



# Hon. Robert A. Katzmann

## Chief Judge, U.S. Court of Appeals for the Second Circuit

by Vivian Rivera Drohan



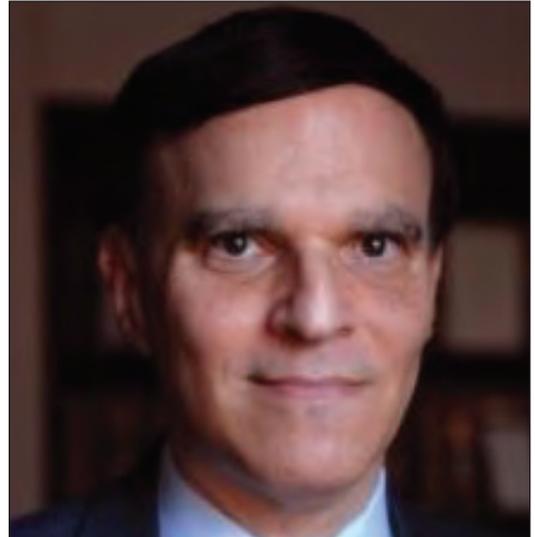
*Vivian Rivera Drohan is the litigation partner at Drohan Lee LLP. Her practice encompasses commercial and intellectual property litigation. Her experience includes federal and state trial and appellate litigation, as well as arbitration and mediation before the American Arbitration Association, Financial Industry Regulatory Authority, National Futures Association, and Commodity Futures Trading Commission.*

Universally ranked among the most respected U.S. Federal jurists, Second Circuit Chief Judge Robert A. Katzmann enjoys a distinguished record of legal accomplishment. This spring he was honored in the 75th Volume of the NYU Annual Survey of American Law, during which U.S. Supreme Court Justices Sonia Sotomayor and Ruth Bader Ginsburg both spoke to Judge Katzmann's achievements and character. Justice Ginsburg, who administered Judge Katzmann's oath of office upon his appointment to the U.S. Court of Appeals for the Second Circuit, underscored his "inquiring mind, extraordinary diligence, and readiness to listen and to learn."<sup>1</sup>

Chief Judge Katzmann is in his 19th year of service as a judge for the U.S. Court of Appeals for the Second Circuit, and his 5th year serving as Chief Judge of the same court. He was appointed to the Judiciary by President Bill Clinton and approved by the Senate in 1999. Before his appointment, Chief Judge Katzmann spent a number of years contributing to legal thought during his time as a Fellow at the Brookings Institution, Walsh Professor of Government, Professor of Law and Professor of Public Policy at Georgetown University, and President of the Governance Institute. He is currently an Adjunct Professor of Law at New York University School of Law.

Education and academic accomplishment feature prominently in Judge Katzmann's background. He received his A.B. *summa cum laude* from Columbia University, as well as an A.M. and Ph.D in government from Harvard University, before receiving his Juris Doctor from Yale Law School in 1980 where he was an Article and Book Review Editor of the Yale Law Journal. After law school, he clerked on the U.S. Court of Appeals for the First Circuit for the Honorable Hugh H. Bownes.

Chief Judge Katzmann is renowned for his commitment to civic education and immigrant rights, with special focus on providing for representation of underprivileged persons navigating the U.S. immigration system. Among his notable articles on the subject is "The Legal Profession and the Unmet Needs of the Immigrant Poor," which he first delivered at the Ori-



son S. Marden Lecture before the City Bar Association in 2007.<sup>2</sup>

Chief Judge Katzmann was born and raised in New York City to a father who was a refugee from Nazi Germany, and a mother born to Russian immigrants. The Chief Judge cites this as one of the reasons why access to justice for immigrants carries such importance for him.

In 2013, Chief Judge Katzmann helped to found, with the support of the Robin Hood Foundation, the Immigrant Justice Corps, a group that seeks to create a new generation of immigration lawyers dedicated to providing legal representation for immigrants facing deportation. This program was the country's first fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants. The idea for this organization sprang from the Katzmann Study Group on Immigrant Representation, launched in 2008, which found that most detained individuals in the New York region did not have counsel at the time their cases were adjudicated.

The Immigrant Justice Corps seeks to hire and train 25 lawyers every year, pulling from pools of recent law school graduates, as well as 10 recent college graduates who assist in community-based organizations. In the past three and a half years, the

Corps has handled 42,000 immigration cases, with a 93% success rate. The program, which had initially served only immigrant communities in New York City, has now expanded to upstate New York, Connecticut, New Jersey, and Texas, with further plans for expansion underway. 141 Fellows have graduated from the program since its inception.<sup>3</sup>

Judge Katzmman has also been heavily involved in creating and expanding programs aimed to educate the younger generation of the federal judiciary. In 2014, he launched an initiative for Justice for All: Courts and the Community, an organization which aims to educate students on the basics of the court system.<sup>4</sup> At its initiation, the program, which Judge Katzmman chairs along with his co-chair Judge Victor Marrero of the Southern District of New York, provided opportunities for students to visit courthouses across the Second Circuit and observe court proceedings, as well as to have conversations with judges and court staff and participate in moot courts and mock trials. The program involves judges in the crafting and editing of its curriculum, ensuring they are active participants in what is being taught in high school classrooms. The program also comprises teacher's institutes and a speaker's bureau whereby judges and Bar members visit schools and community organizations to discuss the working of the courts.

Chief Judge Katzmman's commitment to civic education is clearly of paramount importance to him. He has commented in the past that a large percentage of Americans cannot identify the Constitution as the supreme law of the land, and that at least ten percent of college graduates think Judge Judy is a Supreme Court Justice.<sup>5</sup> It is clear that his support and guidance in projects like Justice for All is geared toward ensuring that students gain a fuller understanding of government institutions, in particular the judiciary.

Chief Judge Katzmman has played a leading role in bringing key aspects of the judiciary directly to the public. The federal courthouse at 40 Foley Square in New York will soon be the home of a state-of-the-art learning center on the 5<sup>th</sup> floor. The center will be open to people of all ages and feature interactive kiosks providing recordings such as Thurgood Marshall's argument before the Supreme Court. The program will also be instituting a podcast series. The center aims to balance the use of technology in a way that encourages accessible public learning and a broader understanding of the role of the judiciary in U.S. civil life. While Chief Judge Katzmman believes books and written media remain important means for students to learn, the learning center reflects the recognition that electronic technology and social media have a growing role in communicating ideas to the younger generation.

In addition to the Immigrant Justice Corps and Justice for All: Courts and the Community, Chief Judge Katzmman is the author of "Judging Statutes," a book published in 2014 to wide recognition.<sup>6</sup> The book discusses the interaction between the courts and legisla-

tion. Critics have noted that the book is unique in that it is written by the only federal judge with a Ph.D. in government. Chief Judge Katzmman credits Senator Daniel P. Moynihan as an influential person in his career, and a primary reason he became a judge. The Chief Judge met the Senator during his studies at Harvard when Moynihan was a professor, later becoming his teaching assistant.<sup>7</sup>

Judging Statutes is noted for its spirited and compelling defense of why judges must look at the legislative record behind a law, and not merely the statute itself. It is an approach that objects to the strict textualist approach espoused by a number of judges, including the late Justice Scalia. The book seeks to emphasize the interplay between the courts and Congress and is targeted not only at law students, jurists and legislators, but also concerned citizens. The book sparked a debate and a number of key interviews.<sup>8</sup>

Respect for fellow jurists, even those with differing views, is apparent from Chief Judge Katzmman's writings and demeanor. In responding to a review by Brett M. Kavanaugh, Supreme Court nominee, currently a Judge of the United States Court of Appeals for the District of Columbia Circuit, of his book, entitled "Fixing Statutory Interpretation," Chief Judge Katzmman began his response by noting "I could not have hoped for a more thoughtful examination of the subject. Judge Kavanaugh, a rightfully highly regarded jurist and colleague, offers a measured critique that furthers discussion of how to approach the interpretive enterprise."<sup>9</sup> The Chief Judge then provides a thorough and thoughtful recitation of why he disagrees with Judge Kavanaugh, exemplifying his respect for contemplative debate in legal thought.

When asked if there is a case in his career that he considers the most important, the Chief Judge replied that every case is important, as each involves a human being whose rights or interests the Court will impact. As one might expect from the Second Circuit, Chief Judge Katzmman sits for cases involving broad issues ranging from financial to criminal and constitutional matters. This year has already seen Judge Katzmman's majority opinion in an *en banc* case, *Zarda v. Altitude Express Inc.*, 883 F.3d 100 (2d Cir. 2018), in which the Court held that Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation. Although he rarely dissents, Judge Katzmman did so in 2017 in the case of *Davino Watson v. United States*, 865 F.3d 123 (2d Cir. 2017), where he would have upheld as timely a U.S. citizen's filing of a claim for mistaken detention of 1,273 days. Among Judge Katzmman's other notable decisions are the following<sup>10</sup>:

- *ABC, Inc. v. Stewart*, 360 F.3d 90 (2d Cir. 2004)—finding that a district court erred by closing voir dire examinations of prospective jurors in the high-profile criminal trial of Martha Stewart.
- *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60 (2d Cir. 2012)—deems transactions in-

volving securities not traded on a domestic exchange to be “domestic” if title passes or irrevocable liability is incurred in the U.S.

- *Souratgar v. Lee Jen Fair*, 818 F.3d 72 (2d Cir. 2016)—Because Lee established that Souratgar had committed multiple, unilateral acts of intimate partner violence against her, and that her removal of the child from the habitual country was related to that violence, an award of expenses to Souratgar, given the absence of countervailing equitable factors, is clearly inappropriate.
- *Aris v. Mukasey*, 517 F. 3d 594 (2d Cir. 2008)—Alien received ineffective assistance when he was misinformed of hearing and was not told of deportation in absentia.

The importance and judicial history of the Second Circuit cannot be overstated. Under the guidance and direction of Chief Judge Robert Katzmann, its legacy and future influence are in as capable hands today as they were during the tenure of Thurgood Marshall, for whom the 40 Foley Square Courthouse is named. ☉

## Endnotes

<sup>1</sup><https://www.youtube.com/watch?v=jsKzWJBSAwk>  
<http://www.law.nyu.edu/news/annual-survey-american->

[law-honors-judge-robert-katzmann-second-circuit](http://www.citybarjusticecenter.org/wp-content/uploads/pdf/Katzmann_Lecture.pdf)

<sup>2</sup>[https://www.citybarjusticecenter.org/wp-content/uploads/pdf/Katzmann\\_Lecture.pdf](https://www.citybarjusticecenter.org/wp-content/uploads/pdf/Katzmann_Lecture.pdf)

<sup>3</sup><http://justicecorps.org/>

<sup>4</sup><http://justiceforall.ca2.uscourts.gov/>

<sup>5</sup><https://www.nytimes.com/2016/11/10/nyregion/teaching-students-that-judge-judy-is-not-a-supreme-court-justice.html>

<sup>6</sup>Robert A. Katzmann, *Judging Statutes* (Oxford University Press 2014).

<sup>7</sup><https://www.c-span.org/video/?321130-1/qa-robert-katzmann>

<sup>8</sup><https://www.brennancenter.org/video/judging-statutes-robert-katzmann-conversation-michael-waldman>

<https://www.youtube.com/watch?v=76ONyZbP9Gw>

<https://www.youtube.com/watch?v=aPmZNYmew4Y>

<sup>9</sup><https://harvardlawreview.org/2016/06/response-to-judge-kavanaughs-review-of-judging-statutes/>

<https://harvardlawreview.org/2016/06/fixing-statutory-interpretation/>

<sup>10</sup>Bloomberg BNA May 2014 profile pp.1758 -70. pp. 32-44.

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## Castel Profile *continued from page 19*

court through challenges without losing its collegiality.” Even by the high standards of the court, she says, “he’s a star.” He chaired the planning committee for the 2008-2009 Second Circuit Judicial Conferences and co-chaired, with Judge Deborah Batts, the SDNY’s year-long 225th anniversary. He has chaired the SDNY Grievance Committee. He’s taught professional responsibility as an adjunct professor at NYU Law School for seven years.

Judge Cote, a frequent lunch partner on culinary explorations in Chinatown, hit it off with Judge Castel on a personal level. “We have a very nice friendship that evolved organically,” she says. Asked for some adjectives to describe his style, she said “thoughtful, reflective, and open-minded.” Katherine Lemire of Lemire LLC, an investigative consulting firm, has tried major racketeering cases and run complex corporate investigations. She first met Judge Castel during a huge prosecution of over three-dozen gang members. “He was sharp as a tack,” she remembers. “He welcomes the challenge of new issues.” More importantly, “There is a human element to him.”

## Running Chambers

Running chambers “is like running a law firm” says Judge Castel. Every new year brings new personnel and new challenges. “It keeps me young.” Judge Castel has worked with courtroom deputy Flo Nacanther for 40 years and counting. She is “an amazing person and a real presence in chambers,” says Douglas Zolkind, a former clerk for Judge Castel and current SDNY assistant U.S. attorney who started as a litigator at Davis Polk & Ward-

well. Nacanther “makes the trains run on time, but also mothered us all,” he adds.

Zolkind felt an immediate connection to Judge Castel during his interview. “We talked about legal writing but he was more interested in me as a person,” Zolkind remembers. “It was a conversation, not an examination.” The connection was only strengthened during the clerkship. Chambers was “like a family.” He is “very serious about his mentor role.” Judge Castel hosts a clerkship reunion dinner every fall and every other summer hosts a clerks-and-family summer party on Long Island.

Jennifer Mintz, formerly a litigator at Debevoise & Plimpton and now counsel at D.E. Shaw group, global investment firm, says clerking for Judge Castel was “a terrifically fun job.” “Every day was fantastic,” she says. He is “really interested in teaching” and had an open-door policy. “We could just walk in and bounce ideas around,” she remembers; “he has a passionate and infectious interest in the law” as well as in his law clerks as people. Judge Castel officiated her wedding, as he has done for other clerks. His attitude was, “Have robe, will travel,” she says.

## Advice From the Bench

“I enjoy good lawyering,” says Castel. “Credibility is key. Every word and action adds to or detracts from credibility, and over time adds up to a reputation.”

Good prosecutors don’t overreach; good lawyers don’t fight everything. “A good advocate concedes points

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