

**J. Andrew Kent**

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New York, NY 10023  
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**PROFESSIONAL EXPERIENCE**

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Fordham Law School

Joseph M. McLaughlin Chair (2023- )  
John D. Feerick Research Chair (two-year rotating chair) (2020-22)  
Dean's Distinguished Research Scholar (2016-17)  
Professor of Law (2013-present)  
Associate Professor (2007-13), with tenure (2012-13)  
Fellow, Louis Stein Center for Law and Ethics

Columbia Law School

Visiting professor of law (fall 2018, fall 2019, fall 2020, spring 2021) (teaching Professional Responsibility and National Security Law)  
Adjunct professor of law (fall 2021, January term 2023, spring 2023, scheduled fall 2023 and spring 2024) (teaching Federal Courts, Advanced Topics in Constitutional Law, and Professional Responsibility)

Universidad CEU San Pablo-Madrid

Visiting professor (spring 2018, spring 2019)

Pro Bono Panel of the U.S. Court of Appeals for the Second Circuit (2015-2020)

Provided appellate representation to indigent upon request of the court

Office of the Attorney General of New York

Senior Counsel to the Solicitor General (2014-2015) (while on leave from Fordham)

Harvard Law School

Climenko Fellow and Lecturer on Law (2005-2007)

Wilmer Cutler Pickering Hale and Dorr, Boston, MA

Associate in Litigation and Securities Departments (2004-2005)

Sullivan & Cromwell, New York, NY

Associate in Litigation Department (2002-2004)

Pro Bono Fellow (2001-2002)

Hon. Robert A. Katzmann, U.S. Court of Appeals for the Second Circuit. Law clerk (2000-2001)

Hon. Carol B. Amon, U.S. District Court for the Eastern District of New York. Law clerk (1999-2000)

**EDUCATION**

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Yale Law School, J.D.

Harvard College, A.B. in Social Studies, *magna cum laude*

**MAJOR COURSES TAUGHT AND RESEARCH AREAS**

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Constitutional Law, Federal Courts, Professional Responsibility/Legal Ethics, Legal History, Foreign Relations Law, Public International Law, the Law of the Presidency, National Security Law

**PUBLICATIONS: LONGER FORM**

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*National Security Torts in the Post-Bivens Era*, in JUDGING NATIONAL SECURITY, edited by Robert M. Chesney & Stephen I. Vladeck, Oxford University Press (forthcoming 2023)

*Lessons for Today's Bivens and Qualified Immunity Debates from Nineteenth Century Officer Tort Litigation*, 96 NOTRE DAME LAW REVIEW 1755 (2021)

*Fiduciary Law and the Law of Public Office* (with Ethan Leib), 62 WILLIAM & MARY LAW REVIEW 1297 (2021)

*Hernandez v. Mesa: Questions Answered and Questions Avoided*, AMERICAN CONSTITUTION SOCIETY ANNUAL SUPREME COURT REVIEW, 2019-20 TERM, at 189

*May Class Counsel Also Represent Lead Plaintiffs?* (with Bruce A. Green), 72 FLORIDA LAW REVIEW 1083 (2020)

*Faithful Execution and Article II*, 132 HARVARD LAW REVIEW 2111 (2019) (with Ethan J. Leib and Jed H. Shugerman)

Cited in House Judiciary Committee, *Impeachment of Donald J. Trump*, House Report 116-326 (2020); *Seila Law LLC v. Consumer Financial Protection Bureau*, -- U.S. --, 140 S. Ct. 2183 (2020) (Kagan, J., dissenting); *United States v. UCB, Inc.*, 970 F.3d 835 (7th Cir. 2020); *Thompson v. Trump*, 590 F.Supp.3d 46 (D.D.C. 2022)

*Congress and the Independence of Federal Law Enforcement*, 52 UNIVERSITY OF CALIFORNIA AT DAVIS LAW REVIEW 1927 (2019)

*Executive Power and National Security Power* (with Julian D. Mortenson), in THE CAMBRIDGE COMPANION TO THE UNITED STATES CONSTITUTION, edited by J.W. Compton and K. Orren, Cambridge University Press (2018)

*Piracy and Due Process*, 39 MICHIGAN JOURNAL OF INTERNATIONAL LAW 385 (2018)

*The Jury and Empire: The Insular Cases and the Anti-Jury Movement in the Gilded Age and Progressive Era*, 91 SOUTHERN CALIFORNIA LAW REVIEW 375 (2018)

Cited in *Oriental Financial Servs. Corp. v. Umpierre*, No. CV 3:17-01745, 2018 WL 3629674 (D.P.R. 2018)

*The Rebel Soldier Who Became Chief Justice of the United States: The Civil War and its Legacy for Edward Douglass White of Louisiana*, 56 AMERICAN JOURNAL OF LEGAL HISTORY 209 (2016)

*Disappearing Legal Black Holes and Converging Domains: Changing Individual Rights Protection in National Security and Foreign Affairs*, 115 COLUMBIA LAW REVIEW 1029 (2015)

*Are Damages Different?: Bivens and National Security*, 87 SOUTHERN CALIFORNIA LAW REVIEW 1123 (2014)

Cited in *Ziglar v. Abassi*, 582 U.S. \_\_, 137 S. Ct. 1843 (2017); *Meshal v. Higgenbotham*, 804 F.3d 417 (D.C. Cir. 2015); *Boule v. Egbert*, 998 F.3d 370 (9th Cir. 2021) (Bumatay, J., dissenting from denial of rehearing en banc); *Quinones-Pimentel v. Cannon*, 2022 WL 826344 (D.P.R. Mar. 17, 2022)

*Citizenship and Protection*, 82 FORDHAM LAW REVIEW 2115 (2014)

*Judicial Review for Enemy Fighters: The Court's Fateful Turn in Ex parte Quirin, the Nazi Saboteur Case*, 66 VANDERBILT LAW REVIEW 153 (2013)

*The New Originalism and the Foreign Affairs Constitution*, 82 FORDHAM LAW REVIEW 757 (2013)

*Evaluating the Palestinians' Claimed Right of Return*, 34 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 149 (2012)

*Do Boumediene Rights Expire?*, 161 UNIVERSITY OF PENNSYLVANIA LAW REVIEW PENNUMBRA 20 (2012)

*Boumediene, Munaf and the Court's Misreading of the Insular Cases*, 97 IOWA LAW REVIEW 101 (2011)

Cited in *Aurelius Inv., LLC v. Puerto Rico*, 915 F.3d 838 (1st Cir. 2019)

*The Constitution and the Laws of War During the Civil War*, 85 NOTRE DAME LAW REVIEW 1839 (2010)

*A Textual and Historical Case against a Global Constitution*, 95 GEORGETOWN LAW JOURNAL 463 (2007)

Cited in *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007); *Al-Hela v. Biden*, 66 F.4th 217 (2023) (en banc) (Rao, J., concurring in judgment and dissenting in part)

*Congress's Under-Appreciated Power to Define and Punish Offenses against the Law of Nations*, 85 TEXAS LAW REVIEW 843 (2007)

Cited in *United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012); *Al Bahlul v. United States*, 767 F.3d 1 (D.C. Cir. 2014) (Brown, J., concurring in part and dissenting in part); *Sarei v. Rio Tinto, PLC*, 671 F.3d 736 (9th Cir. 2011) (Ikuta, J., dissenting)

#### **PUBLICATIONS: SHORTER FORM**

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*What Happened to Post-Trump Reform?* (with Quinta Jurecic), LAWFARE, Mar. 28, 2002, <https://www.lawfareblog.com/what-happened-post-trump-reform>

*What Merrick Garland Said about Jan. 6* (with Quinta Jurecic and Benjamin Wittes), LAWFARE, Jan. 6, 2022, <https://www.lawfareblog.com/what-merrick-garland-said-about-jan-6>

*Merrick Garland Needs to Speak Up* (with Quinta Jurecic and Benjamin Wittes), LAWFARE, Dec. 21, 2021, <https://www.lawfareblog.com/merrick-garland-needs-speak>

*The Man Who Should Be Merrick Garland's Role Model*, THE ATLANTIC (May 9, 2021), <https://www.theatlantic.com/ideas/archive/2021/05/doj-reform-levi-garland/618762/>

*Can Congress Do Anything about Trump's Abuse of the Pardon Power?*, LAWFARE, July 24, 2020, [www.lawfareblog.com/can-congress-do-anything-about-trumps-abuse-pardon-power](http://www.lawfareblog.com/can-congress-do-anything-about-trumps-abuse-pardon-power)

*The 2020 Presidential Candidates Stay (Mostly) Quiet on Law Enforcement Independence* (with Quinta Jurecic), LAWFARE, Feb. 19, 2020, [www.lawfareblog.com/2020-presidential-candidates-stay-mostly-quiet-law-enforcement-independence](http://www.lawfareblog.com/2020-presidential-candidates-stay-mostly-quiet-law-enforcement-independence)

*More Justice Department Precedent in Support of Mueller's Obstruction Theory*, LAWFARE, May 14, 2019, [www.lawfareblog.com/more-justice-department-precedent-support-muellers-obstruction-theory](http://www.lawfareblog.com/more-justice-department-precedent-support-muellers-obstruction-theory)

*Faithful Execution of the Office and Laws: New Research on the Original Meaning of Article II*, LAWFARE, Oct. 10, 2018, [www.lawfareblog.com/faithful-execution-office-and-laws-new-research-original-meaning-article-ii](http://www.lawfareblog.com/faithful-execution-office-and-laws-new-research-original-meaning-article-ii)

*Don't Forget Congress When Assigning Blame: Thoughts on Trump v. Hawaii*, HARVARD LAW REVIEW BLOG, June 27, 2018, <https://blog.harvardlawreview.org/dont-forget-congress-when-assigning-blame-thoughts-on-trump-v-hawaii/>

*Self-Pardons, Constitutional History, and Article II* (with Ethan Leib and Jed Shugerman), TAKE CARE, June 16, 2018, <https://takecareblog.com/blog/self-pardons-constitutional-history-and-article-ii>

*Law Professor Letter on President's Article II Powers* (with co-authors), June 4, 2018, <https://protectdemocracy.org/law-professor-article-ii/>

*FBI Independence: Some Thoughts in Response to Robert Litt*, LAWFARE, July 18, 2017, [www.lawfareblog.com/fbi-independence-some-thoughts-response-robert-litt](http://www.lawfareblog.com/fbi-independence-some-thoughts-response-robert-litt)

*Congress Should Reconsider Giving the FBI Director Independence from Presidential Control*, LAWFARE, July 14, 2017, [www.lawfareblog.com/congress-should-reconsider-giving-fbi-director-independence-presidential-control](http://www.lawfareblog.com/congress-should-reconsider-giving-fbi-director-independence-presidential-control)

*What Happened in Hernandez v. Mesa?*, LAWFARE, June 27, 2017, [www.lawfareblog.com/what-happened-hernandez-v-mesa](http://www.lawfareblog.com/what-happened-hernandez-v-mesa)

*Legal Ethics Questions for Trump's Personal Lawyer*, LAWFARE, June 12, 2017, [www.lawfareblog.com/legal-ethics-questions-trumps-personal-lawyer](http://www.lawfareblog.com/legal-ethics-questions-trumps-personal-lawyer)

*The Most Troubling Part of James Comey's Testimony*, FORTUNE, June 8, 2017, <http://fortune.com/2017/06/08/comey-testimony/>

*Ex parte Milligan and the Fourth Circuit's Travel Ban Decision*, LAWFARE, May 30, 2017, [www.lawfareblog.com/ex-parte-milligan-and-fourth-circuits-travel-ban-decision](http://www.lawfareblog.com/ex-parte-milligan-and-fourth-circuits-travel-ban-decision)

- The Scope of the Mueller Probe: Will the Public Learn What Was Uncovered?*, LAWFARE, May 21, 2017, [www.lawfareblog.com/scope-mueller-probe-will-public-learn-what-was-uncovered](http://www.lawfareblog.com/scope-mueller-probe-will-public-learn-what-was-uncovered)
- Why Did Congress Set a Ten-Year Term for the FBI Director?*, LAWFARE, May 17, 2017 (with Susan Hennessey and Matthew Kahn), [www.lawfareblog.com/why-did-congress-set-ten-year-term-fbi-director](http://www.lawfareblog.com/why-did-congress-set-ten-year-term-fbi-director)
- James Comey's Firing Just Got More Disturbing*, FORTUNE, May 10, 2017, <http://fortune.com/2017/05/10/james-comey-fired-timing/>
- Extraterritorial Constitutional Rights: How Does Originalism Answer the Question in Hernandez v. Mesa?, Part II*, THE ORIGINALISM BLOG, Apr. 25, 2017, <https://originalismblog.typepad.com/the-originalism-blog/2017/04/extraterritorial-constitutional-rights-how-does-originalism-answer-the-question-in-hernandez-v-mesa--1.html>
- Extraterritorial Constitutional Rights: How Does Originalism Answer the Question in Hernandez v. Mesa?, Part I*, THE ORIGINALISM BLOG, Apr. 24, 2017, <https://originalismblog.typepad.com/the-originalism-blog/2017/04/extraterritorial-constitutional-rights-how-does-originalism-answer-the-question-in-hernandez-v-mesa-.html>
- An Addendum on the Constitutionality of Presidential War Powers*, LAWFARE, Apr. 7, 2017, [www.lawfareblog.com/addendum-constitutionality-presidential-war-powers](http://www.lawfareblog.com/addendum-constitutionality-presidential-war-powers)
- What Lies Behind Flynn's Public Request for Immunity?*, LAWFARE, Apr. 1, 2017, [www.lawfareblog.com/what-lies-behind-flynn-public-request-immunity](http://www.lawfareblog.com/what-lies-behind-flynn-public-request-immunity)
- What is a Civil War? (book review)*, LAWFARE, Mar. 28, 2017, [www.lawfareblog.com/what-civil-war](http://www.lawfareblog.com/what-civil-war)
- The Michael Flynn Scandal Just Got a Lot Worse*, FORTUNE, Mar. 27, 2017, <http://fortune.com/2017/03/27/michael-flynn-turkey-russia/>
- How Will We Know if the Russia-Trump Investigations by Congress and the FBI Are Credible?*, LAWFARE, Feb. 27, 2017, [www.lawfareblog.com/how-will-we-know-if-russia-trump-investigations-congress-and-fbi-are-credible](http://www.lawfareblog.com/how-will-we-know-if-russia-trump-investigations-congress-and-fbi-are-credible)
- Michael Flynn's Resignation Is Just the Start of Trump's Legal Drama With Russia*, FORTUNE (Feb. 17, 2017), <https://fortune.com/2017/02/17/michael-flynn-russia-donald-trump/>
- Can Department Heads Refuse White House Orders?*, LAWFARE (Feb. 7, 2017), [www.lawfareblog.com/can-department-heads-refuse-white-house-orders](http://www.lawfareblog.com/can-department-heads-refuse-white-house-orders)
- The Lower Federal Courts and Nationwide Injunctions*, LAWFARE (Feb. 3, 2017), [www.lawfareblog.com/nationwide-injunctions-and-lower-federal-courts](http://www.lawfareblog.com/nationwide-injunctions-and-lower-federal-courts)
- Response to Steve Vladeck on the Hernandez Briefing*, LAWFARE (Jan. 2, 2017), [www.lawfareblog.com/response-steve-vladeck-hernandez-briefing](http://www.lawfareblog.com/response-steve-vladeck-hernandez-briefing)
- Thoughts on the Briefing to Date in Hernandez v. Mesa—The Cross-border Shooting Case*, LAWFARE (Dec. 27, 2016), [www.lawfareblog.com/thoughts-briefing-date-hernandez-v-mesa%E2%80%94cross-border-shooting-case](http://www.lawfareblog.com/thoughts-briefing-date-hernandez-v-mesa%E2%80%94cross-border-shooting-case)
- The Search for Authorization: Three Eras of the President's National Security Power*, LAWFARE (Oct. 19, 2016), [www.lawfareblog.com/search-authorization-three-eras-presidents-national-security-power](http://www.lawfareblog.com/search-authorization-three-eras-presidents-national-security-power)
- On the DOJ White Paper as a Plus for Civil Liberties*, LAWFARE (Feb. 8, 2013), [www.lawfareblog.com/2013/02/andrew-kent-on-the-white-paper-as-a-plus-for-civil-liberties](http://www.lawfareblog.com/2013/02/andrew-kent-on-the-white-paper-as-a-plus-for-civil-liberties)
- Judicial Review for Enemy Fighters? Andrew Kent on the Quirin Case*, LAWFARE (Jan. 4, 2013), [www.lawfareblog.com/2013/01/judicial-review-for-enemy-fighters-andrew-kent-on-the-quirin-case](http://www.lawfareblog.com/2013/01/judicial-review-for-enemy-fighters-andrew-kent-on-the-quirin-case)
- On the Expiration of Boumediene Rights*, LAWFARE (Nov. 3, 2012), [www.lawfareblog.com/2012/11/andrew-kent-on-the-expiration-of-boumediene-rights](http://www.lawfareblog.com/2012/11/andrew-kent-on-the-expiration-of-boumediene-rights)
- On Al-Aulaqi and Bivens*, LAWFARE (Aug. 3, 2012), [www.lawfareblog.com/2012/08/andrew-kent-on-al-aulaqui-and-bivens](http://www.lawfareblog.com/2012/08/andrew-kent-on-al-aulaqui-and-bivens)
- Understanding the Exceptional and Dynamic Nature of Boumediene Rights to Court Access*, 161 UNIVERSITY OF PENNSYLVANIA LAW REVIEW PENNUMBRA 92 (2012)

*Habeas Corpus, Protection, and Extraterritorial Constitutional Rights*, 97 IOWA LAW REVIEW BULLETIN 34 (2012)

*Just Don't Ask for Money: Why won't courts ever award damages to the victims of drone strikes?*, SLATE (July 23, 2012), [www.slate.com/articles/news\\_and\\_politics/jurisprudence/2012/07/anwar\\_al\\_awlaki\\_suit\\_courts\\_should\\_award\\_damages\\_in\\_national\\_security\\_cases\\_.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/07/anwar_al_awlaki_suit_courts_should_award_damages_in_national_security_cases_.html)

*Symposium on INTERNATIONAL LAW IN THE U.S. SUPREME COURT* (Oxford Univ. Press 2011), OPINIO JURIS (July 26, 2011), [www.opiniojuris.org](http://www.opiniojuris.org)

*Supreme Court Holds that Noncitizens Detained at Guantanamo Have a Constitutional Right to Habeas Corpus Review by Federal Civilian Courts*, AMERICAN SOCIETY OF INTERNATIONAL LAW INSIGHT (June 20, 2008)

*Symposium on Supreme Court's Decision in Boumediene v. Bush*, OPINIO JURIS (June 13, 2008), [www.opiniojuris.org](http://www.opiniojuris.org)

*CIA Interrogation Tactics: Honesty Won't Aid Enemies*, NATIONAL LAW JOURNAL (Nov. 26, 2007)

*Symposium on "The Constitution's Text in Foreign Affairs" by Michael Ramsey*, OPINIO JURIS (Aug. 1 & 2, 2007), [www.opiniojuris.org](http://www.opiniojuris.org)

*Has Congress Already Authorized Bush to Attack Iran?*, HUFFINGTON POST (May 18, 2007)

*D.C. Circuit Upholds Constitutionality of Military Commissions Act Withdrawal of Federal Habeas Jurisdiction for Guantanamo Detainees*, AMERICAN SOCIETY OF INTERNATIONAL LAW INSIGHT (March 21, 2007)

*Symposium on Boumediene/Odah Guantanamo Litigation in D.C. Circuit*, OPINIO JURIS (Feb. 26, 2007), [www.opiniojuris.org](http://www.opiniojuris.org)

*Justice for Terrorists*, COMMENTARY (June 2004)

## **PRESENTATIONS**

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Presented at academic conferences or workshops at the laws schools at Albany, American, BYU, Cardozo, Columbia, Duke, Fordham, George Mason, Georgetown, Harvard, Hastings, NYU, Northwestern, Notre Dame, Pace, University of Pennsylvania, Pepperdine, San Diego, Seton Hall, South Texas, St. Johns, Temple, University of Texas, Vanderbilt, William & Mary, and Yale, and at events sponsored by, among others, the American Association of Law Schools, American Constitution Society, American Society of International Law, Association of the Bar of the City of New York, Bill of Rights Institute, Center for Constitutional Originalism, Center on National Security at Fordham Law, Federalist Society, Justice for All Project of the U.S. Court of Appeals for the Second Circuit, Lincoln Forum, International Law Association, and Truman National Security Project.

## **CONGRESSIONAL TESTIMONY**

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U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, written and oral testimony, March 27, 2019, on constitutional issues concerning abuse of the President's pardon power

U.S. House of Representatives, Committee on Natural Resources (with jurisdiction over U.S. territories), written and oral testimony, April 13, 2016, on the constitutionality of H.R. 4900, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA)

## **APPELLATE BRIEFS**

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### **As amicus curiae:**

Brief of Law Professors as Amici Curiae in Support of Appellees, *Blassingame v. Trump* (D.C. Cir., filed Sept. 30, 2022) (Nos. 22-5069, 22-7030, 22-7031)

Brief for Scholars of Constitutional Law and Legal History as Amici Curiae in Support of Petitioners, *Fitisemanu v. United States*, 143 S. Ct. 362 (2022) (No. 21-1394)

Brief of Law Professors as Amici Curiae in Support of Plaintiffs, *Thompson, Blassingame, Swalwell v. Trump*, 590 F. Supp. 3d 46 (D.D.C. 2022) (Nos. 21-cv-00400, 21-cv-00586, 21-cv-00858)

Brief for Scholars of Constitutional Law and Legal History as Amici Curiae Supporting Appellees with Respect to the Insular Cases, *Fitisemanu v. United States*, 20 F.4th 1325 (10th Cir. 2021) (Nos. 20-4017 & 20-4019)

Brief for Scholars of Constitutional Law and Legal History as Amici Curiae Supporting Appellees with Respect to the Insular Cases, *Fitisemanu v. United States*, 1 F.4th 862 (10th Cir. 2021) (Nos. 20-4017 & 20-4019)

Memorandum of Law for Amici Curiae Scholars of Constitutional Law and Legal History, *Fitisemanu v. United States*, 426 F. Supp. 3d 1155 (D. Utah 2019) (No. 1:18-cv-00036)

Brief for Amici Curiae Scholars of Constitutional Law and Legal History, *Segovia v. Board of Election Commissioners of the City of Chicago*, 880 F.3d 384 (7th Cir. 2018) (No. 16-4240)

Brief for Scholars of Constitutional Law and Legal History as Amici Curiae Supporting Petition for Writ of Certiorari, *Tuaua v. United States*, 136 S. Ct. 2461 (2016) (U.S., No. 15-981)

Brief of Amici Curiae Scholars of Constitutional Law and Legal History, *Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015) (No. 13-5272)

As counsel:

Selected briefs available at [www.fordham.edu/info/23154/andrew\\_kent/8849/appellate\\_briefs](http://www.fordham.edu/info/23154/andrew_kent/8849/appellate_briefs)

## **BAR ADMISSIONS AND AFFILIATIONS**

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New York, U.S. Supreme Court, U.S. Court of Appeals for the First and Second Circuits, U.S. District Courts for the Southern and Eastern Districts of New York

Lawfare, Contributing Editor (2023- )

New York City Bar, Member of Professional Responsibility Committee (2016-present)

American Society of International Law, Interest Group on International Law in Domestic Courts; co-chair (2020-22)