

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Zachary Anthony Cunha

2. **Position**: State the position for which you have been nominated.

United States Attorney for the District of Rhode Island

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office of the United States Attorney
District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

Residence address:
Cranston, RI 02905

4. **Birthplace**: State date and place of birth.

1976; Hartford, Connecticut

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

George Washington University Law School, 1998-2001
J.D. (with honors) - May 2001

Brown University, 1994-1998
A.B. (with honors) - May 1998

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

December 2013 – Present
Assistant United States Attorney
Chief, Civil Division (2018-Present)
Affirmative Civil Enforcement Coordinator (2014-2018)
Office of the United States Attorney, District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
Paid

September 2008 – December 2013
Assistant United States Attorney
Chief, Affirmative Litigation Unit (2012-2014)
Deputy Chief, Affirmative Litigation Unit (2010-2012)
Office of the United States Attorney, District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, MA 02210
Paid

February 2005 – September 2008
Assistant United States Attorney
Office of the United States Attorney, Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
Paid

September 2001 – February 2005
Assistant Corporation Counsel
New York City Law Department, Office of the Corporation Counsel
Special Federal Litigation Division
100 Church Street
New York, NY 10007
Paid

January 2000 – August 2000
Law Clerk, Section of Complex & Commercial Litigation
Morgan, Lewis, and Bockius, LLP
111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 (Firm office has since moved to this address)
Paid

May 1999 – August 1999
Legal Intern Office of Senator Jack Reed
Hart Senate Office Building
120 Constitution Avenue, N.W.
Washington, D.C. 20002
Unpaid

May 1999 – August 1999
Research assistant to Professor Phillip Hamburger
George Washington University Law School
2000 H Street, N.W.
Washington, D.C. 20052
Paid

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. military. I have registered for the Selective Service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Hassenfeld Family Foundation Public Service Fellowship, April 2020

Various special commendations and recognitions for case-related contributions as an Assistant U.S. Attorney, including from the Office of Inspector General, Department of Transportation (2017); the Office of Inspector General, Department of Education (2017); the Department of the Interior (2014); and the Federal Aviation Administration (2008).

U.S. Department of Justice, Attorney General's Award for Exceptional Service, October 2010

HHS Office of Inspector General Cooperative Achievement Award, October 2010

U.S. Department of Justice, Civil Division Special Commendation for Outstanding Service, December 2009

Legal Rookie of the Year Award, New York City Law Department, December 2002

Avenatti Award for Excellence in Pre-Trial and Trial Advocacy, G.W. Law School, May 2001

Van Vleck Constitutional Law Moot Court Competition, Best Oralist, G.W. Law School, February 2001

G.W. Law School Moot Court Board, Member, 1999-2001

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Rhode Island Bar Association

Federal Bar Council

Association of the Bar of the City of New York

Committee on Federal Legislation

American Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Rhode Island, May 2008

New York, January 2002

Massachusetts, January 2002

There have been no lapses in membership. I have maintained inactive status in Massachusetts since admission.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the First Circuit (September 2008)

United States Court of Appeals for the Second Circuit (October 2005)

United States District Court, Southern District of New York (February 2002)

United States District Court, Eastern District of New York (February 2002)

United States District Court, District of Rhode Island (November 2011)

There have been no lapses in membership; I have not maintained my admissions in the Second Circuit and the Southern and Eastern Districts of New York in active status since I have not practiced before those courts since 2008.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Sons of the American Revolution, Harris Ferry, PA Chapter (2005-Present)

Fox Point Neighborhood Association (2015 – 2016)

Board Member (September 2015-June 2016)

Treasurer (January 2016 – June 2016)

298 Garfield Place Co-Op Board (2006-2008)

Treasurer (December 2006 – August 2008)

In addition, I have made financial contributions to charitable organizations over the years. Such organizations may list me as a member by virtue of my financial contribution. I have not listed above any organization to which I gave funds and did not otherwise participate in programmatic activities.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, other than described below, none of these organizations discriminates on the basis of race, sex, religion, or national origin, either through formal membership requirements or their membership policies. Membership in the Sons of the American Revolution is open to any adult male lineal descendant of a participant in the American Revolution, regardless of race, religion, or national origin. To my understanding, membership for women is available via a parallel organization, the Daughters of the American Revolution.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. Despite my efforts, there may be other materials that I

have been unable to locate or remember. I have located the following:

Zachary Cunha, *Letter to the Editor*, Nota Bene (GW Law School student newspaper), Oct. 6, 2000 (Copy supplied)

Zachary Cunha, *Parting Shots*, Brown Daily Herald, April 30, 1998 (Copy supplied)

Zachary Cunha, *Immodest Proposals: The Y[oung] C[ommunist] L[eague] Still Has it Wrong*, Brown Daily Herald, March 11, 1998 (Copy supplied)

Zachary Cunha, *Getting it Right: Despite Criticism, Brown Has the Right Financial Idea*, Brown Daily Herald, February 23, 1998 (Copy supplied)

Zachary Cunha, *Misplaced Vanity: Does the Brown Administration Have the Right Priorities?* Brown Daily Herald, January 29, 1998 (Copy supplied)

Zachary Cunha, *Grappling with the Things We Hate: Some Thoughts on Debate at Brown*, Brown Daily Herald, November 13, 1997 (Copy supplied)

Zachary Cunha, *Well Disciplined: Does the Current Uproar Over the Football Captains Point to a Deeper Problem?*, Brown Daily Herald, October 3, 1997 (Copy supplied)

Zachary Cunha, *Students for Life: Zach Ponders the Difficulties of Applying to School After Brown*, Brown Daily Herald, September 5, 1997 (Copy supplied)

Zachary Cunha, *Freshmen Disorientation: Zachary Asks Why Freshman are Taught to Let Others Think for Them*, Brown Daily Herald, August 28, 1997 (Copy supplied)

Stuart Weisberg, Zachary Cunha, and Aaron Weiss, *Fools on Parade: Three Columnists Examine the Root Cause of 20/20's Bias*, Brown Daily Herald, April 18, 1997 (Copy supplied)

Stuart Weisberg, Zachary Cunha, and Aaron Weiss, *Broken in Spirit: Our Three Columnists Take Robin Rose to Task for Her Defense of The U[niversity] D[isciplinary] C[ouncil]*, Brown Daily Herald, April 30, 1997 (Copy supplied)

Stuart Weisberg, Zachary Cunha, and Aaron Weiss, *Rape, Lies, and Huge Donations: Three Columnists Explain Why the U[niversity] D[isciplinary] C[ouncil] Should be Reformed*, Brown Daily Herald, April 8, 1997 (Copy supplied)

Stuart Weisberg, Zachary Cunha, and Aaron Weiss, *Time to Finish the Job: Three Columnists Examine the Failures of the U[niversity] D[isciplinary] C[ouncil]* Brown Daily Herald, March 12, 1997 (Copy supplied)

Stuart Weisberg, Zachary Cunha, and Aaron Weiss, *Not a Question of Rights*, Brown Daily Herald, February 27, 1997 (Copy supplied)

Stuart Weisberg, Zachary Cunha, and Aaron Weiss, *Irresponsible for our Actions: Three New Columnists Take the University to Task for Treating Students Like Children*, Brown Daily Herald, February 12, 1997 (Copy supplied)

Zachary Cunha, *Debate Over Sexual Assault Continues* (Letter to the Editor), Brown Daily Herald, February 5, 1997 (Copy supplied)

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or area member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify any reports memoranda, or policy statements I have prepared or contributed to, including through a review of my personal files and searches of publicly available electronic databases. I have not prepared, or contributed to, any such statements, reports, or memoranda.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify any testimony, official statements, or other communications related, in whole or in part, to matters of public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. I have not made any such statements.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify copies, transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. I frequently speak without notes or speak from a handwritten outline. I did not retain the majority of the handwritten

outlines and have attached all that I could find. Despite my searches, there may be other materials I have been unable to identify, find, or remember. Unless otherwise specifically noted below, I was unable to locate copies, transcripts, recordings, press reports, outlines or notes of these events. I have located the following:

Health Care Financial Managers Conference

New England Chapter

Virtual Presentation

December 3, 2020 (I have spoken periodically at prior iterations of the same annual conference, on substantially the same subject matter, between 2011 and 2020)

Panelist: *Recent Developments in Federal Health Care Fraud Enforcement*, I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text, and no longer have my outline/notes. (Slide deck supplied).

7th Annual Advanced Forum on False Claims & *Qui Tam* Enforcement

American Conference Institute

Park Lane Hotel

36 Central Park South

New York, NY 10019

January 27, 2020

Panelist: *60 Minutes on Legislation, Politics and Policy*,

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text, and do not have an outline or notes. (Program/agenda supplied).

Health Care Fraud and Abuse Seminar

Boston University Law School

765 Commonwealth Avenue

Boston, MA 02215

November 6, 2019

Panelist: *The USAO Perspective in False Claims Act Enforcement*,

I spoke informally to a small section seminar on the federal role in health care fraud prosecution and enforcement under the False Claims Act. It was an informal question-and-answer discussion in a small seminar. I did not speak from an outline or notes.

19th Annual Pharmaceutical Compliance Congress

Mandarin Oriental

1330 Maryland Avenue, SW

Washington, D.C. 20024

November 8, 2018

Panelist: *Qui Tam Roundtable*, I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text. (Outline supplied)

3rd Annual Pharmacy & Pharmaceutical Summit

Mintz Levin

1 Financial Center

Boston, MA

May 8, 2018

Panelist: *Government Enforcement Targeting Financial Relationships*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text, and no longer have my outline/notes. (Slide deck supplied).

National Association of Medicaid Fraud Control Units Team Leader Symposium

Biltmore Hotel

11 Dorrance Street

Providence, RI

August 3, 2017

Panelist: *Relator/Defense/USAO/USDOJ and Taxpayers Against Fraud Relations*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text, and no longer have my outline/notes. (Program/agenda supplied).

17th Annual Conference on Fraud and Abuse in the Sale and Marketing of Drugs

American Conference Institute

Omni Parker House

60 School Street

Boston, MA 02108

March 7, 2017

Panelist: *The Enforcers Speak: U.S. Attorney's Office Roundtable*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text. (Outline supplied)

16th Annual Conference on Fraud and Abuse in the Sales and Marketing of Medical Devices and Drugs

American Conference Institute

Omni Parker House

60 School Street

Boston, MA 02108

March 8, 2016

Panelist: *The Enforcers Speak: U.S. Attorney's Office Roundtable*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text. (Outline supplied)

15th Annual Conference on Fraud and Abuse in the Sales and Marketing of Medical Devices and Drugs
American Conference Institute
Omni Parker House
60 School Street
Boston, MA 02108
March 12, 2015
Panelist: *The Enforcers Speak: U.S. Attorney' Office Roundtable*
I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text, but the topics and content were similar to my remarks in 2016 and other years (Program supplied).

2014 Annual Meeting and Convention
Federal Bar Association
Omni Providence
1 W. Exchange Street
Providence, RI 02903
September 4, 2014
Panelist: *Whistleblowers in Federal Courts*
I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text. (Program supplied).

Taxpayers Against Fraud Annual Conference
Grand Hyatt Washington
1000 H Street, N.W.
Washington D.C. 20001
September 2012 & October 2013
Panelist: *The Government's Role in Declined Qui Tam Litigation*
I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text and do not have any notes I may have used.

American Bar Association, 9th National Institute on the False Claims Act
The Ritz-Carlton
1150 22nd Street, N.W.
Washington D.C. 20037
June 7, 2012
Panelist: *Recent Developments in False Claims Act Litigation*
I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text and do not have any notes I may have used.

Boston Bar Association
16 Beacon Street
Boston, MA 02108

April 12, 2011

Panelist: *Health Care: Recent Developments in Law and Enforcement*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text. (Program supplied).

Suffolk University Law School

Center for Advanced Legal Studies

120 Tremont Street

Boston, MA 02108

March 31, 2011

Panelist: *Recent Developments in False Claims Act Litigation*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text. (Program supplied).

American Bar Association State and Local Government Section Fall Conference

I do not recall, and have been unable to locate, the precise venue address

Providence, RI

October 2, 2010

Panelist: *The False Claims Act and Federal Grantmaking*

I spoke on publicly disclosed federal enforcement matters related to the False Claims Act. I did not speak from a prepared text and do not have any notes I may have used.

St. John's University School of Law

80-00 Utopia Parkway

Queens, N.Y. 11439

April 3, 2003

Panelist: *Bringing Back the Red Squad: NYPD Surveillance of Political Groups in the Wake of 9/11*, I spoke on publicly disclosed developments in litigation of a consent decree involving the City of New York that restricted certain categories of police investigation and its partial modification after 9/11 to conform to FBI investigative guidelines. I no longer have any notes I may have used.

Association of the Bar of the City of New York

42 W. 44th Street?

New York, N.Y. 10036

February 20, 2003

Panelist: *Policing, Intelligence Gathering and the First Amendment Post 9/11*

I spoke on publicly disclosed developments in litigation of a consent decree involving the City of New York that restricted certain categories of police investigation and its partial modification after 9/11 to conform to FBI investigative guidelines. I no longer have any notes I may have used.

I also served as an instructor at various internal-only CLE trainings while employed by the New York City Law Department on general litigation subjects such as discovery and case management. I no longer have any notes or materials from these trainings.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. Despite my efforts, there may be other materials that I have been unable to locate or remember. I have identified the following:

Mary MacDonald, *Five Questions: Zachary A. Cunha*, Providence Business News, Jul. 6, 2018 (Copy supplied)

Jennifer Ryan Woods, *Alumni Profiles: Luke Cass '96, Michael Harwin '94 and Zachary Cunha '94: Friends' values and stock in community service lead three FA alums to become federal prosecutors in three very different parts of the nation*, The Meeting House (high school alumni magazine), Winter/Spring 2012/2013 (Copy supplied)

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never been a candidate for any elective public office, nor rendered service to any political party or election committee, nor held a position or role in a political campaign.

I am currently registered as unaffiliated with the RI Board of Elections.

14. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a law clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

New York City Law Department, Office of the Corporation Counsel
Special Federal Litigation Division
100 Church Street
New York, NY 10007
Assistant Corporation Counsel
September 2001 - January 2005

Office of the United States Attorney, Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
Assistant United States Attorney
February 2005 - September 2008

Office of the United States Attorney, District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, MA 02210
September 2008 – December 2013
Assistant United States Attorney
Chief, Affirmative Litigation Unit (2012-2013)
Deputy Chief, Affirmative Litigation Unit (2010-2012)

Office of the United States Attorney, District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
December 2013 - Present
Assistant United States Attorney
Chief, Civil Division (2018-Present)
Affirmative Civil Enforcement Coordinator (2013-2018)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my legal career as an Assistant Corporation Counsel for the City of New York (2001-2005) where my practice consisted exclusively of civil litigation before the U.S. District Courts for the Southern and Eastern Districts of New York. For the past sixteen years, I have served as an Assistant United States Attorney (AUSA) in three U.S. Attorney's offices. I joined the Justice Department in 2005 as an AUSA in the Eastern District of New York (Brooklyn), transferred in 2008 to the District of Massachusetts, and in December 2013 to the District of Rhode Island. I have been formally assigned to the Civil Division in all three offices. As an attorney for the government, my practice is primarily civil in nature and consists of a mixture of affirmative litigation in which the United States is plaintiff (principally under the False Claims Act); and defensive litigation in which the government, its agencies, or its officers are sued as defendants on a wide array of claims. In my current role as Chief of the Civil Division (and in prior management roles in Boston), I also supervise and mentor a team of attorneys and support staff, and counsel and advise the U.S. Attorney as a member of the Office's management team.

As an AUSA in both Rhode Island and Massachusetts, I have also been cross-designated to the Criminal Division by the United States Attorney, and in that capacity have also worked on a number of criminal cases including health care fraud, violations of the Food, Drug, and Cosmetic Act, mail and wire fraud, violations of the Anti-Kickback Statute, controlled substance offenses, possession of a firearm by a felon, and false statements to a federal officer.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an Assistant Corporation Counsel, I represented the City of New York and its agencies, officers, and officials in litigation in federal court. As an Assistant United States Attorney in the Eastern District of New York, I represented federal agencies in affirmative and defensive litigation in federal district court and on appeal; my work as an AUSA in the District of Massachusetts and the District of Rhode Island has been similar, and has also involved criminal prosecutions on behalf of

the United States, largely but not exclusively related to health care fraud.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:
- | | |
|----------------------------|-----|
| 1. Federal Court | 99% |
| 2. State Courts of Record | 1% |
| 3. Other courts | 0% |
| 4. Administrative agencies | 0% |

The frequency of my appearances in court has varied depending on my office and position. As an AUSA in Rhode Island (December 2013-present), I appear in court somewhat regularly; I did so less frequently in the District of Massachusetts (2008-2013) as my practice was largely composed of long-term affirmative matters. As an AUSA in the Eastern District of New York (2005-2008) and as an Assistant Corporation Counsel for New York City (2001-2005) I appeared in federal court extremely frequently (usually multiple times per week, and sometimes multiple times per day).

- ii. Indicate the percentage of your practice in:
- | | |
|----------------------------------|-----------------------------------|
| 1. District of Rhode Island | |
| a. Civil: | 75% |
| b. Criminal: | 25% |
| 2. District of Massachusetts: | |
| a. Civil: | 90% |
| b. Criminal: | 10% |
| 3. Eastern District of New York | |
| a. Civil: | 99% |
| b. Criminal: | ~1% (Criminal forfeiture matters) |
| 4. New York City Law Department: | |
| a. Civil: | 100% |
| b. Criminal: | 0% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have conducted five federal jury trials as first or second chair, all in the U.S. District Courts for the Southern or Eastern District of New York. Three of those cases went to verdict; the remaining two were settled during trial. I have also

tried two cases to verdict in bench trials in the Eastern District of New York and the District of Massachusetts.

- i. What percentage of these trials were:
 - 1. jury; ~71%
 - 2. non-jury. ~29%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- 1. *Saccoccia v. United States*, No. 19-1361
United States v. Saccoccia (Donna) and Hurley, Nos. 20-2045, 20-1095 (Consol.)
United States Court of Appeals for the First Circuit
The Honorable O. Rogerie Thompson, the Honorable Norman H. Stahl, and the Honorable David J. Barron (No. 19-1361)
The Honorable Sandra J. Lynch, the Honorable Kermit V. Lipez, and the Honorable David J. Barron (Nos. 20-2045, 20-1095)
Dates of Representation: May 2019-Present

Opposing counsel: J. Alan Roth
757 Lloyd Avenue
Latrobe, PA 15650
(724) 537-0939

I served as sole counsel handling the briefing and argument of a trio of appeals defending the validity of a \$136,000,000 criminal forfeiture judgment rendered against a Rhode Island man and two of his confederates (his wife and brother in-law), who laundered over one hundred million dollars on behalf of a Colombian drug cartel.

Defendants sought to set aside the judgment and recover the funds forfeited (notably including a cache of gold bars) in light of new Supreme Court precedent. The First Circuit rejected these challenges and affirmed judgment for the government in two published opinions: *Saccoccia v. United States*, 955 F.3d 171 (1st Cir. 2020) and *United States v. Saccoccia*, 1 F.4th 64 (1st Cir. 2021).

2. *United States v. Ramin Kohanbash*, No. 19-CR-55-WES
United States v. Bernard Klein, No. 20-CR-62-WES
United States District Court for the District of Rhode Island
The Honorable William E. Smith
Dates of Representation: April 2018-Present

Co-counsel: Sandra R. Hebert, Chief, Criminal Division, AUSA
Lee H. Vilker, Deputy Chief, Criminal Division, AUSA
Office of the United States Attorney, District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
(401) 709-5000

Opposing counsel: James M. Trusty
A. Jeff Ifrah
Ifrah Law
1717 Pennsylvania Avenue, NW
Suite 650
Washington, D.C. 20006
(202) 937-1798
(in *United States v. Klein*)

Cathy Fleming
Fleming Ruvoldt PLLC
800 Third Avenue, 28th FL
New York, NY 10022
(212) 600-9537
(in *United States v. Kohanbash*)

I served as co-counsel on a series of related investigations and prosecutions of individuals and entities involved in the manufacture, sourcing, and/or sale of counterfeit (and in some cases defective) military uniforms and goods that were made in China but ultimately imported to the United States and sold to military and government purchasers as American-made and genuine goods. Both criminal cases resulted in pleas of guilty; one case resulted in a sentence of 18 months, the other remains pending sentencing. I participated in both the investigation and in plea negotiations. In addition to the criminal pleas, both cases also involved a parallel False Claims Act settlement, which I negotiated; in total the government has recovered approximately \$1,000,000 to date via these settlements.

3. *United States v. Jerrold Rosenberg*, No. 17-CR-9-JJM-LDA
United States District Court for the District of Rhode Island
The Honorable John J. McConnell, Jr. (Chief Judge)
Dates of Representation: March 2014 - March 2018

Co-counsel: Lee H. Vilker, Deputy Chief, Criminal Division, AUSA
Office of the United States Attorney, District of Rhode Island
50 Kennedy Plaza, 8th Fl.
Providence, RI 02903
(401) 709-5000

Opposing counsel: Charles A. Tamuleviz
McLaughlin Quinn LLC
148 West River Street – Suite 1E
Providence, Rhode Island 02904
(401) 655-2205

I served as co-counsel for the United States in the investigation and prosecution of a Rhode Island pain management physician for health care fraud and conspiracy to receive kickbacks in connection with his prescription of an extremely powerful fentanyl-based oral spray intended for individuals with terminal pain. The investigation, which I and my co-counsel conducted with agents of the U.S. Department of Health and Human Services, involved extensive document review and witness interviews, followed by a lengthy grand jury presentation. I handled multiple aspects of the investigation, including the examination of multiple grand jury witnesses, was actively involved in the negotiation of a plea, and drafted multiple briefs on various sentencing issues, which I argued, and conducted the sentencing argument. The defendant ultimately pleaded guilty on the eve of trial to two counts of the indictment and was sentenced to 51 months imprisonment and ordered to pay roughly \$750,000 in restitution.

4. *United States v. Arif Diwan*, No. 16-CR-45-WES
United States District Court for the District of Rhode Island
The Honorable William E. Smith
Dates of Representation: January 2015- September 2016

Co-counsel: Lee H. Vilker, Deputy Chief, Criminal Division, AUSA
Office of the United States Attorney, District of Rhode Island
50 Kennedy Plaza, 8th Fl.
Providence, RI 02903
(401) 709-5000

Opposing counsel: Olin W. Thompson
(formerly of Federal Defenders Office, retired)
10 Weybosset Street, Suite 300
Providence, RI 02903
(401) 528-4281

I served as co-counsel on a long-running investigation and prosecution of a scheme in which a Rhode Island defendant was facilitating or directing substantial activities in other countries which involved the sourcing, re-packaging, and re-labeling of counterfeit or adulterated drugs in order to sell counterfeit versions of various medications (notably including cancer drugs). This involved falsely labeling them so as to appear to have received regulatory approval by the Food and Drug Administration or European Union drug oversight authorities. I oversaw a substantial part of the investigation, including coordinating with foreign law enforcement authorities and handling an array of warrant applications and related briefing, as well as court hearings and the change of plea. The defendant ultimately pled guilty to conspiracy to engage in false labelling of medical products along with other charges, but passed away prior to sentencing.

5. *United States ex rel Bierman v. Orthofix Int'l NV*, No. 05-10557-EFH
United States District Court for the District of Massachusetts
The Honorable Edward F. Harrington (Senior U.S. District Judge)
Dates of Representation: January 2011- December 2013

Co-counsel: David T. Cohen, Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Fraud Section
U.S. Department of Justice
Washington, D.C.
(202) 353-8190

Counsel for relator: Neil V. Getnick
Leslie Ann Skillen
Getnick & Getnick, LLP
521 5th Avenue, 33rd Floor
New York, NY 10175
(212) 376-5666

Opposing counsel: Brien T. O'Connor
Kirsten V. Mayer
Ropes & Gray, LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7000

I served as co-counsel in this investigation and resolution of a *qui tam* action brought under the federal False Claims Act based on the allegation that defendants had engaged in illegal marketing activities in connection with their promotion and sale of bone growth stimulator devices. My role involved work on the underlying investigation, as well as primary responsibility for negotiating a settlement of the matter, under which the United States recovered approximately \$34 million dollars.

6. *United States v. Merck, Sharpe, and Dohme Corp.*, No. 11-CR-11445-WGY, No. 04-11886-WGY
United States District Court for the District of Massachusetts
The Honorable William G. Young
Dates of Representation: January 2010 - November 2011

Co-counsel: Susan M. Winkler (former Assistant U.S. Attorney)
120 Holmes Street, Unit 313
Quincy, MA 02171
(617) 642-6671

Jeremy Sternberg (former Assistant U.S. Attorney)
Holland & Knight
10 St. James Avenue, 11th Floor
Boston, MA 02116
(617) 523-2700

Jill P. Furman, Assistant Director
Civil Division, Consumer Protection Branch
U.S. Department of Justice
Washington, D.C.
(202) 307-0066

Opposing counsel: R.J. Cinqugrana
Choate, Hall, & Stewart, LLP
Two International Place
100-150 Oliver Street
Boston, MA 02110
(617) 248-5000

Theodore V. Wells, Jr.
Paul, Weiss, Rifkind, Wharton and Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

I served as co-counsel in this criminal and civil investigation of allegations regarding illegal marketing of the drug Vioxx, notably its alleged promotion of the drug for rheumatoid arthritis, a use for which it had not been approved by the Food and Drug Administration, and inaccurate statements regarding the safety of the product. The case involved extensive investigation leading to a negotiated resolution; I worked substantially on the settlement. The company ultimately pleaded guilty to one misdemeanor count of misbranding under the Food Drug and Cosmetic Act relative to the arthritis allegations, and entered into a civil settlement agreement to resolve the remaining claims. In total, the defendant paid a \$321,636,000 fine, and the United States recovered an additional \$628,364,000 via a civil settlement agreement, for a total recovery of roughly \$950,000,000.

7. *United States ex rel Maher v. Ortho-McNeil Pharmaceutical*, No. 03-CV-11445-WGY

United States ex rel. Spivak v. Johnson & Johnson, No. 04-CV-11886-WGY

United States District Court for the District of Massachusetts

The Honorable William G. Young

Dates of Representation: December 2008 (est.) - March 2010

Co-counsel: Colin M. Huntley, Assistant Director
Civil Division, Commercial Litigation Branch, Fraud Section
U.S. Department of Justice
Washington, D.C.
(202) 353-8190

Counsel for Relator: Erika A. Kelton (Counsel for Relator Spivak)
Philips & Cohen, LLP
2000 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 833-4567

David L. Haron (Counsel for Relator Maher)
Haron Law Group, P.L.C.
30300 Northwestern Highway, Suite 115
Farmington Hills, MI 48334
(248) 762-7009

Opposing counsel:

Mark A. Jensen
King and Spalding, LLP
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 626-5526

Christopher J. Wray
Director, Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, DC 20535

I served as lead civil counsel in the investigation of civil claims raised via two *qui tam* actions brought under the federal False Claims Act based on the allegation that defendants had illegally marketed the drug Topamax for a variety of psychiatric conditions for which it had not been approved by the Food and Drug Administration, and that these marketing activities had resulted in the submission of false or fraudulent claims for payment to the federal government. Following extensive investigation, I had primarily responsibility for negotiating an agreement under which defendants agreed to pay \$75,370,000 in settlement of the government's civil claims.

8. *Pfizer Matters:*

United States ex rel. Collins v. Pfizer, No. 04-CV-11780-DPW
United States ex rel. Kopchinsky v. Pfizer, 05-CV-12115-DPW
United States ex rel. Spencer v. Pfizer, 05-CV-12326-DPW
United States ex rel. DeMott v. Pfizer, 05-CV-12040-DPW
United States ex rel. Farber et al. v. Pfizer, 07-CV-10304-DPW
United States ex rel. Rainero v. Pfizer, 07-CV-11728-DPW
United States ex rel. Westlock v. Pfizer, 07-CV-11318-DPW
United States District Court for the District of Massachusetts
The Honorable Douglas P. Woodlock (Senior U.S. District Judge)
Dates of Representation: August 2008 - August 2009

Co-counsel:

Sara Miron Bloom, AUSA
Susan M. Poswistilo, AUSA
Office of the United States Attorney, District of Massachusetts
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Colin M. Huntley
Assistant Director
Civil Division, Commercial Litigation Branch, Fraud Section
U.S. Department of Justice
Washington, D.C.
(202) 353-8190

Sanjay Bhambhani
Senior Trial Counsel
Civil Division, Commercial Litigation Branch, Fraud Section
U.S. Department of Justice
Washington, D.C.
(202) 353-8190

Counsel for Relator:

Erika A. Kelton
Philips & Cohen, LLP
2000 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 833-4567

James J. Pepper
The Pepper Law Firm, LLC
68 East Court Street, Suite 2A
Doylestown, PA 18901
(215) 340-2500

Opposing counsel*: Brien T. O'Connor
Joshua S. Levy
Ropes & Gray, LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7000

*Owing to the number of counsel involved in these consolidated matters and the underlying investigation, I have listed only those counsel with whom I worked or interacted substantially.

I served as co-counsel in the investigation of multiple lawsuits brought under the *qui tam* provisions of the False Claims Act against Pfizer, Inc. in connection with alleged practices relating to the company's promotion and marketing of a number of drugs. My primary responsibilities in the case related to two of the drugs at issue, the investigation of those claims, modeling the government's damages for those drugs, and the negotiation of a settlement regarding those components of the case, including factual admissions regarding certain conduct. The overall investigation, which involved nine separate lawsuits in three Districts, as well as a parallel criminal prosecution and plea, resolved via a negotiated global settlement under which Pfizer agreed to pay a total of \$2.3 billion dollars.

9. *United States v. International Longshoremen's Assoc.*, No. 05-CV-3212 (ILG)
United States District Court for the Eastern District of New York
Honorable Leo Glasser (Senior U.S. District Judge)
Dates of Representation: September 2005- August 2008

Co-counsel: Richard K. Hayes, AUSA
Office of the United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
(718) 254-7000

Kathleen A. Nandan (former AUSA)
Tucker Arensberg
One PPGH Place, Suite 1500
Pittsburgh, PA 15222
(412) 566-1212

Opposing counsel*: Howard W. Goldstein (Deceased)

Gerald J. McMahon
40 Fulton Street, 23rd Fl.
New York, NY 10038
(212) 797-1877

Donato Caruso
The Lambos Firm
29 Broadway, #9
New York, NY 10006
(212) 943-2470

*Owing to the number of counsel involved in these consolidated matters and the underlying investigation, I have listed only those counsel with whom I worked or interacted substantially.

I served as co-counsel in this long-running investigation and litigation of civil RICO claims against the International Longshoremen's Association in connection with claims of racketeering on the New York/New Jersey waterfront. My role involved extensive investigation, witness interviews, deposition preparation and defense (including preparation for a *de bene esse* deposition of a cooperator that continued over two weeks), briefing and argument of an array of pretrial discovery motions, and work alongside co-counsel in drafting two substantial complaints and multiple rounds of dispositive motion briefing, as well as drafting and negotiation of a variety of settlement related documents as to certain defendants. The case remains ongoing, but my involvement ended when I transferred to the District of Massachusetts.

10. *United States v. American Airlines*, No. 05-CV-4254 (CBA) (VVP)
United States District Court for the Eastern District of New York
Honorable Carol Bagley Amon (Senior U.S. District Judge)
Dates of Representation: May 2005 - September 2007

Opposing counsel: Theodore E. Tsekerides
Weil, Gotshal, & Manges, LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

I served as lead/sole counsel in an affirmative civil enforcement action brought against American Airlines. The case sought civil penalties and injunctive relief in connection with American's allegedly unsafe operation of its MD-80 class commercial aircraft owing to running fuel leaks from the wings of this aircraft type. I handled the pre-suit investigation with the Federal Aviation Administration; drafted and filed the complaint and amended it to allege a pattern and practice of safety violations; litigated the case through extensive discovery. Ultimately, I negotiated a court-ordered settlement agreement that provided for a civil monetary penalty and imposition of a maintenance plan to address the alleged leak issue.

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Over the course of my career, I estimate that I have personally and substantially handled well over two hundred individual cases in federal district court and roughly a dozen federal appeals, litigating these matters from inception through resolution. In the process, I have taken and defended dozens if not over a hundred depositions; have drafted, responded to, and argued dozens of dispositive and non-dispositive motions in federal court, many of them complex; have handled myriad miscellaneous court hearings and appearances; and have represented my clients at dozens of court-annexed settlement conferences before United States Magistrate Judges or independent mediators, as well as negotiating a large number of settlements and resolutions without the assistance of a neutral. Beyond this, I have supervised and directed civil and criminal investigations, primarily into health care fraud and related white collar matters. In my various supervisory roles, I have also provided oversight, support, and direction to other Assistant United States Attorneys and support staff in the conduct of their work, reviewed and approved written work product, and supervised court hearings, appearances, and trials.

I have never performed lobbying activities on behalf of any individual, organization, or entity.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

As noted above, I have served as an instructor at various internal-only CLE trainings while employed by the New York City Law Department on general litigation subjects such as discovery and case management. I no longer have any notes or materials from these trainings.

While a student at George Washington University Law School, I was selected to serve as a student instructor in legal research and writing (each group was also assigned a practicing adjunct professor) and taught one section of first year law students in this capacity during my third year (2000-2001). I was not able to locate any notes or materials that I used during this course.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future

for any financial or business interest.

None.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See my SF-278 as provided by the Office of Government Ethics.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with the ethics officials in the Executive Office for United States Attorneys, Department of Justice.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As an Assistant United States Attorney and an Assistant Corporation Counsel, the entirety of my legal career has been devoted to public service, including working with and assisting victims of crime. I have taken part in and supported community organizations in my time off of work, and have supported an array of charitable causes.