Estate, 2003 WL 1389127 (N.Y. App. Term 2003). I concluded that vacatur of a default judgment was warranted upon the defendant's demonstration that it had not been served with process and upon finding that it had a meritorious defense. The Appellate Term reversed and remanded for a traverse hearing, concluding that whether defendant was served with process remained an issue of fact. My unpublished opinion is not available.

Medical v. Allstate Insurance Co., 2002 WL 576078 (N.Y. App. Term 2002). I held that questions of fact precluded summary judgment, insofar as there were diverging accounts as to whether the defendant, an insurer, received notice of an accident pursuant to which the plaintiff, a medical provider, rendered services to the assignor of no-fault benefits. The Appellate Term reversed, holding that the plaintiff conclusively established that the defendant was provided with timely notice via an application. My unpublished opinion is not available.

NPC Co. Inc. v. South Bronx Human Development, 2001 WL 1682604 (N.Y. App. Term 2001). In this case, I granted the defendant's motion to vacate the default judgment with conditions. The Appellate Term determined that I should have granted the defendant's motion unconditionally without any limitation upon the defendant's right to pursue any jurisdictional challenge. My unpublished opinion is not available.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

During my tenure as a Judge of the Housing Part of the New York City Civil Court, I issued in excess of 500 decisions on submitted motions, hearings, and in resolution of bench trials. None of those decisions was published. They are maintained by the Clerk of the Court in individual case files.

During my tenure as a Judge of the New York City Civil Court, I issued in excess of 800 decisions on motions, hearings, and in resolution of bench trials. Those decisions are maintained by the Clerk of the Court in individual case files. Less than 1% of those decisions were published.

During my tenure as a Judge of the New York State Supreme Court, I issued nearly 7,000 decisions on motions, hearings, and in resolution of bench trials. Those decisions are maintained by the Clerk of the Court in individual case files. Less than 1% of those decisions were published.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

People v. Encarnacion, 87 A.D.3d 81 (N.Y. App. Div. 2011).

Jones v. Kreger Truck Renting Co., Inc., Index No. 7139/06 (N.Y. Sup. Ct. 2006). Copy supplied.

Villanova Estates, Inc. v. The Fieldston Property Owners Ass'n, Index No. 24792/03 (N.Y. Sup. Ct. 2004), modified, 23 A.D.3d 160 (N.Y. App. Div. 2005). Copy supplied in response to Question 13f.

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

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;



- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In New York State, recusal is determined pursuant to Judiciary Law § 14, which provides in relevant part that a judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. In the absence of a legal disqualification under Judiciary Law § 14, a judge is the sole arbiter of recusal and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion. In New York State, a judge is also required to comply with 22 NYCRR 100.1, which provides that “an independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part are to be construed and applied to further that objective.” Accordingly, when assessing the necessity or propriety of recusal, I have applied Judiciary Law § 14 and 22 NYCRR 100.1 in reaching a decision.

My wife, Carol Robles-Román, serves as Deputy Mayor for Legal Affairs and Counsel to Mayor Michael Bloomberg for the City of New York. Her term is set to expire on December 31, 2013. I have recused myself sua sponte from the cases listed below wherein the City of New York was a named party to the litigation. Such recusal was made pursuant to New York State Judiciary Law § 14.

Hells Kitchen Neighborhood v. City of New York, et al.

Delgado v. City of New York, et al.

Pagan v. Rhea, NYCHA

Ronga v. Klein

Spencer v. NYCHA

Ruiz v. NYCHA

Simoes v. City of New York

Heim v. The Trustees of Columbia University

Young v. City of New York, et al.

Moreira-Brown v. City of New York, et al.

Batts, et al v. City of New York, et al.

Applewhite v. Accuhealth

Leftenant v. City of New York, et al.

In re March v. Rhea, as Commissioner of the New York City Housing Authority

Chinese Staff and Workers’ Association v. Burden, et al.

Sanchez v. Mattingly, as Commissioner of New York City Administration for  
Children’s Services, et al.

Collado v. Riverside Park Management, et al.

Matter of Rasole v. Department of Citywide Administrative Services, et al.  
Matter of 108 Realty LLC v. Department of Housing Preservation, et al.  
177 Christie, Inc., et al. v. Environmental Control Board, et al.  
Cabrera v. Hirth, et al.  
Rosado v. Alhati, et al.  
Swindell v. Antonelli, et al.  
In the Matter of Takia B.  
Harbatkin v. NYC Department of Public Records, et al.  
McKie v. LaGuardia Community College/CUNY  
Melendez v. The City of New York  
People of NYS v. Posner, et al.  
Matter of Vecchio v. Kelly, et al.  
O'Bryan, et al. v. Stark, Commissioner of the NYC Department of Finance, et al.  
Guzman, by her m/n/g, Estrella v. The City of New York, et al.  
Solano v. The City of New York, et al.  
People ex rel. McManus v. Commissioner of the New York City Department of  
Corrections  
Meacham v. New York City Health & Hosps. Corp.  
Allen, as Administratrix of the Estate of Thornton, deceased v. City of New York,  
et al.  
Lewis v. City of New York, et al.  
Whalen v. NYCDEP, et al.  
Fleming v. City of New York, et al.  
Matter of Ariel Services, Inc. v. New York City Env'tl. Control Board, et al.  
Macri v. Kelly, et al.  
Andino v. NSPD Associates, LLC, et al.  
Goldstein v. The Teachers' Retirement System of the City of New York  
Baez v. Ende Realty Corp., et al.  
Konstantinov v. Daines  
Matter of Breslin Ten. Assoc. v. HPD  
Gordy v. City of New York  
Inglese v. Limandri  
Logan v. Kelly  
Miller v. City of New York, et al.  
Kamara v. Lambert, et al.  
Mendoza v. City of New York  
Padilla v. Dep't of Education of the City of New York, et al.  
Golia v. The Board of Standards and Appeals, et al.  
Lopez v. City of New York  
Mendoza v. City of New York  
JFK Holding Company, LLC v. City of New York  
Perry v. Rhea  
M., Natasha v. Michael Devonne M.  
Asantewaa v. City of New York et al.  
Delakas v. Mintz  
330 West 86th Street v. City of New York

Cohen v. Hunter College  
In the Matter of the Application of Saunders v. Rhea as the Chairman of the New York City Housing Authority, et al.  
Brodsky v. NYC Campaign Finance Board  
Clark v. Schriro, et al.  
LoDuca Associates, Inc. v. PMS Construction, et al.  
Espino v. NYC Board of Education  
Furnari v. City of New York, et al.

I also recused myself sua sponte from the case listed below on the basis that in June 2006 I swore in the entire Board of the National Puerto Rican Day Parade. Such recusal was made pursuant to New York State Judiciary Law § 14.

National Puerto Rican Day Parade Inc. v. Lugo, et al.

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

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

None.

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

None.

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

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

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

From 1995 to 1998, I served as a law clerk to the Honorable Jose A. Padilla, Jr., of the New York County Civil Court.

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

I have never practiced alone.

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

1989 – 1991; 1994 – 1995  
Kings County District Attorney's Office  
350 Jay Street  
Brooklyn, New York 11201  
Assistant District Attorney

1992 – 1994  
Office of the Special Narcotics Prosecutor for the City of New York  
80 Centre Street, 6th Floor  
New York, New York 10013  
Special Narcotics Assistant District Attorney

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

I served as a Small Claims Arbitrator on a pro bono basis from 1996 to 1998. I have not retained any records of these cases. Although the Clerk of the Small Claims Court maintains a list of cases that were submitted to arbitration, they do not maintain the list of cases submitted to particular arbitrators. Accordingly, I am unable to provide a list of the ten most significant matters in which I was involved as an arbitrator.

b. Describe:

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

Upon graduating from law school, I began my legal career as Assistant District Attorney. From August 1989 to December 1991, I prosecuted criminal cases developed from police initiated arrests. I conducted trials and hearings in criminal court, drafted complaints, motions, and memoranda of law, and presented cases before the grand jury.

From January 1992 to March 1994, I was appointed to serve as a Special Narcotics Assistant District Attorney in the Office of the Special Narcotics Prosecutor. The office has statutory city-wide jurisdiction to prosecute major felony narcotics offenses. I handled cases from initial arrest to final disposition; conducted trials and hearings; drafted complaints, search

warrants, motions, and memoranda of law; presented cases before the grand jury; and supervised long-term narcotics investigations.

From April 1994 to January 1995, I served as a Felony Trial Assistant District Attorney in the Kings County District Attorney's Office and prosecuted felony cases to verdict. I conducted trials and hearings, drafted motions and memoranda of law, and handled one case on appeal to the Appellate Division. I also supervised in-field police officers' post-arrest procedures involving homicides, sex crimes, police shootings, robberies, and high-publicity cases.

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

As a state prosecutor, my clients were the people of the State of New York. I specialized in criminal law.

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

During my tenure as a state prosecutor, from August 1989 to January 1995, my practice was entirely in litigation, and I appeared in court at least once or twice a week. As a trial attorney, I appeared in both the New York City Criminal Court and New York State Supreme Court, Criminal Term.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 0%
- 2. state courts of record: 100%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 0%
- 2. criminal proceedings: 100%

- 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.

As a state prosecutor, I tried approximately 20 cases to verdict. I was sole counsel in approximately ten cases, chief counsel in approximately four cases, and second chair in approximately six cases.

- i. What percentage of these trials were:
  1. jury: 85%
  2. non-jury: 15%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. People v. Mace, Indictment No. 06323/90 (N.Y. Sup. Ct.), Hon. Ira Beal; rev'd, 206 A.D.2d 296 (N.Y. App. Div. 1994).

The defendant, along with another individual, was arrested after selling cocaine to a police officer during an undercover drug operation. At a jury trial in 1992, approximately five witnesses, including the defendant, testified. I handled the entire trial, including jury selection, opening statement, examination of witnesses, and summation. During trial, I proved that the defendant was involved in the drug sale by directing customers to the individuals who completed the actual drug transaction. The defendant was convicted and subsequently sentenced. He successfully appealed on speedy trial grounds, claiming errors that occurred before I was assigned to the case.

Defense Counsel:

Natasha Gerisi-Lapiner, Esq.  
 New York County Defender Service  
 225 West Broadway, Floor 11  
 New York, New York 10013  
 (212) 803-5140



2. People v. Rivera, Indictment No. 0952/92 (N.Y. Sup. Ct.), Hon. Jay Gold.

In this case, the defendant was arrested and charged with the sale of heroin to an undercover police officer. Approximately four witnesses, including the defendant, testified during the course of a jury trial in 1992. At trial, the defense attempted to establish that the defendant was acting as an agent for the buyer (the undercover officer) and he was not criminally liable for the drug sale. I handled all aspects of trial, and established that the defendant played a prominent role in the sale of the drugs to the undercover officer, thereby defeating his defense. The defendant was convicted and subsequently sentenced.

Defense Counsel:

Walter Kenny, Esq.  
137 West 25th Street  
New York, New York 10001  
(212) 633-6875

3. People v. Jones, Indictment No. 04773/92 (N.Y. Sup. Ct.), Hon. Alfred Donati.

The defendant in this case was arrested and charged with selling heroin to an undercover police officer. I handled all aspects of the jury trial in 1993, at which approximately four witnesses testified. Although the undercover officer positively identified the defendant, there were inconsistencies in the officer's paperwork which called into question the officer's credibility. The defendant was acquitted.

Defense Counsel:

Brian Perskin, Esq.  
44 Court Street  
Brooklyn, New York 11241  
(718) 875-7584

4. People v. Rodriguez, Indictment No. 9727/92 (N.Y. Sup. Ct.), Hon. Rene White.

The defendant was observed by a police officer, who was stationed on a roof top with a pair of binoculars, handing a quantity of cocaine to a female buyer in exchange for money, and was subsequently arrested and charged with selling cocaine. I handled all aspects of the jury trial in 1993, during which approximately six witnesses testified, including the defendant. The defense attempted to establish that the distance from the roof top, where the observing



officer was positioned, was too great for anyone to see an actual drug transaction and to accurately identify the alleged participants of the sale. In anticipation of such a defense, I prepared graphs and maps depicting the area of the sale, detailing the distance from the roof top to the site of the sale, and had numerous photographs taken from the roof top to show the officer's line of vision. Based on all the evidence, the defendant was convicted and subsequently sentenced.

Defense Counsel:

Donald Cameron, Esq.  
139 Nassau Street  
New York, New York 10038  
(212) 233-3348

5. People v. Smith, Indictment No. 7672/93 (N.Y. Sup. Ct.), Hon. Murray Mogel.

The defendants in this case were arrested and charged with the sale of cocaine, and with possessing an additional amount with the intent to sell, during an undercover police drug operation. At a jury trial in 1994, approximately six witnesses, including one of the two defendants, testified. The defendant who testified attempted to establish the defense of agency, claiming that he was not criminally liable because he was acting as an agent for the buyer, the undercover officer, and was not part of the drug sale. I established that each defendant played a prominent role in the drug transaction, thereby defeating the defense. Both defendants were convicted and subsequently sentenced. I handled all aspects of the trial.

Defense Counsel for defendant Smith:

Melvyn Reiss, Esq.  
305 Broadway  
New York, New York 10007  
(212) 227-2222

Defense Counsel for defendant Spear:

Stephen Filler, Esq.  
Post Office Box 28  
New Paltz, New York 12561  
(917) 213-0303

6. People v. McDoe, Indictment No. 15253/93 (N.Y. Sup. Ct.), Hon. Lewis L. Douglass.

In this case, an undercover police officer posing as a drug purchaser attempted to buy illegal drugs. The defendants did not recognize the undercover officer and thus refused to sell illegal drugs to him. When the undercover officer persisted in his attempts to buy illegal drugs, the defendants surrounded him and attempted to rob him of his money. The defendants were arrested. One pleaded guilty to possession of a controlled substance and the other proceeded to a jury trial in 1994, at which he was acquitted. I served as co-counsel in this case and handled the questioning of both prosecution and defense witnesses.

Co-counsel:

David Garcia, Esq. (former Assistant District Attorney)  
The Law Office of David A. Garcia  
101 Stumberg  
San Antonio, Texas 78204  
(210) 224-4100

Defense Counsel:

Azalia Torres, Esq.  
Legal Aid Society  
111 Livingston Street  
Brooklyn, New York 11201  
(718) 243-6803

7. People v. Celestin, Indictment No. 10744/93 (N.Y. Sup. Ct.), Hon. Ira Harkavy.

In this case, the defendant, along with several unidentified individuals fatally shot a seventeen-year-old boy on a Brooklyn street corner and was subsequently arrested and charged with murder. I served as co-counsel at the jury trial in 1994 and conducted direct examination of two of the prosecution's witnesses, including the ballistics expert. I also assisted in securing the whereabouts and testimony of the only witness who could positively identify the defendant. After a lengthy trial, defendant was convicted of murder in the second degree and was sentenced to 25 years to life.

Co-Counsel:

Robert Friedman, Esq. (former Assistant District Attorney)  
Sheppard, Mullin, Richter & Hampton LLP  
30 Rockefeller Plaza, Suite 2400  
New York, New York 10112  
(212) 634-3058

Defense Counsel:

Michael Harrison, Esq.  
48 Wall Street, 11th Floor  
New York, New York 10005  
(917) 378-7631

8. People v. Walston, Indictment No. 5176/94 (N.Y. Sup. Ct.), Hon. Michael Curci.

This case involved a domestic dispute during which the defendant possessed and displayed a handgun. He was arrested and charged with possession of a loaded firearm and with using the gun to menace his live-in girlfriend. During the jury trial in 1994, approximately four witnesses testified, including the defendant. I served as co-counsel and conducted the direct and cross examination of several witnesses. The defendant attempted to establish at trial that the gun was not his, as it was not found on his person but was recovered in a bedroom closet. He was convicted and subsequently sentenced to a term of 6 to 12 years.

Co-Counsel:

Ruth Diaz, Esq. (former Assistant District Attorney)  
1820 Cortelyou Road, Apt. 5C  
Brooklyn, New York 11226  
(718) 431-0688

Defense Counsel:

Martin Goldberg, Esq.  
672 Dogwood Avenue, Suite 183  
Franklin Square, New York 11010  
(516) 292-0380

9. People v. Mack, Indictment No. 15399/93 (N.Y. Sup. Ct.), Hon. Carolyn Demarest.

The defendant, while working with another unknown individual, robbed a pharmacy at gunpoint. At the jury trial in 1994, approximately six witnesses testified. Although there were numerous individuals in the pharmacy at the time of the robbery, only one witness was in a position to identify the defendant. He was convicted and subsequently sentenced to 25 years to life. I served as lead counsel and handled the majority of the trial.

Co-Counsel:

Maria Bukumira, Esq. (former Assistant District Attorney)  
5 Millet Street  
Dix Hill, New York 11746  
(631) 586-8090

Opposing Counsel:

Hon. Robert Collini  
Richmond Supreme Court  
18 Richmond Terrace  
Staten Island, New York 10301  
(718) 675-8650

10. People v. Knight, 222 A.D.2d 525, 635 N.Y.S.2d 537 (N.Y. App. Div. 1995); Hon. Thompson, Ritter, and Florio.

Defendant was convicted of manslaughter in the first degree after fatally stabbing a man on a Brooklyn street corner and appealed. On appeal, the defendant alleged that the trial court's instructions to the jury violated his due process rights and his constitutionally protected right not to testify in a criminal trial. In particular, the defendant claimed that the court's instruction to the jury regarding his failure to testify at trial improperly suggested that he was guilty by virtue of his silence. I researched, drafted, and prepared the appellate brief, which argued that the defendant had failed to preserve his objection for appellate review and that the trial court's charge to the jury was substantially correct, not prejudicial, and that, in any event, any error in the charge was harmless. The defendant's conviction was affirmed by the New York Supreme Court, Appellate Division, Second Department, holding that the defendant failed to preserve the issue for appellate review because he did not object to the jury charge at trial.

Co-Counsel:

Dana Robbins, Esq. (former Assistant District Attorney)  
335 Sackett Street  
Brooklyn, New York 11231  
(212) 788-0611

Appellant's Counsel:

Daniel L. Greenberg, Esq.  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
(212) 756-2069

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

Since 2000, I have served as an advisory board member of the Bronx County Thurgood Marshall Junior Mock Trial Program. The Program incorporates an intensive four-month coaching period, in which students meet with their coaches on a weekly basis to learn the fundamental principles of litigating a criminal trial. The students are taught to take on roles as prosecutors, defense attorneys, and witnesses. After the coaching period, the students present their cases before actual judges, who preside over the mock trials. Court officers and stenographers also staff the courtrooms during the competitions. Over the years, in addition to being a member of the advisory board, I have served as a trial judge in early round and semi-final round competitions.

From 1996 to 1998, I served as a volunteer small claims arbitrator for the New York City Civil Court in Bronx County and New York County. As a small claims arbitrator, I volunteered approximately once or twice per month during the evening sessions in Small Claims Court. As an arbitrator, I presided over small claims disputes with the consent of the parties. Each evening session, I presided over three to five cases, conducted hearings, and rendered decisions in accordance with the applicable law. The claims involved disputes having a monetary value of no greater than \$3,000.

During my tenure as a jurist, I have also had the privilege of serving on several state-wide committees that have sought to enhance the state court system. In 2006, I was appointed by New York Chief Judge Judith Kaye to serve on the Special Commission on the Future of the New York State Courts. The commission sought to assess the effectiveness of the state's court structure and to propose appropriate reforms. After conducting a study of

the courts, the committee issued a report in 2007: "A Court System for the Future, The Promise of Court Restructuring in New York State." In its simplest terms, the report proposed the restructuring and consolidation of New York State's existing multi-layered archaic court system into a two-tier structure with a single Supreme Court and a state-wide network of District Courts.

In 1998, I was appointed by then-New York State Chief Administrative Judge Jonathan Lippman to serve on the Task Force on the Mandatory Retirement of Judges. The Task Force was charged with the responsibility of evaluating the adequacy of the existing mandatory retirement scheme for state court judges and suggesting possible alternatives. After completing its study, the Task Force issued its report in 1999, which recommended the continuation of judicial service beyond age 70, but not at the expense of reduced judicial opportunities for individuals seeking entry into the judiciary. The Task Force proposed the establishment of a "senior judge system," similar to the federal courts.

Since 2008, I have served as a member of the Judicial Hearing Officer's (JHO) Selection Advisory Committee, for the First Department. As a member of the committee, I evaluate applicants who seek to serve as judicial hearing officers. Applicants are evaluated based on competence, work ethic, experience and judicial temperament. In New York State, JHOs typically supervise jury selection, attempt to resolve discovery disputes, attempt to resolve attorney fee disputes and conduct settlement conferences. In essence, JHOs help to alleviate some of the judicial responsibilities so that full-time judges to preside over trials and hearings in ongoing cases.

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

I taught as an Adjunct Professor at the City University of New York at Lehman College from 2003 to 2005. I taught a real estate law course, which examined general principles of real estate law, modern real estate transactions, preparation of relevant documents, and legal actions associated with realty. Syllabi from 2004 and 2005 are supplied. I no longer have the syllabus from 2003, but it is substantively identical to the syllabi supplied.

In the Spring of 2004, I taught a juvenile delinquency course as an adjunct professor at Monroe College. The course examined the various theories and causes of delinquent behavior in juveniles and the contemporary political, social, and legal techniques to address and deter delinquent acts. The class discussed and examined the role of the Family Court as well as juvenile detention facilities. Syllabus supplied.

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



customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no anticipated receipts from deferred income arrangements nor have I made any arrangements to be compensated in the future for any financial or business interest.

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

I have no intention of pursuing outside employment during any potential service as a United States District Judge, if I am confirmed.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

My wife serves as Deputy Mayor for Legal Affairs and Counsel to Mayor Michael Bloomberg for the City of New York. Her term is set to expire on December 31, 2013. As a state judge, I have recused myself sua sponte from cases in which the City of New York was a party and would continue to do so if confirmed as a United States District Judge. Otherwise, I am not aware of any potential conflicts of interest if I am confirmed as a United States District Judge for the Southern District of New York. I would address any potential conflict of interest by consulting the Code of Conduct for United States Judges and any other relevant statute, ethical canon, or applicable rule.

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



If confirmed, I would resolve any potential conflict of interest by consulting the Code of Conduct for United States Judges and any other relevant statute, ethical canon, or applicable rule. I would also disclose any and all potential conflict of interest to the respective parties.

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

Throughout my career, I have been involved in various activities and programs which have centered on educating children about the American legal system, encouraging college graduates to pursue a legal education, and mentoring students. From 1990 to 1991, I participated in the Kings County District Attorney's Office Adopt a School Program. Another attorney-volunteer and I were assigned to a public elementary school in Brooklyn, New York. The schools were typically located in underserved communities. I taught the children about the criminal justice system, including basic criminal law and procedure, as well as the role of the police, prosecutor, defense attorney, judge, and corrections department. I visited the school at least once a week every two weeks throughout most of the academic school year.

From 1992 to 1998, I served on the Puerto Rican Bar Association Scholarship Selection Committee. As a member of the committee, I was responsible for ensuring that the scholarship applications were available to law students nationally. In addition, I met with members of the committee to review and rate several hundred applications, and subsequently select the scholarship recipients. Scholarships were awarded based on academic achievements and/or financial need.

From 1992 to 1994 and 1997 to 1998, I served as a board member of the Puerto Rican Bar Association Scholarship Fund. The Fund is a non-profit entity that raises money for Hispanic law students who demonstrate exceptional academic achievements and/or financial need. I was intimately involved in all logistical aspects of planning the annual dinner gala, which is the primary means of raising funds for the scholarships.

26. **Selection Process:**

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

I submitted a Questionnaire to the Judicial Screening Panel for Senator Charles E. Schumer on March 26, 2012. On April 10, 2012, I was interviewed by members of the Judicial Screening Panel. On April 22, 2012, I interviewed with Senator Schumer. Soon thereafter, on April 26, 2012, Senator Schumer announced that he was recommending me to President Obama. Since April 26, 2012, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On June 18, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 20, 2012, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

I, NELSON S. ROMAN,  
do swear that the information provided in this statement is, to  
the best of my knowledge, true and accurate.

September 20<sup>th</sup>, 2012

\_\_\_\_\_  
(DATE)

*Nelson S Roman*

\_\_\_\_\_  
(NAME)

*F. Gomez*

\_\_\_\_\_  
(NOTARY)



*Supreme Court, Appellate Division  
First Department*



*Nelson S. Román*

*Associate Justice*

*27 Madison Avenue*

*New York, N.Y. 10010*

*212-340-0400*

January 8, 2013

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 20, 2012 to be United States District Judge for the Southern District of New York. Incorporating the additional information listed below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

**Q. 13b. – Provide citations for all opinions you have written, including concurrences and dissents.**

*Fabrizi v. 1095 Avenue of the Americas, L.L.C.*, 98 A.D.3d 864, 951 N.Y.S.2d 480 (N.Y.App. Div. 2012)

*Melcher v. Greenberg Traurig, LLP* (awaiting final publication)

**Q. 13f – Reversed decisions**

*People v. Martinez*, 84 A.D.3d 550, 925 N.Y.S.2d 8 (2011), modified by \_\_ N.E.2d \_\_, 2012 WL 6571277 (Ct. App. Dec. 18, 2012). The Appellate Division held that defendant's discharge of a gun without any regard as to whom he was shooting, which resulted in a bystander being shot, rose to the level of depraved indifference murder. The Court of Appeals modified that decision, holding that the depraved indifference murder count should be dismissed and the case remitted to the Supreme Court for resentencing based on a charge of manslaughter in the first degree. The Court of Appeals found that defendant's acts of obtaining a gun after an altercation with the victim, chasing him down, and firing four or five shots at the victim at close range, after he ran into the occupied lobby of a building, were inconsistent with a conviction for depraved indifference murder.

**Q. 14 – Recusal**

I recused myself sua sponte from the following cases because the City of New York was a named party to the litigation. My wife, Carol Robles-Román, serves as Deputy Mayor for Legal Affairs and Counsel to Mayor Michael Bloomberg for the City of New York.

*Libertypointe Bank v. 75 East 125<sup>th</sup> Street, LLC*

*Saadia Shapiro v. The City of New York, et al.*

*Wood v. East 49<sup>th</sup> Street and the City of New York, et al.*

*Garcia v. The City of New York, et al.*

*Administration for Children's Services in re: Medina v. Cruz*

*Matter of Beckles v. Cestero, Commissioner, New York City Department of Housing Preservation and Development*

*Silverio v. The City of New York, et al.*

I recused myself sua sponte from the following case because I know the plaintiff.

*Colwin v. Katz, et al.*

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

  
Nelson S. Román

cc:

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510