



E. Joshua Rosenkranz

Partner

New York

T +1 212 506 5380

E jrosenkranz@orrick.com

Josh Rosenkranz heads the firm's Supreme Court & Appellate Litigation practice.

Practice Areas

- Supreme Court & Appellate
- Intellectual Property
- Complex Litigation & Dispute Resolution
- White Collar, Investigations, Securities Litigation & Compliance
- Antitrust & Competition

Honors

- Named "Litigator of the Year," *The American Lawyer*, 2012, 2018
- Named "Appellate Attorney of the Year," *Benchmark Litigation 2017*
- Named one of the 10 most innovative lawyers in North America, *Financial Times*, 2014
- Nationally ranked as a Band 1 appellate lawyer by *Chambers USA 2017*. Ranked in the guide since 2008.
- "Appellate MVP," *Law360*, 2011, 2013, 2017
- "Leading Lawyer," *Legal*

A former law clerk to U.S. Supreme Court Justice William J. Brennan Jr. and then-Judge Antonin Scalia on the D.C. Circuit, Josh has personally argued more than 190 appeals in state and federal appellate courts across the nation, including 16 before the U.S. Supreme Court.

Josh is the only lawyer ever named *American Lawyer's* "Litigator of the Year" twice. In 2012, the magazine dubbed him "the Defibrillator" based on his streak of appellate wins for companies that "appeared to be at death's door," and in 2017 it declared, he "still deserves the moniker we once gave him."

Chambers USA has reported, "He wins accolades for his 'brilliant analysis and judgment.' Clients appreciate how he 'rethinks every case from the ground up,' and add: 'He can take the most complicated legal or technological issue and present it in a way that seems like common sense.'" Another edition of *Chambers USA* added: "His briefs are quite simply beautiful," and "clients describe his courtroom presence as 'both commanding and accessible at the same time.' He has the 'perfect combination of persuasiveness, intelligence, wit, and deference.'"

Josh's practice covers a wide range of subjects, including securities, intellectual property, antitrust, federal preemption, insurance law, corporate governance, criminal law and constitutional litigation. Among his recent clients are Apple, Credit Suisse, DIRECTV, DISH Network, Facebook, JPMorgan Chase, Kleiner Perkins, LinkedIn, Microsoft, Morgan Stanley, Oracle, Royal Bank of Scotland, and UBS.

Clients turn to Josh to win the highest stakes appeals, including appeals in cases that threaten the very survival of a business. He is currently representing Microsoft in an international cause célèbre in the U.S. Supreme Court challenging the U.S. Government's claim that it can serve warrants for emails stored overseas. He represented DISH Network in one of the most high-profile patent appeals in the country, successfully overturning an infringement finding that yielded \$400 million in damages and an injunction that ordered the satellite TV company to turn off the recording

500, 2011-2017

- “Litigation Star,” *Benchmark Litigation*, 2012-2017
- BTI Client Service All-Star MVP, 2014-2017
- Named “Distinguish Leader,” *New York Law Journal*, 2017.
- Named to *Managing Intellectual Property’s* list of “IP Stars,” 2015
- “Litigator of the Week,” *AmLaw Litigation Daily*, February, May, and July 2016
- “Lawyer of the Week,” and the month’s “Lawyer in the Spotlight,” *American Lawyer*, Sept. 2010
- “Outstanding IP Litigator of the Year in New York,” *Managing IP*, 2013
- Milton S. Gould Award for Outstanding Advocacy, 2010
- Society of American Law Teachers Human Rights Award, 2007
- New York State Bar Association Award for Outstanding Contribution to Delivery of Defense Services, 1995
- Scribes Brief-Writing Award, 1993
- Rhodes Scholarship Finalist, 1985

Education

- J.D., Georgetown

capabilities of millions of customers. He represented Facebook in the high-profile battle waged by the founder’s Harvard classmates who laid claim to the idea for Facebook, winning a ruling from the Ninth Circuit to end the lawsuit. He represented Apple in the “smartphone wars” in an appeal about the validity of the patent on Apple’s revolutionary touchscreen.

In 2005, he successfully represented Merck KGaA in a Supreme Court case that the *National Law Journal* described as “the most significant patent infringement case to confront the biotech and pharmaceutical industries in a generation.” He represented 36 law schools in a high-profile Supreme Court case against the Department of Defense. He also argued and won a case that many consider to be the most important employee benefits case of the decade. And in March 2013, he won a landmark victory in a Supreme Court case that rescued the estimated \$60 billion U.S. market of copyrighted goods manufactured abroad.

Josh was the founding president and CEO of the Brennan Center for Justice at New York University School of Law, one of the country’s foremost public interest firms. Over the course of eight years, he was the Brennan Center’s chief strategist on litigation and public policy advocacy. Under his direction, the center represented parties in connection with more than 50 cases (including three at the U.S. Supreme Court) and filed almost 40 amicus briefs (including 20 at the U.S. Supreme Court). Before creating the Brennan Center, Josh founded the Office of the Appellate Defender, a public defender office specializing in criminal appeals in New York state courts.

Josh has published numerous books, monographs, chapters and scholarly articles. He has also authored 18 op-eds or articles in major newspapers and magazines, including *The New York Times*, *The Washington Post*, *The Los Angeles Time*, *The Chicago Tribune*, *The Washington Monthly*, *The Boston Review*, *The National Law Journal*, and *The American Prospect*.

Representative Engagements

Supreme Court Engagements:

- ***United States v. Microsoft Corporation***: Lead counsel presenting Microsoft in a fight to prevent the U.S. government from unilaterally searching private emails stored in foreign countries. After a win in the Second Circuit, *The Washington Post* described the case as one of the “most intriguing, consequential, and complex legal cases having to do with technology now in the courts.”
- ***Kirtsaeng v. John Wiley & Sons***: Lead counsel in a landmark copyright case that rescued the estimated \$60 billion U.S. market of copyrighted goods manufactured abroad from the brink of potential disaster. The Court had split 4-4 when it previously addressed the issue. Josh won over the ninth Justice and flipped another vote, for a 6-3 win. SCOTUSBlog reported: “A common trope says that it is common for a case to be lost at oral argument but rare for one to be won. I am not so sure.... Joshua Rosenkranz managed to directly confront, and

University Law Center,
1986, *magna cum laude*

- B.A., Chemistry, Case Western Reserve University, 1983, *summa cum laude*, *Phi Beta Kappa*, (*Columbia University*, 1979-81)

Clerkships/Externships

- Hon. William J. Brennan, Jr., United States Supreme Court
- Hon. Antonin Scalia, United States Court of Appeals, D.C. Circuit
- Hon. Stephen F. Williams, United States Court of Appeals, D.C. Circuit

Memberships

- Fellow, American Academy of Appellate Lawyers
- Board of Directors, Office of the Appellate Defender

apparently defuse, the concerns of several Justices who seemed opposed to his position. This well might be the rare case of a victory at oral argument.” On April 23, 2016, Josh argued a follow-on case before the Supreme Court, this time to establish the standard for prevailing parties to obtain attorneys’ fees under the Copyright Act.

- **United States v. June:** Lead counsel in a 5-4 victory securing a critical ruling that makes it easier for victims of wrongful government conduct to seek accountability.
- **Merck KGaA v. Integra LifeSciences:** As lead counsel, on behalf of Merck KGaA, persuaded the Supreme Court to reverse the Federal Circuit, 9-0, to grant a broad protection allowing pharmaceutical companies to perform experiments on promising drugs before a relevant patent had expired.
- **County of Los Angeles v. Mendez:** Lead counsel representing the County of Los Angeles in an excessive force case raising the validity of the “provocation rule,” which holds an officer personally liable for a reasonable use of force, if there was an earlier constitutional violation.
- **Lightfoot v. Cendant Mortgage Corp.:** As lead counsel, persuaded the Court to rule unanimously that Fannie Mae’s charter does not automatically confer federal jurisdiction whenever Fannie is a party.
- **Los Angeles v. Patel:** Lead counsel in a high-profile case defending the constitutionality of an ordinance—aimed at deterring prostitution, drugs, and other crime at cheap motels—requiring hotel operators to keep a guest register and make it available to the police.
- **MetLife v. Glenn:** As lead counsel in an employee benefits case, persuaded the Supreme Court that courts must give less deference to an insurance company’s decisions to deny benefits than to the decisions of a neutral administrator, because the insurance company labors under a conflict of interest.
- **Sheriff v. Gillie:** Lead counsel in a case involving interpretation of the Fair Debt Collections Practices Act and the rules governing how to interpret federal statutes that are alleged to infringe on state sovereignty.
- **Rumsfeld v. FAIR:** Lead counsel in a Supreme Court case representing 36 law schools and an organization of 900 law professors in a suit challenging, on First Amendment grounds, the Solomon Amendment, a federal law requiring academic institutions to assist military recruiters.
- **Nevada Comm’n on Ethics v. Carrigan:** Lead counsel in a landmark Supreme Court case about whether the First Amendment protects a legislator’s right to vote.
- **Fox v. Vice:** Lead counsel in persuading a unanimous Supreme Court that a court may not award attorneys’ fees against a civil rights plaintiff without showing that the fees would not have been incurred but for the plaintiff’s decision to plead a frivolous federal claim.
- **Van de Kamp v. Goldstein:** Lead counsel in a case about the scope of prosecutorial immunity.
- **Travelers v. PG&E:** Lead counsel arguing, on behalf of Pacific Gas & Electric, that an unsecured creditor cannot recover attorneys’ fees for intervening in a bankruptcy proceeding.
- **Kentucky Retirement Systems v. EEOC:** Leading role in

successfully defending Kentucky against allegations of age discrimination in connection with the structure of its plan of retirement benefits for public employees, a case that threatened to invalidate thousands of plans in two dozen states.

- **Bruesewitz v. Wyeth:** Helped brief the major preemption victory for Wyeth, holding that plaintiffs claiming to have been harmed by childhood vaccines cannot bring lawsuits asserting that the vaccine should have been designed more safely.
- **McConnell v. FEC:** Leading role in representing Senators John McCain and Russell Feingold and other sponsors successfully fending off 11 consolidated lawsuits challenging the McCain-Feingold campaign finance reform measure, before a three-judge district court in Washington, D.C., and then the U.S. Supreme Court.
- **Legal Services Corp. v. Velazquez:** Leading role in a successful First Amendment challenge against the restrictions Congress imposed on lawyers funded by the Legal Services Corporation.
- **Shrink Missouri Gov't PAC v. Nixon:** Leading role in successfully defending Missouri's campaign contribution limit against a First Amendment challenge.
- **Lynch v. Dimaya:** Lead counsel in a case that will affect the immigration status of thousands of immigrants. At issue is whether a federal law that can be used as a basis for deporting immigrants is unconstitutionally vague.

Representative Other Appeals:

- Lead counsel in persuading the Second Circuit to overturn a liability finding against a **former Countrywide executive**, the only individual targeted in connection with the "Hustle" mortgage program, who had been ordered to pay a \$1 million civil penalty. In an unprecedented enforcement action, the government tried to portray our client as the face of the subprime crisis and had secured crushing, career-ending penalties.
- Lead counsel on behalf of **Facebook**, successfully defending in the Ninth Circuit a ruling finally ending a contentious litigation by competitors who claimed to be the true owners of Facebook.
- Lead counsel in patent appeal to the Federal Circuit, successfully representing **DISH Network** in challenging an infringement finding that yielded \$400 million in damages and injunction requiring DISH to turn off DVR functionality for millions of customers.
- Lead counsel in Ninth Circuit appeal, successfully challenging an injunction requiring **MGA Entertainment**, the maker of Bratz dolls, to abandon the line and turn over its entire \$1 billion a year trademark portfolio to Mattel.
- Lead counsel successfully persuading the Second Circuit to dismiss a putative class action filed against **UBS** by shareholders seeking \$800 million in lost "merger premium" for a failed merger.
- Lead counsel on behalf of **Intel** in Federal Circuit appeal, successfully defending the grant of summary judgment on a major patent-infringement case on flash memory.

Publications

- “The Common Man as Uncommon Man: Remembering Justice William J. Brennan, Jr.,” (J. Rosenkranz & T. Jorde, eds., Brennan Center), 2006
- “Reason & Passion: Justice Brennan’s Enduring Influence,” (Rosenkranz & Schwartz, eds., W.W. Norton), 1997
- “Buckley Stops Here: Loosening the Judicial Stranglehold on Campaign Finance Reform,” (Twentieth Century Fund), 1998
- “If Buckley Fell,” (J. Rosenkranz, ed., Century Foundation), 1999
- “Voter Choice ‘96: A 50-State Report Card on the Presidential Elections,” (Brennan Center), 1996
- “A Guide to Criminal Appeals,” (Rosenkranz & Gimpel, Office of the Appellate Defender), 1995
- “Clean & Constitutional,” in *New Directions in Campaign Finance Reform* (Rogers & Cohen, eds. Beacon Press), 1999
- “Campaign Finance Reform and the Constitution: What’s Hot in the Courts?” (*Extensions* 13, Spring), 1999
- “Solving the Race Problem,” in *New Directions in Democracy* (Rogers & Cohen, eds. Beacon Press), 1999
- “Campaign Finance Reform & the Constitution: The Current Legal Quandaries,” (*19 American Review of Politics* 307), 1998
- “Faulty Assumptions in ‘Faulty Assumptions’: A Response to Professor Smith’s Critiques of Campaign Finance Reform,” (*30 U. Conn. L. Rev.* 867), 1998
- “Preserving Errors in Capital Cases,” in *Capital Defender Manual* (Warshawsky, Rosenkranz & Shelton), 1995
- “A Practitioner’s Guide to Harmless Error,” (New York State Defenders Association), 1991
- “Custom Kids and the Moral Duty to Genetically Engineer Our Children,” (*2 High Tech. L.J.* 1), 1987
- “The Pollution Exclusion Clause Through the Looking Glass,” (*74 Geo. L.J.* 501), 1986
- “FDA Regulation of Environmental Contaminants after *Community Nutrition Inst. v. Young*,” (*41 Food Drug Cosm. L.J.* 330), 1986
- “A Ghost of Christmas Yet to Come: Standing to Sue for Future Generations,” (*1 J.L. & Tech.* 67), 1986

Speeches and Programs

- Panelist, “The Future of Federal Courts,” American Academy of Appellate Lawyers Fall Meeting, October 5-7, 2017

Admissions

- New York

Court Admissions

- Supreme Court of the United States
- **United States Courts of Appeals** | First Circuit
- **United States Courts of Appeals** | Second Circuit
- **United States Courts of Appeals** | Third Circuit
- **United States Courts of Appeals** | Fourth Circuit
- **United States Courts of Appeals** | Fifth Circuit
- **United States Courts of Appeals** | Sixth Circuit
- **United States Courts of Appeals** | Seventh Circuit
- **United States Courts of Appeals** | Eighth Circuit
- **United States Courts of Appeals** | Ninth Circuit
- **United States Courts of Appeals** | Eleventh Circuit
- **United States Courts of Appeals** | Federal Circuit
- **United States Courts of Appeals** | District of Columbia Circuit