



## A summary of media-related decisions by Supreme Court nominee Sonia Sotomayor

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Judge Sonia Sotomayor has served on the U.S. Court of Appeals for the Second Circuit for more than 10 years, and before that as a district judge in New York City for six years. With all that federal judicial experience behind her — reportedly more than any Supreme Court nominee in a century — it is surprising to see that no clear standard on First Amendment issues has emerged from her many cases.

Sotomayor has defended the rights of the public and the news media to gain access to court proceedings and be free from judicial and prosecutorial restraints on speech. She has allowed access to important information in the investigation into a suicide by a White House official. And other decisions show a careful analysis of the First Amendment issues at stake.

But because there are so few of these decisions, and because of the cases that went the other way — particularly in allowing the government to withhold information from FOIA requesters — it is difficult to know how she will decide the cases that concern journalists.

### **Prior Restraints**

In *U.S. v. Quattrone* in 2005, Sotomayor wrote for a unanimous panel striking down a gag order on the news media issued during the retrial of former Credit Suisse First Boston executive Frank Quattrone. Pointing to problems faced by jurors in a similar case, the trial court judge ordered that “no member of the press or a media organization is to divulge at any time until further order of this Court the name of any prospective or selected juror.”

Sotomayor, writing for the panel, found that the order violated the First Amendment. “A judicial order forbidding the publication of information disclosed in a public judicial proceeding collides with two basic First Amendment protections: the right against prior restraints on speech and the right to report freely on events that transpire in an open courtroom,” she wrote.

Though noting that the prohibition on prior restraints is not absolute, Sotomayor highlighted the long line of cases that found that such restraints are “the most serious and the least tolerable infringement on our freedoms of speech and press.” She added that the gag on the press, beyond constituting a prior restraint, “also infringed their freedom to publish information disclosed in open court. This imposed an independent constitutional harm on [the press] and rendered the district court’s violation of the First Amendment even more plain.”

Sotomayor concluded that “[b]ecause the facts of this case did not justify the imposition of a prior restraint or an infringement of appellants’ right to publish information disclosed in open court, we hold that the district court’s order violated the Free Speech and Free Press Clauses of the First Amendment.”

In *Doe v. Mukasey*, Sotomayor joined a panel of the U.S. Court of Appeals in 2008 in striking down a portion of the Patriot Act that placed a gag order on recipients of “national security letters.”

The lawsuit, filed by the American Civil Liberties Union, challenged the law which gagged recipients of national security letters, administrative subpoenas sent by the FBI to organizations — telephone companies, Internet service providers, financial institutions, and even libraries — requesting subscriber information. The letters prohibit the recipients from speaking about their contents to anyone, including the customers whose information the FBI is requesting.

The court ruled that the gag orders violated the First Amendment and constituted a prior restraint on speech. Additionally, the court shifted the burden of proof for the necessity of the gag order to the government.

In effect the decision gives courts the opportunity to determine whether government restrictions on speech are justified, instead of allowing the FBI to make that call.

## Secret Courts

In *Gambale v. Deutsche Bank AG* in 2004, Sotomayor signed on to a unanimous opinion, written by Judge Robert Sack, which allowed a district court to unseal court documents despite party objections.

The parties in the sex discrimination suit agreed to keep court documents, including a diversity study, sealed as a part of the settlement. Nevertheless, the district court on its own initiative unsealed several documents in a public order which also disclosed that “the parties agreed to a multi-million dollar settlement.”

Deutsche Bank appealed the unsealing order, telling the appellate court that it settled the case in large part to keep sealed documents from public view and “that after the stipulation of dismissal was filed, the court lacked jurisdiction to issue such an order.” The appellate court disagreed, in part because “[t]he public has a common law presumptive right of access to judicial documents ... and likely a constitutional one as well.”

The panel did find that the district court acted improperly by releasing the settlement amount without a showing of public interest in disclosure, since the amount was “set forth in settlement documents that were entered into on a confidential basis between the parties and are not themselves part of the court record.” But the court added that “[w]e simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again.”

In *U.S. v. Smith* in 2005, Sotomayor signed on to a unanimous opinion written by Judge Barrington D. Parker, which cautioned the U.S. Marshals Service to consult the court

before imposing limitations on courthouse access, “because the judiciary is uniquely attuned to the delicate balance between defendants’ Sixth Amendment rights to public trial, the public and press’s First Amendment rights to courtroom access, and the overarching security considerations that are unique to the federal facilities containing courtrooms.”

## Freedom of Information

Sotomayor’s freedom of information jurisprudence has skewed more in favor of withholding records under the federal Freedom of Information Act rather than ordering their release. However, she did have one notable order releasing the suicide note of former deputy White House counsel Vince Foster.

In the Foster case, *Dow Jones v. Department of Justice*, the publisher of the *Wall Street Journal* sued the Justice Department for reports prepared by the U.S. Park Police and the FBI concerning Foster’s death and for a copy of the apparent suicide note found in his briefcase. Citing law enforcement exemptions, the Justice Department redacted portions of the Park Police report and the entire FBI report and the copy of the note. Sotomayor sided with the government on the reports but wrote that the note “touched on several events of public interest,” including the controversy related to the Whitewater investment issue, and that it “implicated government agencies and employees in misconduct.”

On the side of withholding, in two different opinions she authored for unanimous Second Circuit panels, Sotomayor ruled that FOIA exemptions were properly applied to support documents’ exemption from disclosure. In *Tigue v. U.S. Department of Justice*, she affirmed a district court ruling that a memo describing and outlining how the Internal Revenue Service should conduct criminal tax investigations was an internal document that was never made final and was properly withheld under Exemption 5.

In *Wood v. Federal Bureau of Investigation*, newspaper reporter Alexander Wood of the *Journal Inquirer* in Connecticut sought documents related to an investigation of Connecticut FBI agents who had been accused of misrepresenting information in arrest warrant affidavits. Sotomayor’s opinion found the documents were properly withheld as work product under Exemption 5. That case also held that the names of those agents were protected from release under Exemption 6, which protects personal privacy.

She also joined a 2001 decision dismissing a claim for release of documents from the National Archives and Records Administration in *Robert v. National Archives*. There, the Second Circuit held the Archives had shown that it conducted a thorough search and released all records related to the request. The plaintiff had suggested additional records existed but were not turned up in the search and were constructively “withheld.” The court disagreed and found no jurisdiction for the case with no records being withheld under FOIA.

In a similar case while a district judge, Sotomayor dismissed a case where she found that a FOIA requester failed to exhaust his administrative remedies and also did not show an agency had withheld any records. In *Greene v. Federal Bureau of Investigation*, the plaintiff requested records in the early 1980s and received responses that the FBI was experiencing delays; in two

later requests to the FBI he received replies that no records existed in response to his request. After Greene sued under FOIA, Sotomayor wrote that the first request did not rise to an “adverse” determination by the FBI to allow for an appeal and that Greene did not exhaust the administrative remedies required by the law. She dismissed the suit regarding the two later requests because Greene could not show the agency was actually withholding any records.

## Libel

Early in her judicial career on the federal district court in New York, Sotomayor wrote one of her few opinions dealing with a defamation lawsuit against a news media outlet.

In the 1994 case *Aequitron Medical Inc. v. CBS*, Sotomayor allowed a lawsuit to go forward against CBS News for various business claims, while dismissing defamation and trade libel claims for procedural reasons.

Aequitron, a Minnesota-based company that manufactured infant monitors, sued CBS after it aired a segment on its morning show that reported on the failure of some Aequitron monitors that were used to prevent Sudden Infant Death Syndrome. In the 1989 airing of *CBS This Morning*, the reporters described flaws in the monitors, showed tests conducted by an expert in biomedical engineering, and interviewed mothers who blamed their infants’ deaths on a failure of the Aequitron monitors.

The suit was first brought in Minnesota, where a district court dismissed the trade libel and defamation claims for a lack of personal jurisdiction. The business claims were allowed to go forward. The case was then transferred to Sotomayor’s court in the Southern District of New York. In an opinion focusing on procedural issues, Sotomayor upheld the Minnesota court’s ruling dismissing the trade libel and defamation claims and allowing the business claims to go forward.

## Reporter’s Privilege

Sotomayor joined a panel that upheld the prosecution of an investigative journalist in *U.S. v. Sanders*, who was charged with stealing materials from the wreckage of TWA Flight 800, which crashed into the Atlantic Ocean in 1996.

The unanimous 2000 decision is one of Sotomayor’s only cases dealing with the reporter’s privilege, although this was not the typical privilege case in which a reporter was attempting to quash a subpoena. The panel held that the reporter’s privilege did not shield a journalist who alleged he was only prosecuted as a means to coerce him to reveal his source.

The facts of *Sanders* are unique, and because it is the only case Sotomayor has participated in dealing with a reporter’s privilege, it doesn’t offer much of a glimpse into her view of a First Amendment-based privilege.

Reporter James Sanders and his wife, Elizabeth, a TWA employee, were given a piece of seat material from the wreckage by TWA pilot Terrell Stacey. Sanders had the fabric tested, and claimed that the test revealed a substance that was consistent with missile fuel

residue. In Sanders' 1997 book, "The Downing of TWA Flight 800," he alleged that the U.S. military had mistakenly shot down the commercial airliner off of Long Island with a missile.

In 1999, the Sanders were convicted of stealing evidence from a civil aircraft. He was sentenced to three years probation and 50 hours of community service, while his wife was sentenced to one year of probation along with 25 hours of community service.

Stacey testified at their criminal trial that Elizabeth had coerced him into speaking with James and giving the couple the fabric swatch.

The couple appealed their convictions to the U.S. Court of Appeals in New York, arguing that they were prosecuted vindictively. They argued that they were prosecuted in an attempt to reveal their source, and that a reporter's privilege should be applied to protect them from that prosecution.

The panel disagreed. It found that a reporter's privilege typically is used by a court to control who can be compelled to testify before it. Such a privilege does not give a journalist a right not to be prosecuted, because the determination of whether to prosecute is made by a federal prosecutor, and is not up to the discretion of the court, the court found.

In refusing to find that the prosecution was vindictive and that the reporter's privilege protects the couple, the court let the convictions stand.

## Copyright

As a District Court judge, Sotomayor wrote the opinion in *Tasini v. New York Times*, a case that was eventually overturned by the U.S. Supreme Court.

In 1993, a group of six freelance authors sued the New York Times Company, Newsday, Inc., and Time, Inc., claiming that the print publishers had infringed upon the writers' copyrights when the publishers licensed rights to copy and sell articles to computerized databases such as Lexis/Nexis. The media companies argued that they were authorized to reproduce the articles as a "collective work" under the federal Copyright Act.

Sotomayor sided with the media companies in holding that the writers did not have a copyright interest in the articles. Instead, Sotomayor held that electronic versions are "revisions" of the original articles which are covered by the publishers' copyright interest in the collective work of the periodicals.

The case was one of the first applying the collective work provision of the Copyright Act to modern electronic technology, Sotomayor noted. In the 24-page opinion, Sotomayor analyzed in detail the text and intent of the Copyright Act.

"If today's result was unintended, it is only because Congress could not have fully anticipated the ways in which modern technology would create such lucrative markets for revisions; it is not because Congress intended for the term revision to apply any less broadly than the Court applies it today," she wrote.

The case was appealed to the Second Circuit, which overturned the decision, and held

that the reproduced articles were new works, and not revisions included in a collective work. The U.S. Supreme Court upheld the Second Circuit 7–2, ruling that the authors had copyright interests in the electronic editions of their works.

In a 1997 case, Sotomayor sided with “Seinfeld” in a copyright lawsuit brought by the owners of the television show against a book publishing company. *Castle Rock Entertainment v. Carol Publishing Group* involved the issue of “fair use.”

Carol Publishing Group had produced a Seinfeld trivia book based on the popular television series. Castle Rock, the company that owned the copyright in the Seinfeld series, sued Carol Publishing alleging that the book infringed on their copyright.

Sotomayor held that the book was an infringement of Castle Rock’s copyright in Seinfeld because it “appropriated original elements” of the television show. Additionally, Sotomayor analyzed each of the four “fair use” factors and found that Carol Publishing could not avail itself of the fair use defense.

Though she held that the book was a “transformative use” of the Seinfeld show that favored Carol Publishing on the first fair use factor regarding the purpose of the work, she went on to find that the remaining three factors favored Castle Rock.

“Seinfeld is a work of fiction, and such works are accorded special status in copyright law; [the book] draws upon ‘essential’ elements of Seinfeld, and it draws upon little else; and, most importantly, [it] occupies a market for derivatives which plaintiff — whatever it decides — must properly be left to control,” she wrote.

The judgment was then affirmed by the Second Circuit.

## Student Speech

Sotomayor’s record is mixed when it comes to student speech. In *Doninger v. Nieboff* in 2008, she signed on to a decision that allowed a school to disqualify a candidate for student office who called school administrators “douchebags” on an off-campus blog and encouraged readers to contact the principal “to piss her off more.”

Sotomayor and her colleagues concluded that a student may be disciplined for speech “occurring off school grounds, when this conduct ‘would foreseeably create a risk of substantial disruption within the school environment,’ at least when it was similarly foreseeable that the off-campus expression might also reach campus.” The court found that this test was met, in part because the student used lewd language in the blog post. But it also relied on the idea that participation in extracurricular activities is a privilege rather than a right and declined to consider “whether a different, more serious consequence than disqualification from student office would raise constitutional concerns.”

On the other hand, in the 2006 case *Guiles ex rel. Guiles v. Marineau*, Sotomayor signed on to a unanimous opinion which upheld the right of 13-year-old Zachary Guiles to wear in his Vermont middle school a T-shirt criticizing George W. Bush “as a chickenhawk president and accus[ing] him of being a former alcohol and cocaine abuser.” Guiles was disciplined when he refused to cover references to drugs and alcohol on the shirt, but

the court rejected the idea that “*all* images of illegal drugs and alcohol” could be prohibited. It added that the shirt was not disruptive, noting that “Guiles wore the T-shirt on average once a week for two months without any untoward incidents occurring.” The court ordered the school to expunge Guiles’ record.

## Other First Amendment Issues

### *Campaign Finance*

In 2005, Sotomayor joined seven of her colleagues in declining to review *en banc* the court’s 2005 decision in *Landell v. Sorrell*. That decision upheld, in part, Vermont’s strict campaign finance restrictions: depending on the office, candidates for office were limited to spending between \$2,000 and \$300,000, and contributors were limited to contributing between \$200 and \$400 during an election cycle.

The panel decision found the law’s contribution limits to be permissible and sent the case back to the district court to consider whether the spending limits were constitutional. Sotomayor joined a concurring opinion by Judge Robert Sack, which declined to rehear the case largely for procedural reasons. “The issue for us, of course, is not whether the opinion for the panel majority or the dissent was right,” the opinion read, because “[m]ere substantive disagreement with a panel decision is not ... sufficient reason for an *in banc* rehearing.” The Supreme Court reversed the panel decision and invalidated the Vermont law as a violation of the First Amendment in 2006.

### *Restrictions on Expression*

In one case interpreting the validity of a New York statute prohibiting people from wearing masks, Sotomayor joined a panel decision finding the law constitutional despite a First Amendment challenge from members of a Ku Klux Klan group.

In *Church of the American Knights of the Ku Klux Klan v. Kerik*, the Klan made several First Amendment arguments after they were denied a parade permit because the participants would be masked. The Court’s decision thoroughly considered the arguments, focusing on the argument that the Klan’s masks were expressive speech.

While the Second Circuit agreed the Klan dress, including robes, hoods, and masks, was expressive speech, it found that the masks alone were not expressive. Thus, it was constitutionally permissible for New York to ban them.

In 2005, Sotomayor joined the panel’s majority opinion in *Hobbs v. Westchester*, upholding a county executive order that prevented a convicted sex offender from receiving a permit to perform a balloon act for children on county property. The panel held that the order did not violate the First Amendment because it was narrowly tailored to the compelling state interest of protecting children from sexual predators. The U.S. Supreme court declined to review the case.

In *Pappas v. Giuliani*, Sotomayor dissented in a 2-1 panel decision in 2002 that upheld the firing of a New York City police officer who anonymously mailed racially bigoted materials to a charity. Thomas Pappas, the police officer, on at least two occasions returned char-

ity reply envelopes, from a personal mailbox, after stuffing them with fliers that contained anti-Black and anti-Semitic messages. Pappas claimed the envelope stuffing was a form of protest and that he was tired of being solicited for donations. He was fired and subsequently sued the city alleging that his First Amendment rights were violated.

The majority rejected Pappas' claim, finding that the risk of harm to the police department's ability to function caused by Pappas' mailings outweighed his individual right to express himself. It upheld a district court decision that granted the defendants' motion for summary judgment.

Sotomayor wrote a pointed dissent focused on the facts that Pappas mailed the fliers anonymously on his own time, did not connect the fliers to the police department, did not have policymaking authority or contact with the public as an employee in the information technology department, and caused no workplace disruption. She also noted that it took the investigative work of two police departments to bring his speech to public attention. "To be sure, I find the speech in this case patently offensive, hateful, and insulting. The Court should not, however, gloss over three decades of jurisprudence and the centrality of First Amendment freedoms in our lives because it is confronted with speech it does not like and because a government employer fears a potential public response that it alone precipitated."

Sotomayor wrote for the panel in *Farrell v. Burke* in 2006, rejecting a parolee's constitutional challenge to a special term of his parole that prohibited him from possessing "pornographic material." The panel found the condition could not be challenged for vagueness, because it did not reach activity substantially protected by the First Amendment, noting that a paroled sex offender had limited First Amendment rights, the plaintiff was the only person affected by the condition, and no chilling effect could be attributed to the condition. The panel upheld the special condition as applied to the plaintiff, saying that even if "pornography" is a vague term, a book called "Scum: True Homosexual Experiences," including explicit pictures and descriptions of sex between men and boys, was "inarguably 'pornographic.'" The panel also rejected a First Amendment-based claim that the condition was overly broad, finding any hypothetical overbreadth was not real or substantial.

### *Civil Rights and Retaliation*

In another Second Circuit case in which Sotomayor joined a panel decision, *Zieper v. Metzinger*, the Court narrowly parsed the difference between whether a plaintiff had enough evidence to go to trial after claiming an FBI agent unlawfully coerced the plaintiff into removing video from the Internet and whether the defendant in the case had qualified immunity from the suit.

The Court concluded that the plaintiffs had enough evidence of coercion to go to trial, because a reasonable juror could have found a violation of the First Amendment, but also held that a reasonable FBI agent or other official would not have known they were possibly violating the First Amendment, and would thus be immune from liability.

In the 2006 case *Papineau v. Parmley*, Sotomayor held that a group of police officers' request for qualified immunity in a civil rights case was barred because protesters had a "clearly established" First Amendment right to demonstrate on private property without po-

lice interference. The officers were appealing a district court’s denial of summary judgment in a case arising from a protest that ended with police arresting and allegedly assaulting the demonstrators. The fact that a few protesters had gone onto a public highway, Sotomayor wrote, did not give rise to the “clear and present danger” that would have made qualified immunity appropriate.

In *Singh v. City of New York*, Sotomayor wrote for a unanimous panel in 2008 that upheld a district court dismissal of a public employee’s First Amendment claim. The case involved the claims of six New York City Fire Department alarm inspectors that they should be compensated for their commutes to work under the Fair Labor Standards Act because they were required to carry inspection documents home with them. One of the inspectors, Rajkumar Singh, also claimed that he was suspended — in violation of his First Amendment rights — for speaking out about concerns over the practice as well as concerns over the length of time new inspectors were considered “provisional” employees. The Second Circuit panel rejected that claim: “Here, Singh’s speech was not a matter of public concern, relating only to internal employment policies of the City and made only in his capacity as an employee and not as a citizen.”

Sotomayor authored a unanimous 2007 panel decision in *Krabam v. Lippman*, upholding New York’s judicial rule prohibiting the appointment of political party leaders, as well as their family members or coworkers, as fiduciaries in court proceedings. An attorney who served as a county party leader challenged the rule on First Amendment grounds, claiming that it infringed on her right to freely associate with political groups. The rule had been enacted to cut down on the practice of rewarding party leaders by appointing members of party leaders’ firms as fiduciaries. In its 2007 ruling, the Second Circuit applied “rational basis” review to the rule, reasoning that it did not interfere with the function of political parties in deciding to apply the standard. The court found that preventing corruption was a legitimate government interest and the rule was rationally related to that interest.

As a district court judge in 1997, Sotomayor held in *U.S. v. Spy Factory, Inc.* that “[a]lthough there may be a constitutional right to hear there has never been articulated nor implied any constitutional right to hear the private speech of others or to be provided with a specific means to record one’s own speech.” The case involved the prosecution of Spy Factory owners and employees on charges of conspiracy to sell illegal bugging and wiretapping devices. The defendants challenged the vagueness of the statute and at oral argument raised a First Amendment claim, which Sotomayor quickly dispatched.

In *Porr v. Daman*, Sotomayor joined in a panel decision that rejected a public school teacher’s First Amendment retaliation claim in 2008. Walter Porr was a teacher in a Bronx public school who spoke out about conflict he was having with another teacher and about concerns he had over fire safety. He claimed that after speaking out, the school’s principal, superintendent and others in the administration created a pattern of harassment that forced him to resign. The court issued a summary order affirming a district court judge’s summary judgment ruling in favor of the school. It said that Porr’s conflict with the other teacher was not a matter of public concern, so it did not garner First Amendment protection. The court found that the safety concerns were a matter of public concern, but that Porr could not show a connection between speaking out about safety and being forced to resign.

In *Brenes v. City of New York*, Sotomayor joined in a panel decision in 2009 that reinstated a teacher’s First Amendment retaliation claim against the principal of the school in which he worked, but upheld a district court’s dismissal of his claims against other school officials. Ricardo Brenes had been a teacher at Norman Thomas High School in December 1997 when he participated in a *New York Post* article that dealt with attendance fraud in New York City schools. Less than two months after the article, the principal tried to reject Brenes’ appointment to teach at the school. She was overruled, but may have had the expectation that he would be let go over the summer. When he returned in the fall, Brenes began receiving negative performance evaluations and he was fired in 1999. The court reasoned that Brenes might be able to show a connection between the article and the principal’s actions, but that because the other school officials’ involvement did not come until a year after publication, he could not show a connection with their actions and his speech.

### *Religious Displays*

While a district court judge, Sotomayor struck down a city ordinance that prohibited the display of religious monuments at a city park in *Flamer v. City of White Plains*. While the city had argued that allowing such displays would violate the church-and-state separation requirement of the First Amendment, Sotomayor agreed with a local rabbi that the prohibition was a content-based restriction on speech.

In previous cases, the Supreme Court “implicitly recognize[d] that, in the mind of the reasonable observer, expressive activities in true public forums are symbolically linked to the public, not the government, and that religious speech in no way alters this deeply-rooted association. Quite the contrary, these decisions make clear that by permitting religious speech on a nondiscriminatory basis, government sends a message of neutrality, not endorsement,” Sotomayor wrote as she concluded the plaintiff, a rabbi, should be allowed to erect a menorah in a local park.

Similarly, as a circuit judge, Sotomayor joined an unsigned decision in *Amandola v. Town of Babylon*, directing a city government to make its Town Hall annex available to a religious groups. Using similar reasoning to *Flamer*, the Court said a town’s refusal to make its public space available for religious spaces violated the groups’ right to free speech.

## Citations to cases discussed:

*Aequitron Medical, Inc v CBS*, 1994 WL 30414 (S.D.N.Y.)  
*Amandola v. Town of Babylon*, 251 F.3d 339 (2d Cir. 2001)  
*Brenes v. City of New York*, 2009 WL 742163 (unpublished) (2d Cir. 2009)  
*Castle Rock Entertainment v. Carol Publishing Group*, 955 F. Supp. 260 (S.D.N.Y. 1997)  
*Church of the American Knights of the Ku Klux Klan v. Kerik*, 356 F.3d 197 (2d Cir. 2004)  
*Doe v. Mukasey*, 549 F.3d 861 (2d Cir. 2008)  
*Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008)  
*Dow Jones v. Department of Justice*, 880 F. Supp. 145 (S.D.N.Y. 1995)  
*Farrell v. Burke*, 449 F.3d 470 (2d Cir. 2006)  
*Flamer v. City of White Plains*, 841 F. Supp. 1365 (S.D.N.Y. 1993)  
*Gambale v. Deutsche Bank AG*, 377 F.3d 133 (2d Cir. 2004)  
*Greene v. Federal Bureau of Investigations*, 1993 WL 288132 (S.D.N.Y. Jul. 26, 1993)  
*Guiles ex rel. Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006)  
*Hobbs v. Westchester*, 397 F.3d 133 (2d Cir. 2005)  
*Kraham v. Lippman*, 478 F.3d 502 (2d Cir. 2007)  
*Landell v. Sorrell*, 406 F.3d 159 (2d Cir. 2005)  
*Papineau v. Parmley*, 465 F.3d 46 (2d Cir. 2006)  
*Pappas v. Giuliani*, 290 F.3d 143 (2d Cir. 2002)  
*Porr v. Daman*, 299 Fed. Appx. 84 (2d Cir. 2008)  
*Robert v. National Archives*, 2001 WL 38277 (2d Cir., Jan. 12, 2001)  
*Singh v. City of New York*, 524 F.3d 361 (2d Cir. 2008)  
*Tasini v. New York Times*, 972 F. Supp. 804 (S.D.N.Y. 1997)  
*Tigue v. U.S. Department of Justice*, 312 F.3d 70 (2d Cir. 2002)  
*U.S. v. Quattrone*, 402 F.3d 304 (2d Cir. 2005)  
*U.S. v. Sanders*, 211 F.3d 711 (2d Cir. 2000)  
*U.S. v. Smith*, 426 F.3d 567 (2d Cir. 2005)  
*U.S. v. Spy Factory, Inc.*, 951 F. Supp. 450 (S.D.N.Y. 1997)  
*Wood v. Federal Bureau of Investigation*, 432 F.3d 78 (2d Cir. 2005)  
*Zieper v. Metzinger*, 474 F.3d 60 (2d Cir. 2007)