

ANDY AYERS

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EXPERIENCE

Albany Law School **2016—present**
Director of the Government Law Center and Assistant Professor of Law.
Classes taught: Administrative Law; Law of Government; Professional Responsibility.

Office of New York Solicitor General Barbara D. Underwood **2007—2016**
Senior Assistant Solicitor General (2014-2016); Assistant Solicitor General (2007-2014). Litigated, in federal and state appellate courts, cases about administrative law; immigration law; civil rights; environmental law; civil procedure; and many other subjects. From 2014-2016, primary responsibility was supervising and editing other attorneys' work.

Hon. Gerard E. Lynch **2006—2007**
Law clerk, U.S. District Court for the Southern District of New York.

Hon. Sonia Sotomayor **2005—2006**
Law clerk, U.S. Court of Appeals for the Second Circuit.

EDUCATION AND EARLIER EXPERIENCE

Georgetown University Law Center, J.D., *summa cum laude* **2002—2005**

Honors: Francis E. Lucey, S.J. Award (highest grade-point average in class)

Order of the Coif

Public Interest Law Scholar (three-year partial scholarship)

Int'l Academy of Trial Lawyers Assoc. Award (for work in asylum clinic)

Pro Bono Service Award (500+ pro bono hours)

Graduation Speaker (selected by vote of classmates)

Journal: Articles Editor, *Georgetown Immigration Law Journal*

Internships: U.S. Department of State, Office of the Legal Adviser, summer 2004 (Bureau of Human Rights & Refugees and Bureau of Claims & Investment Disputes)

U.S. Senate Judiciary Committee, Constitution Subcommittee (Office of Sen. Russ Feingold), summer 2003 and three semesters during 2004—2005

Human Rights Watch **1999—2002**

Special Assistant to the General Counsel. Researched human rights and international humanitarian law issues. Helped coordinate legal training sessions and policy discussions.

Vassar College, A.B. **1994—1998**

Honors: Phi Beta Kappa; departmental honors in both majors (Literature and Religion)

LAW REVIEW ARTICLES

Discriminatory Cooperative Federalism (forthcoming) (examines statutes in which Congress purports to give state and local governments the choice whether to treat noncitizens differently from citizens)

Federalism and the Right to Decide Who Decides, 63 VILL. L. REV. 567 (2018) (examines federal statutes that preempt all state action except legislative enactments, thus forcing states to act, if at all, through their legislatures; and argues that Congress violates the anti-commandeering doctrine when it uses preemption to force decisions into state legislatures)

The Half-Virtuous Integrity of Atticus Finch, 86 MISSISSIPPI L.J. 1 (2016) (arguing that lawyers are mistaken in praising Atticus for being true to himself, and that other characters in *To Kill a Mockingbird* are ethically praiseworthy precisely because they are not true to themselves)

What if Legal Ethics Can't Be Reduced to a Maxim?, 26 GEORGETOWN J. LEGAL ETHICS 1 (2013) (arguing that legal ethicists should stop trying to create maxims that will solve ethical dilemmas in which values conflict, and ask instead what capacities are needed to act well in such situations)

The Lawyer's Perspective: The Gap between Individual Decisions and Collective Consequences in Legal Ethics, 36 J. LEGAL PROFESSION 77 (2011) (arguing that legal ethicists should help lawyers identify the ways in which their work can be intrinsically valuable—that is, valuable apart from their consequences for the justice system in general)

International Law as a Tool of Constitutional Interpretation in the Early Immigration Power Cases, 19 GEORGETOWN IMMIGRATION L.J. 125 (2005) (student note) (discussing the use of customary international law as persuasive authority in the Supreme Court cases that established federal power over immigration)

BOOK

A STUDENT'S GUIDE TO LAW SCHOOL (University of Chicago Press 2013) (a guide to the intellectual and practical challenges of law school, explaining the elements of legal reasoning and the practical judgment and other virtues that matter in practice)

OTHER PUBLICATIONS

What Is a 'Sanctuary' City?, *Municipal Matters* (Fall 2018)

What Happens to Abortion Rights in New York If Brett Kavanaugh Is Confirmed? (Rockefeller Institute of Government Policy Brief, 2018), available at <http://rockinst.org/issue-area/what-happens-to-abortion-in-new-york-if-brett-kavanaugh-is-confirmed/>

Immigrants and Public Benefits: What Must States and Localities Provide? (Government Law Center Publication, July 2018), available at <http://www.albanylaw.edu/centers/government-law-center/Immigration/Documents/GLC-Immigration-Explainer.pdf>

Justice Sotomayor and the Sense of Respect, 81 ALB. LAW REV. 721 (2018) (introduction to the transcript of Justice Sotomayor’s address to Albany Law School students)

Sanctuaries: An Explainer (Government Law Center publication, April 2018) (the first in a series of “explainers” aimed at helping state and local policymakers understand the immigration-related decisions that face them, and the laws that apply to those decisions)

Protections in the New York State Constitution Beyond the Federal Bill of Rights (Government Law Center publication, April 2017) (co-authored and co-edited) (compilation of short pieces by invited contributors explaining ways in which the New York Constitution offers protections greater than their federal equivalents)

One Hundred and Six Ideas for Constitutional Change (Government Law Center publication, Sept. 2017) (co-edited) (compilation of ideas for topics that might be addressed at a New York State constitutional convention)

PRESENTATIONS AND PANELS

Presenter, incubator proposal, “Sanctuary Values,” at **Emerging Immigration Law Scholars** conference (Brigham Young University Law School, June 9, 2019)

Panelist, “Rural Access to Justice,” at **American Association of Law Schools Annual Meeting**, New Orleans (Jan. 5, 2019)

Panelist, “State Constitutions in the Era of a Shifting Supreme Court,” at **Rockefeller Institute of Government**, Albany (July 23, 2018); video available at <http://rockinst.org/blog/state-constitutions-in-the-era-of-a-shifting-supreme-court/>

Presenter, incubator proposal, “Can Congress Authorize Discrimination Against Noncitizens?” at **Drexel Law School conference on “Immigration Law In, Through, and Beyond Moments of Distress”** (Immigration Law Scholars and Teachers Workshop, May 26, 2018)

Facilitator, workshop on “Strategies for Sanctuary Spaces in the Age of Deportations,” at **Harvard Law School “Ideas in Action Hackathon”** (Apr. 20, 2018) (facilitated group discussion on health-care facilities’ response to immigration enforcement)

Moderator, panel on “Civilian Oversight of Police,” at **Albany Government Law Review symposium on “Cracks in the U.S. Constitution: Broken Windows Policing and the Criminalization of Children”** (Mar 8, 2018)

Panelist on “Lawyering with a Healthy Mind,” **Albany Law School, Wellness Week series** (Mar. 5, 2018)

Moderator, panel on “Inclusion and Exclusion: Renewal, Displacement, and Community Transformation” at **Albany Law School conference on “Community Renewal and Its Discontents,”** (Nov. 3, 2017)

Moderator, Albany Law Review symposium on “**Sanctuary Cities**” (Nov. 9, 2017)

Co-Moderator, “**The Honorable Sonia Sotomayor: A Special Kate Stoneman Event,**” **Albany Law School** (Apr. 3, 2017)

Panelist, “Using the State Constitution and International Law to Fight Injustice,” at **Albany Law School conference on “Advocacy and Activism Today”** (Feb. 25, 2017)

CLE SESSIONS

(“Presenter” = solo presentation; “co-presenter” = with others.)

Presenter, CLE session on “County Interactions with Immigrants,” at the annual meeting of the **County Attorneys’ Association of the State of New York** (May 20, 2019)

Co-Presenter, CLE session on “Research: What Does the Court Want?” (co-presenter with Hon. Sharon Aarons and Assistant Attorney General Christopher Liberati-Conant), for the **Albany County Bar Association** (May 14, 2019)

Moderator, panel on “What’s Needed for Rural Renewal,” **Government Law Center’s Anderson Breakfast Seminar** (May 14, 2019)

Presenter, CLE session on “What Cities and Villages Need to Know About Immigration Law,” at **New York Conference of Mayors** annual meeting (May 5, 2019)

Presenter, training on “Legal Writing for Non-Lawyers” for the **Public Service Workshops Program** (a project of the Governor’s Office on Employee Relations) (May 1, 2019)

Presenter, CLE session on “Local Governments’ Role in Immigration Law,” at **New York Association of Towns conference** (Feb. 19, 2019)

Presenter, CLE session on “The Legal Ethics of To Kill a Mockingbird,” at **New York Association of Towns conference** (Feb. 18, 2019)

Moderator, panel on “Immigration Policy and Horse Racing,” **Albany Law School Saratoga Institute** (Aug. 7, 2018)

Co-Presenter, CLE session on “A Moving Target: Federal Immigration Policy and State Responses” for lawyers in public service sponsored by the **New York State Attorney General’s Office** (May 14, 2018)

Moderator and Panelist, **Government Law Center’s Anderson Breakfast Seminar** on “**State and Local Power Over Immigration**” (Apr. 3, 2018)

Presenter, CLE session on “Governments, Lawyers, and the Ethics of Disobedience” at **New York Association of Towns conference** (Feb. 19, 2018)

Presenter, CLE session on “Civility and Other Ethical Problems,” at **Albany Law School CLE for Recent Graduates** (Nov. 18, 2017)

Presenter, CLE session on legal ethics, **Albany Law School CLE in Saratoga Program** (Aug. 25, 2017)

Moderator, panel on “Immigration Policy and Horse Racing,” **Albany Law School Saratoga Institute** (Aug. 8, 2017)

Presenter, CLE session on “Municipal Conflicts of Interest and Ethical Challenges in the Workplace” at **New York County Attorneys’ Association conference** (May 23, 2017)

Co-Presenter, CLE session on “Judicial Review of State Agencies” at **New York State Bar Association’s Local and Government Law Section Spring Forum** (with Hon. Bernard Malone) (May 5, 2017)

GUEST-TEACHING

Writing and Critical Inquiry, Prof. Marcie Newton (U. Albany, Mar. 25, 2019) (session on legal reasoning and argument for students in the 3+3 program)

Writing and Critical Inquiry, Prof. Marcie Newton (U. Albany, Oct. 22, 2018) (session on legal reasoning and argument for students in the 3+3 program)

Writing and Critical Inquiry, Prof. Marcie Newton (U. Albany, Mar. 9, 2018) (session on legal reasoning and argument for students in the 3+3 program)

Immigration Law, Prof. Christian Sundquist (Albany Law School, Jan. 22, 2018) (session on statutory interpretation)

Writing and Critical Inquiry, Prof. Marcie Newton (U. Albany, fall 2017) (session on legal reasoning and argument for students in the 3+3 program)

Writing and Critical Inquiry, Prof. Marcie Newton (U. Albany, spring 2017) (session on legal reasoning and argument for students in the 3+3 program)

Supreme Court Seminar, Prof. Steve Gottlieb (Albany Law School, spring 2017) (session on Justice Sotomayor)

Law and Literature, Prof. Jim Redwood (Albany Law School, spring 2017) (session on *To Kill a Mockingbird*)

Law School Success II, Prof. Joe Buffington (Albany Law School, spring 2017—taught each of three sections) (session on shame)

Appellate Advocacy, Prof. Rosemary Queenan (Albany Law School, Oct. 26, 2016) (session on appellate ethics)

Appellate Advocacy, Prof. Victor Paladino (Albany Law School, Feb. 25, 2016) (session on appellate ethics)

Appellate Advocacy, Prof. Victor Paladino (Albany Law School, Feb. 5, 2015) (session on appellate ethics)

MEDIA

Interviewed about the role of politics in the work of the Attorney General, on *Capitol Pressroom* (May 13, 2019)

Interviewed on *Everything Explained* podcast about sanctuary cities (Northeast Public Radio, Aug. 24, 2018), <https://www.npr.org/.../488521530/everything-explained-podcast> and <https://wamcpodcasts.org/podcast/what-are-sanctuary-cities/>

Interviewed about Kavanaugh nomination and state constitutions on *Capital Tonight* (Spectrum News, July 22, 2018)

Interviewed about state and local power over immigration on *Capitol Pressroom* (Apr. 3, 2018)

Quoted in “Albany’s police chief insists city is complying with federal immigration law,” WNYT (Jan. 25, 2018)

Quoted in Amanda Fries, “Albany stands firm on sanctuary city status,” Albany Times Union (Jan. 9, 2018)

Quoted in Massarah Mikati, “Albany Law Holds Symposium on Sanctuary Cities,” Albany Times Union (Nov. 10, 2017)

Interviewed about the Government Law Center and state constitutional issues on *Capitol Pressroom* (Dec. 1, 2016)

SELECTED SIGNIFICANT BRIEFS AND ARGUMENTS

State Courts

In re Cesar Vargas, 131 A.D.3d 4 (N.Y. App. Div. 2d Dep’t 2015) (amicus brief in support of a beneficiary of Deferred Action for Childhood Arrivals program, who sought admission to the bar; first case in the nation to recognize state’s right to admit DACA beneficiaries to licensure despite federal statute’s apparent restriction of that right)

Association for a Better Long Island v. N.Y.S. Dep’t of Env’tl. Conservation, 23 N.Y.3d 1 (2014) (on what interest a petitioner must invoke to establish standing to challenge environmental regulations on procedural grounds, e.g., failure to hold a public hearing)

N.Y.S. Superfund Coalition v. N.Y.S. Dep’t of Env’tl. Conservation, 18 N.Y.3d 289 (2011) (scope of cleanup operations under New York’s Superfund statute)

Feminists Choosing Life v. Empire State Stem Cell Board, 87 A.D.3d 47 (3d Dep’t 2011) (whether funding for stem cell research violates ban on human cloning)

Blue Line Council v. Adirondack Park Agency, 86 A.D.3d 756 (3d Dep’t 2011) (challenge to multiple environmental regulations; whether municipalities had standing and capacity)

Dagvadorj v. DeFleur, 70 A.D.3d 1275 (3d Dep’t 2010) (whether federal law required college to report that student’s work at another school was not “on-campus employment” and therefore that student violated his student visa)

Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 N.Y.3d 297 (2009) (on whether recreational users of a natural resource have standing to sue to protect it from environmental harms)

Amoah v. Mallah, 57 A.D.3d 29 (3d Dep’t 2008) (whether federal immigration law preempted a decision by the Worker’s Comp Board to award benefits to an undocumented alien)

Federal Courts

FTC v. Actavis, Inc., 570 U.S. ___, 133 S. Ct. 2223 (2013) (amicus brief for New York and other states) (on the permissibility under antitrust law of “pay-for-delay” agreements, in which drug manufacturers pay manufacturers of generic competitors to stay out of the market)

Bryant v. N.Y.S. Educ. Dep’t, 692 F.3d 202 (2d Cir. 2012) (a challenge under the Individuals with Disabilities Education Act to prohibition on schools’ use of “aversive interventions,” i.e., electric skin-shocks); ***and brief opposing certiorari; cert. denied***, 133 S. Ct. 2022 (2013)

Yeldon v. Fisher, 710 F.3d 452 (2d Cir. 2013) (on whether consent is required to refer a case to a magistrate judge)

Dandamudi v. Tisch, 686 F.3d 66 (2d Cir. 2012) (on what level of Equal Protection scrutiny applies to state laws affecting nonimmigrant aliens)

Reynolds v. Barrett, 685 F.3d 193 (2d Cir. 2012) (on whether a pattern-or-practice theory of discrimination is available under 42 U.S.C. § 1983)

Kirk v. N.Y.S. Dep’t of Educ., 644 F.3d 134 (2d Cir. 2011) (holding that attorney’s fees are available under 42 U.S.C. § 1988 where plaintiff obtained a final judgment, even though the case became moot on appeal and the original judgment was vacated)

Air Transport Association v. Cuomo, 520 F.3d 218 (2d Cir. 2008) (whether Airline Deregulation Act preempted NYS requirement that planes on the tarmac for more than five hours provide food, air, water, bathrooms)