

1. United States v. Rakeem Figueroa – EDNY Docket No. 08 CR 749 (ARR)
Trial 11/9-11/16/2009 (sole defense counsel)

This *Figueroa* case, which a federal judge asked me to accept, involved the defendant's complicity in a crack distribution operation in a Brooklyn housing project which featured the use of body cameras planted on the informants who were sent by an FBI-NYPD task force to act as drug customers. Although Figueroa, having been fingered by the digital camera, as well as implicated by several informants who testified against him at trial, was convicted, the sentence he received at the end of the process, as a result of successful post-trial advocacy, was considerably lower than the potential sentence he had faced under the federal sentencing guidelines.

2. United States v. Kissone Frederick- EDNY Docket No. 09 CR 258 (KAM)
Trial 12/7-12/10/2009 (sole defense counsel)

In the *Frederick* trial, my court-assigned client was charged with Hobbs Act robberies, in which he either brandished a firearm or used it to beat one of his victims. The evidence against Frederick was based on accomplice witness testimony and a security video at one of the robbery locations which captured him, with a gun in his hand, and his 2 accomplices as they attempted unsuccessfully to break into a Brooklyn electronics store. Despite the incriminating video, the jury was out for a considerable period of time before finding Frederick guilty, perhaps because of my attack on the quality of the videotape and the blurry image of the shiny object the defendant was holding.

3. United States v. Ortavia Lamandez Austin- EDNY Docket No. 09 CR 119 (ARR)
Trial 9/13-9/29/2010 (lead defense counsel)

The *Austin* case involved the importation of large shipments of marijuana, hidden in cargo containers, from Jamaica, West Indies, through a collaborative effort of Jamaican drug exporters and local distributors. The marijuana loads were hidden inside large cargo containers which had been transported by sea vessels whose voyages originated in Jamaica, with stops at other Caribbean ports where some of the marijuana-laden containers were offloaded, and terminated in Miami. From that port, the rest of the containers in which the marijuana loads had been secreted were then transported by the truckload to various locations in the Eastern seaboard, principally in the New York area.

At trial, Austin was clearly implicated in the Jamaican end of the activities through the testimony of several cooperators, but the proof of his involvement in the New York activities was thin. The trial defense, therefore, embraced the prosecution's portrayal of Austin as a Jamaican offender, while pointing out the paucity of proof as to his participation of drug crimes in the U.S. In essence, relying on the limits of international jurisdiction, I conceded that while the proof showed that my client may have been a major marijuana exporter, all his activities had been contained to Jamaica and other Caribbean locations, and there was insufficient evidence that he had been involved in the importation and distribution of the marijuana shipments in the United States. As a result of this jurisdictional defense, the jury acquitted Austin of all the charges.

4. United States v. Victor Bourne- EDNY Docket No. 08 CR 888 (NGG)
Trial 9/26-10/24/2011 (lead defense counsel)

In the *Bourne* case, the defendant imported loads of cocaine from the Caribbean hidden in air cargo, with the complicity of corrupt foreign officials and the aid of American Airline and JFK Airport cargo workers, as well as large marijuana shipments hidden in sea cargo from the Caribbean to Florida. Bourne was the head of a smuggling network, with operatives in the Caribbean and New York City, which used airborne shoe shipments from his shoe store in Brooklyn to smuggle millions of dollars in cash drug proceeds from the New York area to Barbados, where he maintained a home and directed scores of accomplices. In that case, the defendant was acquitted of nearly half the charges against him, although prior to trial, a clean sweep conviction of all the charges appeared likely.

5. United States v. Edward Elorreaga (a/k/a “FNU LNU”) - EDNY Docket No. 11 CR 242 (ARR)- EDNY Docket No. 11 CR 242 (ARR)
Trial 11/7-11/10/2011 (sole defense counsel)

This was another challenging case which a federal judge asked me to take, involving charges of false passport applications and theft identity. No one has ever learned Elorreaga’s real name, but it plainly was not Elorreaga. At his insistence, we proceeded to trial, in which the government was good enough to bring in a recidivist felon serving a long sentence in a California state prison, whose name and date of birth were identical to my client’s. Serendipitously, both Elorreagas had a glass eye, each on a different side of his face. In the course of the trial, the defense was able to undermine the prosecution’s case as to the more serious theft identity count, resulting in the defendant’s conviction of a lesser false passport application charge. He was sentenced to time served.

6. United States v. Joseph Mazella - EDNY Docket No. 11 CR 300 (CBA)
Trial 1/23-2/13/2012 (lead defense counsel)

The *Mazella* case resulted in a \$14 million dollar Ponzi scheme trial in the EDNY that produced considerable pretrial motions and hearings, as well as an onslaught of victim witnesses at trial, including elderly and disabled persons, whose investments with the defendant had been wiped out. The *Mazella* case was featured in an episode of the television program *American Greed* in which I was interviewed. Mazella had represented to investors that they were buying ownership shares in his real estate developments, which would yield double-digit interest payments.

For well over a decade, his investors received the promised interest yields, but payments began to dry up as the economy began to nosedive in the Great Recession of ‘08-’09. Ultimately, he was unable to meet his payment commitments to existing investors as he could no longer recruit new investors as the recession deepened. The trial defense was

that Mazella's investors' losses had resulted from the adverse economic conditions of the time, including the collapse of the real estate market, and that even as the economy tanked, he had continued to infuse his own funds to keep his ventures going, thereby also becoming a victim of the depressed economy.

But the evidence of my client's material misrepresentations to his multiple investors concerning the true nature of his real estate holdings and projects, which in reality were either undeveloped or depressed properties, which included the trial testimony of over a dozen, primarily elderly investors who had lost their entire life savings in his scheme, as well as his videotaped pitch to potential investors which the FBI had recovered from his office, was too much to overcome.

In the sentencing proceedings, the government sought a 30-year term under the federal sentencing guidelines for my client based on the extensive nature of the fraud and the vulnerability of many of his investors. However, by developing a vigorous mitigation presentation in the sentencing proceedings, which the sentencing judge obviously took into account in imposing a far-lower 10-year term, I managed to save my client 20 additional years in prison.

7. People v. Michael Pena– Manhattan Sup. Ct. Indictment No. 4162/2011
Trial 3/15-3/27/2012 (sole defense counsel)

The *Pena* trial, in the Manhattan Supreme Court, involved the rape and sodomy of a school teacher by my client, an off-duty police officer. The trial generated considerable media print and television coverage, including an outcry by activists over the jury deadlock on the rape charges, based on the inconsistent recollections of witnesses and the undermining of the prosecution's DNA evidence. During my cross examination of two eyewitnesses to the crime, I was able to draw out inconsistencies between their trial testimony descriptions and got one of the witnesses to acknowledge that his statement to the police on the day of the crime conflicted with his trial testimony as to what he was able to see in the interaction between the defendant and the victim. The victim, a young school teacher on the way to her first day on her new job, was unable to recall, during my cross examination, a number of details to which other witnesses testified. The jury could not agree to a unanimous on the rape charges, but convicted my client of predatory sexual assault and aggravated sexual abuse on the sodomy charges.

A draconian 75 year-to-life sentence on the charges of which the former officer was convicted is being challenged by me before the New York State Court of Appeals, the state's highest court, which granted my petition for leave to appeal, which it only grants to select few cases accepted for consideration, premised on an 8th Amendment Cruel and Unusual Punishment prohibition attack on the disparity between his sentence and the median rape sentence of only 12 years in New York State and across the country. Pena's appeal is pending and an argument date is to be scheduled for early 2017.

8. United States v. Antoine Mayes I- EDNY Docket No. 10 CR 473 (ARR)
Trial 5/21-6/7/2012 (lead counsel)

Mayes I was a trial of two brothers who led interrelated organizations of drug workers and distributors, one based in East New York under my client Antoine, and the other in North Carolina directed by his brother Anthony. Their main product was crack cocaine, lots of it. Prior to trial, Antoine pled guilty to 7 crack distributions to an informant, who had tape recorded all of those deals. The defense to the more serious drug conspiracy and several weapons charges rested on a multiple conspiracies argument--which is a technical defense that asks the jury to acquit because the government incorrectly charged one large conspiracy, but instead proved multiple smaller uncharged conspiracies--given that each brother had his own group, one in Brooklyn, the other down in North Carolina.

Despite the evidence that members of the North Carolina group, including Anthony, also functioned as drug dealers and shooters in Brooklyn, the jury found that the charged single overarching conspiracy had not been proven. The experienced trial judge in that case later remarked that that was the first time she had seen a multiple conspiracies defense work. My client was acquitted of all the trial charges; his brother was convicted of only one firearms charge.

9. United States v. Michael Chung- EDNY Docket No. 12 CR 537 (RRM)
Trial 10/22-10/25/2012 (sole defense counsel)

Chung was an unusual case where all the initial indicators pointed to my client's guilt, but as the case progressed and disclosures were made by the government, I realized that the case against my client did not simply suffer from reasonable doubt, but that he was factually innocent. Chung, a member of the odd Sovereign nation movement, members of which do not believe in paying their bank bills, was accused of making a threat by telefax to a bank officer who denied his grossly inadequate, and largely false, mortgage application. A surveillance videotape, purporting to be that of my client as he sent the threatening email, turned out to be that of a neighbor, also an Asian man, who had been my client's real estate attorney, but had become his antagonist, and had decided to set him up by using his forged signature on the subject email to the bank officer.

With the assistance of my investigator, I subpoenaed nine witnesses, all of them neighbors of my client in his Queens apartment building, including the antagonist attorney, to testify at trial. Eight of the witnesses, who knew both my client and his antagonist, testified that the Asian man in the video was not my client, but due perhaps to the grainy nature of the video, or a reluctance to get a neighbor into trouble, could not identify the antagonist. I also put the antagonist on the stand, much against his will. During my extensive cross examination of the actual culprit, the jurors were actually laughing at his attempts to deny that he was the Asian man in the video, rather than Chung. A so-called alibi witness for the antagonist, his secretary, was called by the prosecution, but she exploded and her testimony imploded on my cross-examination. As

a result of my aggressive defense case, a trial which was supposed to result in a conviction after a 2-day presentation by the government, was converted into a 4-day trial centered on a strong counterattack against the prosecution's theory of guilt. It took the jury less than an hour to acquit my client of all charges.

10. United States v. David Ojo- EDNY Docket No. 13 CR 334 (ARR)
Trial 8/5-8/8/2013 (lead defense counsel)

In the *Ojo* case, which was assigned to me by a federal judge, the defendant was part of an international computer website sales scheme. I persuaded the Court to permit my client to withdraw his previously-entered guilty plea, which rarely occurs, when he was represented by prior counsel, due to a technical error that I found in his sworn allocution admitting his guilt to his fraudulent use of false identifications. Although the overwhelming evidence at his trial made his conviction a certainty, my sentencing mitigation advocacy resulted in his time-served sentence, which was several years lower than the sentence to which he had been exposed prior to his trial pursuant to his original plea agreement.

11. United States v. Alejo Polanco- EDNY Docket No. 08 CR 65 (RJD)
Trial 8/12-8/22/2013 (lead defense counsel)

Polanco was a challenging Hobbs Act robbery case, which featured, among numerous robberies of drug stash houses, a drug-related robbery during which my client, one of the armed invaders into an upper Manhattan drug dealer's apartment, shot the dealer's pregnant girlfriend to death. Because the government, prior to trial, declined to consider a disposition that would have likely resulted in a life sentence, Polanco had no option but to proceed to trial. Given that multiple testifying cooperators made the case unwinnable for the defense, the chief focus of my trial strategy was to get every cooperator to confirm, on cross examination, that the defendant had lamented that he had killed the woman because his gun went off accidentally, thereby setting up a convincing post-trial argument for a reduced sentence. Ultimately, Polanco's conviction yielded a sentence whereby he would be released in about 15 years, rather than having to serve a life term, based principally on the trial judge's acceptance of the my trial and sentencing arguments that the shooting was unintentional and that the defendant's remorse was genuine, as conceded by every cooperator who testified at trial.

12. United States v. Antoine Mayes II- EDNY Docket No. 12 CR 385 (ARR)
Trial 4/24-5/13/2014 (lead defense counsel)

Stung by its unexpected defeat in the first Mayes trial, the government developed numerous cooperators, and expended considerable resources in going after the Mayes brothers on racketeering, murder, attempted murder, drug, firearms, Hobbs Act robberies

and obstruction charges in *Mayes II*. To obviate a repeat of my multiple conspiracies defense in *Mayes I*, the government took the unusual step of dropping the racketeering conspiracy charge and kept the superseding indictment focused on multiple substantive and RICO charges. A seemingly unending stream of accomplice witnesses, all subject to withering cross examinations by myself, as Antoine's counsel, and the lawyers for his brother Anthony, was too much for the defense to overcome. Both brothers were convicted. Anthony was sentenced to life, and Antoine, who decided to represent himself at sentencing, was sentenced to a combined mandatory-minimum of 110 years.

13. United States v. Bebars Baslan- EDNY Docket No. 13 CR 220 (RJD)
Trial 7/15-7/24/2014 (sole defense counsel)

The *Baslan* case was almost surreal, given the type of crime--which involved a plot to sexually abuse babies and a child, the children and niece of the informant, and the nature and scope of the evidence--which included extensive tape recorded conversations between my client and a government informant, that were shockingly graphic in his description of the sexual acts to which he planned to subject the children with the aid of his girlfriend. According to the FBI, the defendant possessed of the largest collection of computer child pornographic images and videos that the agency had ever intercepted, which added substantially to the proof of his guilt. As if all that was not enough proof against my client, the evidence was raised to an insurmountable level by the recorded conversations he had while in pretrial detention with a jailhouse informant, in which they discussed ways for him to obstruct justice by making up a false story to tell on the stand when he would testify.

Because the prosecution was unwilling to agree to any plea disposition below the harsh 30-year mandatory-minimum term prescribed by the top charge against my client, we had no real option but to proceed to trial. A trial verdict was also the only way to preserve my client's appellate challenge to the statutory punishment that he faced on constitutional grounds based on the 8th Amendment's protection against disproportionately excessive punishment and an appellate challenge to his conviction grounded on the government's investigative methods violating the 6th Amendment's protection against intrusion by planted jailhouse informants to coax incriminating statements from indicted defendants. .

The defense at trial was premised primarily in exposing the informant, whom the government avoided calling to the stand, as a sex predator with an axe to grind against my client. That was accomplished through a probing cross-examination of the informant's brother, who was called by the prosecution to report on what the informant had told him in statements that were allowed under exceptions to the hearsay rule. Arguing that what was "good for the goose, was good for the gander," I persuaded the trial judge to permit me to elicit details about the informant's severe depression and several suicide attempts from his brother, in an effort to show the mental instability of the informant the government chose not to put on the stand. As for the recorded jailhouse conversations, which were introduced without calling that informant to the stand, the defense argument was that the tapes showed that the informant had made the proposal to

my client to perjure himself at trial. Indeed, Baslan took the stand and, having been properly prepared by me to anticipate areas of the prosecutor's cross-examination, actually performed well in his testimony. But, in the face of the overwhelming evidence against him, all that was not enough to forestall Baslan's conviction. Yet, as a result of the defense trial strategy, two serious constitutional challenges were preserved for him to raise in his pending appeal to the Second Circuit.

14. United States v. Christian John- EDNY Docket No.11 CR 405 (FB)
Trial 10/23-12/3/2014 (lead defense counsel)

The *Christian John* case, to which I was assigned by a federal judge because of my considerable experience in death penalty cases, took 2 months to try to verdict, ending just before the 2014 year-end holiday period. In that case, which had a lengthy pre-trial life for over 3 years, despite my efforts to push for a trial as things got worse for the defense through a steady government enlistment of cooperators, my client twice faced potential death penalty prosecution, and the Department of Justice was reportedly very close, at the second go-around, to a decision to seek capital punishment for John. I presented the mitigation on both occasions, and as the evidence was disclosed in the discovery materials produced prior to trial, it became clear that my vigorous mitigation advocacy on John's behalf helped persuade the US Attorney General not to seek the death penalty for him. He was implicated, either as the shooter, participant or director, in 6 homicides, some committed in a brutal fashion.

With over 50 witnesses, including 8 cooperators, compelling forensic evidence and an improvident post-arrest statement by my assigned client, the government had a lock on the 6 murders that John was charged with, as well as the RICO and RICO conspiracy, drugs, firearms and Hobbs Act robbery charges. The defense was premised on an attack on the racketeering charges by seeking to undermine that a racketeering enterprise existed and on the motives of the cooperators, many of them implicated in the murders, to avoid life sentences for their crimes by testifying against John, as dissected and explored in the course of my nearly 50 cross examinations during the lengthy trial.

But, as the overwhelming evidence against John showed, he was the boss of a core group of street thugs, many of whom became cooperating witnesses against him, who conducted crack, cocaine and marijuana operations in the Brownsville section of Brooklyn and who terrorized the gang's rivals and pot suppliers, 5 of whom were murdered either directly by John or on his instructions. Despite John's better-than-expected testimony when he took the stand, largely because I had prepared him for anticipating the prosecution's cross-examination, the jury, after asking for read-backs of every major witness during 4 full days of deliberations, convicted John of almost all the charges. John, who is no longer my client, faces 5 life sentences. With the help of my advocacy, however, John was spared the real possibility of a death sentence, given that all his victims were non-violent offenders and the murders were committed in especially cruel ways, including the torture of most of the victims before they were either shot or suffocated to death.

