

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Inga Saterlie Bernstein

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

United States District Judge for the District of Massachusetts

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: Zalkind Duncan & Bernstein LLP
 65a Atlantic Avenue
 Boston, Massachusetts 02110

Residence: Brookline, Massachusetts

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

1961; New Haven, 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.

1991 – 1994, Harvard Law School, J.D. (*cum laude*), 1994
1980 – 1984, Wellesley College, B.A. (*magna cum laude*), 1984
1982 – 1983, University of California, Berkeley, no degree (Junior Year)

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.

1995 – Present
Zalkind Duncan & Bernstein LLP (formerly Zalkind Rodriguez Lunt & Duncan LLP)
65a Atlantic Avenue

Boston, Massachusetts 02110
Partner (2001 – present)
Associate (1995 – 2001)

1994 – 1995
Judge Douglas P. Woodlock
United States District Court for the District of Massachusetts
One Courthouse Way
Boston, Massachusetts 02210
Law Clerk

September – December 1993
Greater Boston Legal Services
Employment Unit
197 Friend Street
Boston, Massachusetts 02114
Clinical Intern

Summer 1993
Angoff, Goldman, Manning, Pyle, Wagner & Hiatt
(now defunct)
Summer Associate

Summer 1992
Harvard Defenders
Harvard Law School
Cambridge, Massachusetts 02138
Summer Associate

1985 – 1991
Urban Community Mediators
(now defunct)
Dorchester, Massachusetts
Director (1990 – 1991)
Mediation Trainer (1986 – 1991)
Mediator (1985 – 1991)
Board President (1989 – 1990)
Executive Board Member (1987 – 1990)

1988 – 1990
Boston Fair Housing Commission
City of Boston
One City Hall Square
Boston, Massachusetts 02201
Assistant Director for Investigations and Enforcement

1985 – 1988
South Shore Housing Development Corporation
169 Summer Street
Kingston, Massachusetts 02364
Director of Housing Services

1984 – 1985
Hi Spot Deli
(now defunct)
Boston, Massachusetts
Accounts Receivable and Catering Manager

Spring 1985
Women's Review of Books
Wellesley Centers for Women (formerly Wellesley Center for Research on Women)
828 Washington Street
Wellesley, Massachusetts 02481
Advertising Sales Manager

Other Affiliations (uncompensated):

2012 – 2014
Massachusetts Employment Lawyers Association
No physical address
Boston, Massachusetts
Vice President

Approximately 1996 – 2003
Frank J. Murray Inn of Court
No physical address
Boston, Massachusetts
Board Member

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 military and was not required to register for 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.

Recognized for Criminal Defense: Non-White-Collar and Employment Law –
Individuals, Best Lawyers in America (2007 – present)

Massachusetts Super Lawyer (2004 – present)

Martindale-Hubbell, AV Preeminent rating (2002 – present)

“Lawyer of the Year” for Employment Law – Individuals in Boston, Best Lawyers in America (2014 – 2015)

Global Award 2015 for Civil Rights – Massachusetts, Corporate LiveWire Winner (2015)

“Lawyer of the Year” for Civil Law, Boston, Corporate LiveWire (2014)

Top 50 Women “Super Lawyers” in Massachusetts (2004)

Honored as one of five “Up and Coming Lawyers,” Massachusetts Lawyers Weekly (2003)

Best Oralist, Ames Moot Court Competition Semi-Finals, Harvard Law School (1993)

Articles Editor, Harvard Women’s Law Journal (1992 – 1993)

Honor Student, University of California, Berkeley (1982 – 1983)

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.

Boston Bar Association

Member (2008 – present)

Labor and Employment Law Section Steering Committee (2008 – 2009)

Federal Bar Association

Member (approximately 1998 – 2000, 2014 – present)

Section Co-Chair, Labor and Employment Law Sections (2014 – 2015)

Criminal Justice Act Panel

Member (January 2015 – present)

Frank J. Murray Inn of Court

Member (1995 – 2015)

Board Member (approximately 1996 – 2003)

Magistrate Reappointment Committee for Magistrate Judge Robert B. Collings (2006)

Massachusetts Association of Criminal Defense Lawyers

Member (approximately 1995 – present)

Massachusetts Bar Association

Member (2006 – 2011)
Individual Rights and Responsibilities Section Council (2006 – 2008)
Amicus Brief Committee (2006 – 2009)

Massachusetts Employment Lawyers Association
Member (approximately late 1990s – present)
Vice President (2012 – 2014)

Massachusetts LGBTQ Bar Association (formerly Massachusetts Lesbian and Gay Bar Association)
Member (approximately late 1990s – 2013)

National Employment Lawyers Association
Member (2014 – present)
First Circuit Representative, NELA Judicial Nominations Committee (2014 – 2015)

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.

Massachusetts; 1995

There has been no lapse in membership.

- 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; 1996
United States District Court for the District of Massachusetts; 1995

There have been no lapses in membership.

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.

Member, Book Group (January 2015 – present)

Member, Chilmark Associates (approximately 2005 – present)

Member, Wellesley Lawyers' Network (2002 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate 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, none of the organizations listed 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.

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.

With Zoraida Fernandez, *Strangulation and Suffocation: New Criminal Statute with Penalties and Procedures Defendants Need to Be Aware of*, Boston Lawyers Blog, March 20, 2015. Copy supplied.

Practice Tips for Opening Statements, Massachusetts Continuing Legal Education, 2007. Copy supplied.

With Ruth O'Meara-Costello, *Recent Cases Interpreting the Family Medical Leave Act*, Employment Law Conference, December 7, 2007. 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 are a 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.

None.

- 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.

April 23, 2015: Letter to The Honorable Charles Grassley, Chairman, Committee on the Judiciary and The Honorable Patrick J. Leahy, Ranking Minority Member, Committee on the Judiciary, regarding the potential appointment of the Honorable L. Felipe Restrepo to the U.S. Court of Appeals for the Third Circuit. I did not sign or draft this letter, but it was sent by the National Employment Lawyers Association during the time in which I served on that organization's Judicial Nominations Committee. Copy supplied.

January 16, 2015: Letter to Massachusetts Governor Charles Baker regarding a proposal to create a cabinet level Office of Civil Rights. The letter was presented as coming from The Working Committee on Civil Rights (in formation) and was signed by a number of individuals and organizations, including the Massachusetts Employment Lawyers Association. Although I did not participate in the drafting of this letter, or ask that my name be included as a signatory, my name was included among the list of signatories as a Massachusetts Employment Lawyers Association Committee Chair. Copy supplied.

July 2, 2014: Letter to The Honorable Jim Cooper, U.S. House of Representatives regarding the possible appointment of Donna J. Mikel to the U.S. District Court for the Eastern District of Tennessee. I did not sign or draft this letter, but it was sent by the National Employment Lawyers Association during the time in which I served on that organization's Judicial Nominations Committee. Copy supplied.

April 2, 2014: Letter to Kendra Foley, Director of Boards and Commissions, Executive Office of the Governor of Massachusetts, encouraging the appointment of Nadine Cohen as a Commissioner of the Massachusetts Commission Against Discrimination. I signed this letter in my capacity as Vice President of the Massachusetts Employment Lawyers Association. Copy supplied.

February 7, 2014: Letter to Kendra Foley, Director of Boards and Commissions, Executive Office of the Governor of Massachusetts, encouraging the appointment of Commissioner Sunila Thomas-George as Chair of the Massachusetts Commission Against Discrimination. I signed this letter in my capacity as Vice President of the Massachusetts Employment Lawyers Association. Copy supplied.

April 2, 2013: Letter to President Obama recommending Jeffrey Neil Young for the then-open seat on the United States District Court for the District of Maine. I signed this letter in my capacity as Vice President of the Massachusetts Employment Lawyers Association. Copy supplied.

February 4, 2013: Letter to Judges David Campbell, Paul Grimm and John Koeltl to provide comments on proposed amendments to the Rules of Civil Procedure, particularly those that would impose limits on the number of requests for production of documents, reduce the presumptive limits on the number of depositions, reduce the number of interrogatories permitted without leave of court, and impose limits on the number of requests for admissions. The letter was sent on behalf of the Massachusetts Employment Lawyers Association and I signed in my capacity as Vice President of the organization at that time. Copy supplied.

During the time I served as Vice President of the Massachusetts Employment Lawyers Association, in or around the Spring of 2013, that entity wrote letters recommending consideration of Indira Talwani and Suzanne Garrow for a then-open seat on the United States District Court for the District of Massachusetts. I have been unable to locate a copy of either of these letters.

- 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.

March 5, 2015: Lawyer Panelist, Federal Judicial Forum 2015, Massachusetts Continuing Legal Education, Boston, Massachusetts. This panel consisted of lawyer panelists, including myself, asking members of the Federal Bench questions about their approaches to a variety of issues presented in civil and criminal litigation in the District of Massachusetts. I have no notes, transcript, or recording, but a list of the lawyer panelists' assigned questions (not all of which were asked due to time constraints) is supplied. The address for Massachusetts Continuing Legal Education is 10 Winter Place, Boston, Massachusetts 02138.

February 28, 2014: Faculty, Proving and Valuing Damages in Employment Cases, Massachusetts Continuing Legal Education, Boston, Massachusetts. Video is available at <http://www.clebuilder.com/mcle/validate.php?action=launch-mcle-meeting&userID=89846&email=ibernstein%40zalkindlaw%2Ecom&firstname=Inga&lastname=Bernstein&company=Zalkind%2C%20Duncan%20%26%20Bernstein%20LLP&phone=%28617%29%20742%2D6020&productID=2140183wbc>.

November 15, 2012: Presenter, Learn How to Protect Yourself from Employment Discrimination, Black Law Students' Association, Harvard Law School, Cambridge, Massachusetts. I addressed law students on approaches to addressing concerns about discrimination and retaliation in the workplace. I have no notes,

transcript or recording. The address for the Black Law Students' Association is Hastings Hall Basement, 1541 Massachusetts Avenue, Cambridge, Massachusetts 02138.

May 18, 2012: Faculty, Effective Courtroom Advocacy in Employment Cases, 33rd Annual Labor & Employment Law Spring Conference, Massachusetts Bar Association, Boston, Massachusetts. Annotated outline (prepared by another panelist) supplied.

March 3, 2012: Presenter, View from the Trenches: Trial of Kiely v. Teradyne, Frank J. Murray Inn of Court, Boston, Massachusetts. Outline supplied.

June 3, 2011: Speaker, the Honorable Douglas P. Woodlock's Portrait Presentation Ceremony, Federal Courthouse, Boston, Massachusetts. Video supplied.

May 12, 2010: Faculty, Effectively Using & Excluding Evidence in Employment Cases, Massachusetts Continuing Legal Education, Boston, Massachusetts. Outlines supplied.

March 29 – 30, 2007; March 12 – 13, 2008; March 25 - 26, 2009: Faculty, Employment Law Trial Skills Master Class, Massachusetts Continuing Legal Education, Boston, Massachusetts. I participated annually from 2007 to 2009 as faculty for parts of this two-day trial skills training, in which I discussed opening statements. A copy of the handout on which my presentation was based is supplied in response to Question 12(a).

December 7, 2007: Panelist, Update on Leave of Absence Issues, Annual Employment Law Conference, Massachusetts Continuing Legal Education, Boston, Massachusetts. I presented on decisional law interpreting the Family and Medical Leave Act. A copy of the materials on which my presentation was based is supplied in response to Question 12(a).

May 12, 2004: Faculty, Jury Trials in Employment Discrimination Cases: Techniques for Success, Massachusetts Bar Institute, Boston Massachusetts. I cannot recall the precise topics presented on for this session, nor do I have notes, a transcript or a recording. The address for the Massachusetts Bar Institute is 20 West Street, Boston, Massachusetts 02110.

February 12, 2002: Introducer, Event Featuring the Honorable Sandra Lynch, Wellesley Lawyers' Network, Boston, Massachusetts. I gave an introduction for Judge Lynch, who was speaking at an event highlighting her background. I have no notes, transcript or recording. The address for the Wellesley Lawyers' Network is Wellesley College Alumnae Association, Green Hall Room 246, Wellesley, Massachusetts 02481.

Approximately 2001: Presenter, Edwards v. Massachusetts Bay Transportation Authority, Massachusetts Employment Lawyers Association, Boston, Massachusetts. I gave a presentation with Norman Zalkind regarding our trial in the case of Edwards v. Massachusetts Bay Transportation Authority. I have notes, transcript or recording. The Massachusetts Employment Lawyers Association has no mailing address.

Approximately 1993: Guest lecturer, Washington University School of Law, St. Louis, Missouri. I taught a class on mediation at the invitation of my father, Merton Bernstein, who was on the faculty there. I cannot recall the precise date of this lecture but it was while I was in law school. I have no notes, transcript or recording. The address for the Washington University School of Law is One Brookings Drive, St. Louis, Missouri 63130.

1985 – 1988. During the time I worked as Director of Housing Services at South Shore Housing, a major component of my job was providing educational seminars for landlords and tenants. During this time period I averaged approximately one to two seminars a month on topics related to property management, tenant selection, eviction processes, rental assistance programs, non-discrimination rights, and lead paint issues. Many of these seminars were repeated in different locations across Plymouth and Bristol counties and at different times throughout this period. I have no notes, transcripts or recordings. The address for South Shore Housing is 169 Summer Street, Kingston, Massachusetts 02364.

- 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.

Brandon Gee, *JNOV Flipped in MGH Nurse's Retaliation Case*, Massachusetts Lawyers Weekly, Mar. 19, 2015. Copy supplied.

Todd Wallack, *Massachusetts Spent Millions on Secret Settlements*, Boston Globe, Jan. 26, 2014. Copy supplied.

Mary Moore, *TSA Pat-Down Policy Challenged by Boston Law Firm in Federal Court*, Boston Business Journal, Jan. 6, 2014. Copy supplied.

Sheri Qualters, *Disabled Passenger Takes Airport Pat-Downs to First Circuit*, National Law Journal, Jan. 2, 2014. Copy supplied.

David Frank, *Nurse's \$1.2M Verdict Vacated by JNOV Ruling*, Massachusetts Lawyers Weekly, Nov. 7, 2013. Copy supplied.

David Frank, *Trading Places: No One Fears the Embarrassment of Getting Sued More than Attorneys*, Massachusetts Lawyers Weekly, Aug. 9, 2012. Copy supplied.

John Zaremba, *Lawyer: 'They Have to Follow the Same Rules'*, Boston Herald, May 24, 2012. Copy supplied (reprinted in multiple outlets).

Frequent Flyer with Metal Implants Takes TSA Pat-Down Policy to Court, FlyersRights.org, Jan. 21, 2012. Copy supplied (reprinted in multiple outlets).

Kimberly Thorpe and David Frank, *Verdict Reflects Trend in Employment Disputes*, Massachusetts Lawyers Weekly, Jan. 5, 2012. Copy supplied.

Former Associate of Boston-based Bingham McCutchen Settles Sexual Harassment Case against Firm, Massachusetts Lawyers Weekly, Nov. 17, 2011. Copy supplied.

Associate's Date-Rape Suit versus Bingham Heads to Trial, Massachusetts Lawyers Weekly, Aug. 17, 2011. Copy supplied.

Associate's Suit against Bingham Set for Trial, Massachusetts Lawyers Weekly, Mar. 10, 2011. Copy supplied.

Andrew Ryan, *On Bench, Woodlock Taps Life Experience*, Boston Globe, Jan. 27, 2011. Copy supplied.

Julia Reischel, *Risky Business?*, Massachusetts Lawyers Weekly, Dec. 21, 2009. Copy supplied.

Meghna Chakrabarti, *Suspended MBTA Safety Director Speaks Out*, WBUR, Dec. 16, 2009. Copy supplied.

David Frank, *Former Bingham Associate Files Superior Court Suit against Firm*, Massachusetts Lawyers Weekly, June 29, 2009. Copy supplied.

Confidential Informant: Women Press Bias Suits against Two Big Firms, Massachusetts Lawyers Weekly, Apr. 27, 2009. Copy supplied.

Press release, *Former Bingham McCutchen, LLP Associate Files Sex Discrimination Complaint*, reprinted in Massachusetts Lawyers Weekly, May 7, 2008. Copy of press release supplied (complaint removed to comply with settlement confidentiality provisions).

Jay Lindsay, *Firm Owner Arrested in Immigration Raid*, Washington Post, Mar. 6, 2007. Copy supplied (reprinted in multiple outlets).

Maggie Mulvihill, *Soft Touch for 'Love Judge'*, The Boston Herald, Nov. 29, 2005. Copy supplied (reprinted in multiple outlets).

Natalie White, *Police Union Liable for Retaliation in Sexual Harassment Claim*, Lawyers Weekly USA, Nov. 7, 2005. Copy supplied.

Adrian Walker, *Bittersweet Justice*, Boston Globe, Oct. 20, 2005. Copy supplied.

Shelley Murphy, *Jury Awards Ex-Officer \$2.2 Million for Retaliation*, Boston Globe, Oct. 19, 2005. Copy supplied.

Lisa Bruno, *United States District Court Judge Woman with Bipolar May Sue for Long-Term Disability*, Massachusetts Lawyers Weekly, May 16, 2005. Copy supplied.

Lisa Bruno and John O. Cunningham, *Up and Coming Lawyers 2003*, Massachusetts Lawyers Weekly, Aug. 25, 2003. Copy supplied.

Jason Scally, *The Top Jury Verdicts of 2001: Number Three*, Massachusetts Lawyers Weekly, Jan. 14, 2002. Copy supplied.

Raphael Lewis, *FBI Said to Subpoena Records in Case of a Top T Manager*, Boston Globe, Nov. 21, 2001. Copy supplied (reprinted in multiple outlets).

Jason Scally, *Compelling Testimony Key to \$7.6 Million Job-Bias Verdict*, Reuters News, June 18, 2001. Copy supplied.

Boston Transit Agency Penalized \$7.6 Million, Reuters News, June 8, 2001. Copy supplied.

Thomas Palmer, *MBTA Chooses Costly Defense over Settling Bias Lawsuit*, Boston Globe, Jan. 14, 2001. Copy supplied.

Adrian Walker, *Time to Reform Civil Service*, Boston Globe, May 25, 2000. Copy supplied (reprinted in multiple outlets).

Andy Dabilis, *Lowell Officer Takes Her Complaint to MCAD*, Boston Globe, Apr. 1, 1999. Copy supplied.

Peter Canellos and Ellen O'Brien, *Case Is Now Down to Three Legal Options*, Boston Globe, Nov. 1, 1997. Copy supplied.

Sex Offender Registration, "All Things Considered," National Public Radio (NPR), May 6, 1997. Transcript supplied.

Samantha Nicosia, *Rhodes Retires from Cornell University*, Columbia Daily Spectator, Mar. 22, 1994. Copy supplied.

Traci R. Manning, *Harvard Law School Proposes Ban on Hate Speech*, The Harvard Crimson, Mar. 19, 1994. Copy supplied.

Greg Stohr, *Harvard Law School Takes Steps to Bring in Female Professors*, Harvard Law Record, March 18, 1994. Copy supplied.

Ishaan Seth, *Law School Organizes Lobby Days*, The Harvard Crimson, Mar. 4, 1994. Copy supplied.

Victoria Kuohung, *Coalition for Civil Rights Lobbies Professors for More Diversity*, Harvard Law Record, March 4, 1994. Copy supplied.

Rajath Shourie, *Coalition for Civil Rights Organizes 'Diversity Day'*, The Harvard Crimson, Oct. 27, 1993. Copy supplied.

Max Boot, *The Diversity Battle at Harvard Law*, Christian Science Monitor, June 7, 1993. Copy supplied.

Johanna Davis, *Fake Dean's Letter Fools Many*, Harvard Law Record, April 16, 1993. Copy supplied.

Rajath Shourie, *Fake Letter Claims Minorities Tenured*, The Harvard Crimson, Apr. 15, 1993. Copy supplied.

Steve Marantz, *Agency Study Finds No Housing Discrimination Against Asians*, Boston Globe, Jan. 22, 1990. Copy supplied.

Pamela Reynolds, *Harvard Broadens Its Housing Policy*, Boston Globe, Oct. 5, 1989. Copy supplied.

Steve Marantz, *Two Areas Lead City in Housing Bias Charges*, Boston Globe, July 16, 1989. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. 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, nor have I had unsuccessful candidacies for elective office or nominations for appointed 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 not held a position in a political party, election or campaign. I have served on host committees for fundraisers for candidates. After searching my records and the internet, the only two I could identify are the host committees for Maura Healy (candidate for Massachusetts Attorney General, 2014), and Kenneth Gordon (candidate for Massachusetts House of Representatives, 2014). My father, Merton C. Bernstein, ran as a candidate for the United States Senate from Missouri in 1992. Living in Massachusetts, I did not work on his campaign aside from attending some campaign events for him in the final days leading up to the primary.

16. 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 clerked for the Honorable Douglas P. Woodlock, of the United States District Court for the District of Massachusetts, from August 1994 to September 1995.

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

I have not 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.

1995 – Present
Zalkind Duncan & Bernstein LLP
(formerly Zalkind, Rodriguez, Lunt & Duncan LLP)
65a Atlantic Avenue
Boston, Massachusetts 02110
Partner (2001 – present)
Associate (1995 –2000)

- 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.

Between 1985 and 1991, I was a volunteer community mediator with the not-for-profit organization, Urban Community Mediators. During this time I mediated disputes between neighbors, family members, friends, couples, and community members, some of which were referred by personnel from the Dorchester and Roxbury district courts. These were confidential proceedings and their significance stemmed from the efforts the parties made to peacefully and collaboratively engage in problem solving.

b. Describe:

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

All of my law practice has been at one firm, and it has all involved trial and appellate litigation or pre-litigation counseling. When I first joined the firm in 1995, the vast majority of the firm's practice, and thus my own, was criminal defense work, although the firm always had some civil practice including torts, domestic relations, and civil rights. Early in my practice, I started taking plaintiff's employment discrimination and retaliation cases and, over the years, although I have continued to represent clients in criminal and quasi-criminal matters, the employment practice has grown to make up a substantial portion of my, and the firm's, work. Throughout my years of practice, I have also represented clients in divorce and child custody matters, and more recently, a care and protection and termination of parental rights case in juvenile court. Although my appellate work has been more limited, I have done appeals

throughout my years of practice, both civil and criminal, in state and federal court.

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

Since starting work as a lawyer, I have had an active criminal defense practice which has run the gamut from the state district court to the U.S. Supreme Court. My clients in these cases have all been individuals facing prosecution or threat of prosecution. A sizeable percentage of my clients are people of color, quite a few have been immigrants and are linguistic minorities, or come from immigrant families, and/or are from economically disadvantaged backgrounds.

My employment practice has primarily involved the representation of people with colorable claims of illegal discrimination, including discrimination based on race, gender (including pay equity, promotion, pregnancy-related matters, and sexual harassment), sexual orientation and gender identity, disability, age, and national origin, and related retaliation matters. I also represent people with other statutory, contract or common law claims related to employment. In addition, I have represented numerous faculty members, administrators and academic researchers involved in employment disputes.

- 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.

Throughout my career, the bulk of my work has involved litigation, and I would estimate that in recent years, 90% of my practice has been litigation; the other 10% of my practice has involved pre-litigation counseling and negotiations in civil matters. During my earlier years, when my practice was more heavily weighted to criminal defense work in state district courts, I was in court multiple times a week. Over the past ten or so years, as my practice evolved to include less state district court criminal representation, that frequency diminished, but I have continued, throughout, to appear in court frequently. Over the past year I appeared in court for hearing or trial on 47 occasions.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 30%
- 2. state courts of record: 70%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 55%
- 2. criminal proceedings: 45%

- 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 tried at least 19 cases to verdict (or in one case, withdrawal of criminal charges after several days of evidence). Since 2005, all but one of the cases I have tried have either been as chief counsel or sole counsel; in earlier years, I was more frequently (though not exclusively) second-chair.

- i. What percentage of these trials were:
- | | |
|--------------|-----|
| 1. jury: | 63% |
| 2. non-jury: | 37% |

- 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 participated in two petitions for certiorari to the Supreme Court, participated in the briefing for one of those cases in which certiorari was granted, and was involved in amicus briefing in one other case, listed below.

Van Anh v. United States, No. 08-5258 (petition for writ of certiorari, copy supplied) (cert. denied)

Cleveland v. United States, 524 U.S. 125 (1998) (petition for a writ of certiorari, copy supplied; brief for petitioner, 1998 WL 35184; reply brief, 1998 WL 120284)

United States v. LaBonte, 520 U.S. 751 (1997) (amicus brief for the National Association of Criminal Defense Lawyers and the Families Against Mandatory Minimums supporting respondents, 1996 WL 567086).

17. **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. Care and Protection of V., Middlesex Juvenile Court Docket No. 11-CP-0131

I represented a mother whose child had been removed from her care because of the mother's misuse of alcohol and related mental health instability in this care and protection matter that was converted into a termination of parental rights case. I entered my appearance in the spring of 2012, and the trial was conducted over 65 days from September 2013 to November 2014. As lead trial counsel, my involvement included counseling the client throughout the case and supporting her as she gained and solidified her recovery from misuse of alcohol, representation in related administrative proceedings with the Department of Children and Families, and litigating pre-trial motions including motions for abuse of discretion. When the client was no longer able to pay for our services, I was appointed, during trial, to continue to represent her by the Committee for Public Counsel Services. After trial and post-trial briefing, in January 2015, the judge found that the child was not in need of care and protection and that my client's parental rights should not be terminated. Unfortunately, a relapse during the reunification process resulted in a further merits hearing and a decision to terminate her parental rights in May 2015.

Judge: Hon. Kenneth J. King

Co-counsel: Zoraida Fernandez & David Russcol
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Counsel for Commonwealth: Dianne Hatch
Department of Children and Families
30 Mystic Street
Arlington, Massachusetts 02474
781-641-8257

Counsel for the child: Judy Glennon
Solo Practitioner
P.O. Box 279
Burlington, Massachusetts 01803
781-229-2503

Counsel for the father: Thomas Fothergill
Solo Practitioner
80 Maple Street
Stoneham, Massachusetts 02180
781-438-1122

Counsel for mother's partner:

Belle Soloway
Solo Practitioner
450 Washington Street, Suite 306
Dedham, Massachusetts 02026
781-457-2544

2. Ruskai v. Pistole, 775 F.3d 61 (1st Cir. 2014)

This case involved a challenge to Transportation Security Administration (TSA) airport security screening procedures by my client, a woman with metal hip and knee implants, who was subject to physically invasive screening when her implants alarmed walk-through metal detectors. The screening was challenged as a violation of Fourth Amendment protections to be free of unreasonable search and seizure, and under the Rehabilitation Act, as unfairly burdening her as a person with a disability. This matter was a petition for review of the TSA's actions and was brought in the first instance to the First Circuit in the spring of 2012. I was lead counsel and had the assistance of two associates. I argued the case before the First Circuit in January 2014 and a decision denying my client's petition was issued in December 2014.

Judges: Judge Sandra L. Lynch
Judge William J. Kayatta, Jr.
Judge Kermit V. Lipez

Co-counsel: Monica Shah and Naomi Shatz
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Counsel for defendant: Sydney Foster
U.S. Department of Justice, Civil Division
950 Pennsylvania Avenue, NW, Rm. 7258
Washington D.C. 20530
202-616-5374

3. Greenspun v. Greenspun, Middlesex Probate Court Docket No. MI11D-4048-DV1

In this divorce and child custody action, I represented the husband/father, taking over as his counsel about halfway through the discovery period and after an initial round of motions for temporary orders were decided. After the child custody and visitation issues were resolved on the eve of trial, the economic component of the case was tried over four days to Judge Maureen Monks in October 2013. I was lead counsel throughout this representation. The outcome obtained reflects a position between what each of the parties was seeking. The client appealed aspects of the case with successor counsel.

Judge: Judge Maureen Monks

Co-counsel: Emma Quinn-Judge
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Counsel for defendant: David Lee
Lee & Rivers LLP
222 Berkeley Street, Suite 1400
Boston, Massachusetts 02116
617-266-6262

4. Dixon v. Int'l Brotherhood of Police Officers, 434 F. Supp. 2d 73 (D. Mass. 2006).
Dixon v. Int'l Brotherhood of Police Officers, 504 F.3d 73 (1st Cir. 2007).

My client was a female police officer who was sexually harassed on a union-sponsored political outing. After a number of the male officers who participated in that outing were investigated and disciplined by the police department, a campaign of retaliation was undertaken by the union against my client, causing her to leave the department. She sued the union, members of union leadership, and two of the officers involved in the incident for discrimination, retaliation, defamation and related torts. I was sole counsel in pre-trial proceedings from the fall of 1997 through discovery and summary judgment. I was lead counsel in the trial, which was conducted in September and October of 2005. The trial resulted in a verdict for my client in which compensatory damages of \$1,205,000 and punitive damages of \$1,027,501 were awarded. The verdict was affirmed on appeal by the First Circuit in September 2007. Although some of the defendants filed a petition for certiorari to the United States Supreme Court, the case was settled in January 2008 and that petition was withdrawn.

Trial Judge: Judge William G. Young

Appellate Judges: Judge Sandra L. Lynch
Judge Kermit V. Lipez
Judge Jeffrey R. Howard

Co-counsel: Monica Pastorak
(former associate ZRLD)
Law Offices of Monica Pastorok
Four Oakland Street
Lexington, Massachusetts 02420
781-652-8888

Rachel Stroup
(law student at trial, associate on appeal)

Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Counsel for defendants: Joseph W. Monahan, III
(for defendants Int'l Brotherhood of Police Officers,
Lyons, Leary and Pender)
Monahan & Padellaro
92 High Street, Suite T2A
Medford, Massachusetts 02155
781-393-5500

Peter Perroni and Gary Nolan
(for defendants Int'l Brotherhood of Police Officers
Local 382 and Flynn)
Nolan Perroni Harrington LLP
133 Merrimack Street
Lowell, Massachusetts 01852
978-454-3800

5. Fletcher v. Tufts University, 367 F. Supp. 2d 99 (D. Mass. 2005)
Fletcher v. Tufts University, No. 05-8012 (1st Cir. Dec. 23, 2005).

In this case I represented a woman who had been a Professor at Tufts University until her bi-polar illness left her unable to continue to function in that capacity. She filed suit after her long term disability insurance provider, MetLife, indicated that her benefits would be limited to two years based on a policy provision allowing differential treatment of disabilities caused by mental illness. My client challenged this provision as a violation of the Americans with Disabilities Act and the Employee Retirement Income Security Act. My representation of this client began in 2002, and continued through the successful defeat of a motion to dismiss the ADA claims, and the subsequent successful defeat of a petition to the First Circuit for interlocutory review of that decision. Following that latter decision, the parties negotiated a settlement 2006. I was lead counsel throughout this litigation.

Trial Court Judge: Judge Reginald C. Lindsay

Appellate Court Judges: Judge Juan R. Torruella
Judge Bruce M. Selya
Judge Kermit V. Lipez

Co-counsel: Malick Ghachem
(former associate at ZRLD)
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102

617-324-7284

Counsel for defendants: David Henderson (for Tufts)
Nutter McClennon & Fish LLP
115 Seaport Boulevard
Boston, Massachusetts 02210
617-439-2345

James Kavanaugh, Jr. (for Metropolitan Life Ins.)
Conn, Kavanaugh, Rosenthal, Peisch & Ford, LLP
10 Post Office Square
Boston, Massachusetts 02109
617-482-8200

6. Edwards v. Massachusetts Bay Transportation Authority, Suffolk Superior Court
Docket No. 99-0458-F

My client in this case was the former Chief Administrative Officer at the Massachusetts Bay Transportation Authority (MBTA) who had taken on that role at a time when the MBTA was under considerable external pressure to address chronic issues with discrimination in its workforce. After actively undertaking efforts to address these issues, she concluded that she, herself, was being discriminated against based on her race (African-American), and filed a complaint at the Massachusetts Commission Against Discrimination. Within days of this filing she was suspended and, within two weeks, was fired. She brought discrimination and retaliation claims against the MBTA and its chief of staff. Summary judgment was granted on the discrimination claim and with respect to claims against the chief of staff. At trial, which was held in June 2001, the jury found the MBTA liable for retaliation and awarded \$602,999 in compensatory damages and \$7 million in punitive damages. At the time, this was the largest verdict in an employment discrimination case in Massachusetts' history. Approximately two months after trial, the parties settled the case. I took on this case in 1998, and was primary counsel throughout the pre-trial period, conducting all but one deposition and drafting and arguing all motions. Norman Zalkind, who had limited involvement during the discovery phase, was lead counsel at trial.

Judge: Judge Ernest B. Murphy

Co-counsel: Norman S. Zalkind
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Counsel for defendants: Michael Mone (lead trial counsel for MBTA)
Esdaile, Barrett, & Esdaile
75 Federal Street, 16th Floor
Boston, Massachusetts 02110

617-482-0333

Scott Moriearty (lead pre-trial counsel for MBTA)
Solo Practitioner
233 Brattle Street
Cambridge, Massachusetts 02138
617-669-4407

Joan Lukey (counsel for Puccia)
Choate Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110
617-248-4949

7. Commonwealth v. Pringle, Suffolk Superior Court Docket No. 95-11592
Commonwealth v. Pringle, 1998-P-0159 (Mass. App. Ct. July 30, 1999)

In this appointed murder case, Norman Zalkind and I represented a teenager who, along with two others, was charged with first degree murder following the shooting death of another young man. I appeared alone in the Dorchester District Court within the first weeks of starting work as a lawyer with Zalkind Rodriguez Lunt & Duncan in 1995 to represent this client at his initial arraignment and, throughout the case, I was the client's primary contact with the firm. I performed all legal research and drafted all motions and other court filings. In addition, I worked with Norman Zalkind through all aspects of discovery and investigation and did the ballistics analysis that revealed that there had been multiple shots fired from the field behind the young man who was killed where other young men who were acquaintances of the victim had been during the confrontation. All three defendants were found not guilty of the murder charge at trial in the spring of 1997; our client was convicted of a firearms charge. I was second chair at trial and drafted and argued all trial motions, including one for a required finding of not guilty on the firearms charge, and sentencing. I handled the appeal of the firearms charge, which was reversed and dismissed in July 1999 because the Commonwealth had failed to introduce evidence of an essential element of that crime.

Trial Judge: Judge James McDaniel

Appellate Judges: Judge George Jacobs
Judge Gerald Gillerman
Judge Mel L. Greenberg

Co-counsel: Norman S. Zalkind
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Counsel for Commonwealth: James Larkin (trial counsel)
(former Suffolk County Assistant District Attorney)
Cannot locate current business contact information

Jane A. Sullivan (appellate counsel)
Worcester County District Attorney's Office
225 Main Street
Room G-301
Worcester, Massachusetts 01608
508-755-8601

Counsel for co-defendants: James Dilday (lead counsel for Clacher)
Dilday & Associates LLC
10 Liberty Square #504
Boston, Massachusetts 02109
617-227-3470

Michael W. Smith (for Molina)
Bonner, Kiernan, Trebach & Crociata
200 Portland Street, Suite 400
Boston, Massachusetts 02114
617-426-3900

8. United States v. Kadi, Docket No. 97-cr-10141-MEL (D. Mass.)

Lead counsel Norman Zalkind and I represented this client, who along with others, was charged in 1997 with extortion by means of threats or violence and conspiracy, stemming from a dispute with two men about ownership of a mosque that culminated in a physical confrontation. I was involved in all aspects of the investigation, pre-trial litigation and trial of this case. Norman Zalkind and I, who led the joint defense efforts for all the defendants in this case, twice travelled with several other defense counsel to Philadelphia to conduct interviews with many members of the religious community from which this dispute had arisen. I did the analysis of the banking records of the individuals who were the purported victims and the government's key witnesses in the case which revealed substantial and unexplained cash transactions that belied the veracity of their accounts of the dynamics that had led to the dispute, and assisted Norman Zalkind with the crafting of the cross-examination of the first of these witnesses to testify which focused in on these issues. The day after that examination at trial in June 1998, the government dismissed the charges against our client and all the other defendants, with the exception of one firearms charge for one defendant.

Judge: Judge Morris Lasker

Co-counsel: Norman S. Zalkind
Zalkind Duncan & Bernstein LLP

65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Prosecutors:

John M. Griffin
(formerly at United States Attorney's Office)
Current business contact information unavailable

David Apfel
(formerly at United States Attorney's Office)
Goodwin Procter
Exchange Place, 53 State Street
Boston, Massachusetts 02109
617-570-1970

Counsel for co-defendants:

Jeffrey Denner (for Nachef)
Denner Law
Four Longfellow Place
Boston, Massachusetts 02114
617-227-2800

Kevin Nixon (for Houssami)
Solo Practitioner
65 Atlantic Avenue
Boston, Massachusetts 02110
617-227-6363

E. Peter Parker (for Hawthorne)
Solo Practitioner
151 Merrimac Street
Boston, Massachusetts 02114
617-742-9099

John Wall (for Mateen)
Deceased

Elliot Weinstein (for Sahib)
Solo Practitioner
83 Atlantic Avenue
Boston, Massachusetts 02110
617-367-9334

Melvin Norris (for Itani)
Solo Practitioner
260 Boston Post Road
Wayland, Massachusetts 01778
617-244-7717

Theodore Barone (for Dennaoui)
Barone Law Offices
130 Liberty Street, #2B
Brockton, Massachusetts 02301
508-584-0411

Benjamin Entine (for Salem)
Deceased

9. United States v. Gray-Santana, Docket No. 94-cr-10292-REK (D. Mass.)
United States v. Cleveland, 106 F.3d 1056 (1st Cir. 1997)
on appeal, Muscarello v. United States, 524 U.S. 125 (1998)

I became involved in this case of Norman Zalkind's around the change of plea of our client, who entered a conditional plea to "using and carrying" a firearm during a drug transaction. Shortly after that change of plea, the Supreme Court issued a decision in Bailey v. United States, 516 U.S. 137 (1995), which interpreted and limited the meaning of "using" a firearm in the relevant statute. Our client had been charged after a stop following surveillance resulted in the discovery of a firearm along with evidence of drug dealing in a hidden compartment in the vehicle in which he was traveling. Before sentencing, I drafted and filed a motion to re-consider or vacate our client's plea arguing that the "carrying" prong of the statute should not be interpreted to extend to circumstances in which the firearm was inaccessible. This motion was denied, and I drafted and argued, for our client and for his co-defendant, the unsuccessful appeal to the First Circuit on this issue. I drafted a successful petition for certiorari to the Supreme Court. Although I remained involved in the case, worked on the briefing in the Supreme Court and attended the argument, others in my office took the lead in those ultimately unsuccessful efforts and Norman Zalkind argued for our client and his co-defendant in that Court.

Trial Court Judge: Judge Robert E. Keeton (trial judge)

Appellate Judges: Judge Michael Boudin (First Circuit)
Judge Levin H. Cambell (First Circuit)
Judge Hugh H. Bownes (First Circuit)

Lead Counsel: Norman S. Zalkind
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Prosecutor: Jeffrey Locke (in trial court)
(former Assistant United States Attorney)
Associate Justice, Superior Court
Suffolk County Courthouse

Three Pemberton Square
Boston, Massachusetts 02108
617-788-8130

Dina Michael Chaitowitz (in First Circuit)
United States Attorney's Office
One Courthouse Way
Boston, Massachusetts 02210
617-748-3361

Counsel for co-defendant: John M. Cunha (for defendant Cleveland)
Cunha & Holcomb
One State Street
Boston, Massachusetts 02109
617-523-4300

10. Commonwealth v. Rosenthal, Middlesex Superior Docket No. 95-1775

Our client in this case was charged with the gruesome murder of his wife. Norman Zalkind and David Duncan began their representation of him in the summer of 1995 shortly before I joined the firm as an associate. I joined the defense team as we prepared for trial. We met with our expert witnesses as we worked to understand and best present the evidence of our client's mental status to support an insanity defense. I was second chair at trial – my first jury trial – in the fall of 1996, examining at least one witness and drafting proposed jury instructions and arguing for our client's position on the jury instructions at the charge conference. Following our client's conviction, I communicated with staff at the facility at which he was being held for classification and the Department of Correction, urging incarceration at the Bridgewater Treatment facility, where he did end up being housed for many years, rather than in the regular prison population.

Judge: Judge Malcolm R. Graham

Lead Counsel: Norman S. Zalkind and David Duncan
Zalkind Duncan & Bernstein LLP
65a Atlantic Avenue
Boston, Massachusetts 02110
617-742-6020

Lead Prosecutor: Martin Murphy
(former Middlesex Assistant District Attorney)
Foley Hoag
155 Seaport Boulevard
Boston, Massachusetts 02210
617-823-1213

18. **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.)

My practice, like many litigation practices, involves many cases resolved short of trial. In criminal cases in the state district courts in particular, where I have handled many cases, the vast majority of cases are resolved with a plea, some by pre-trial motion. Each of these cases is significant to the individual defendant who faces them, and I work hard to approach each with a fresh set of eyes to enable me to provide the highest quality legal services I can to my client. In federal court, the vast majority of criminal cases are resolved with plea agreements and, following discovery and dispositive motions, many involve wrestling with sentencing and guidelines issues. Similarly, in employment situations, I have represented many individuals in difficult workplace situations, many involving claims of discriminatory or otherwise illegal employer practices or strong intimations of such. I handle many cases in which I help the client to navigate these waters, and many others where I undertake negotiations to resolve disputes without resort to litigation. A subset of these proceed to litigation, where most are resolved short of, though many on the eve of, trial.

Over the years I have participated in a number of law-related organizations. Among these is the Frank J. Murray Inn of Court, of which I have been a member since starting in practice and for which I was, for a period of time, a member of the board. This group is focused on providing an opportunity for the bench and bar to come together informally for presentations and discussions of interest to litigators. I have been involved in both Massachusetts Bar Association and Boston Bar Association sections; individual rights and responsibilities for the former and labor and employment law for the latter. Each of these groups brought together practitioners from all segments of practice related to the area of interest, and provided opportunities for discussion and education on issues of interest to the bar. In addition, I have been a member of the Massachusetts GLBTQ Bar Association, the Massachusetts Criminal Defense Lawyers Association and the Massachusetts and National Employment Lawyers Associations. Each of these organizations has provided opportunities for getting to know other members of the bar, sharing their experiences and expertise and offering and receiving mentoring.

I have not performed any lobbying activities.

19. **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.

None.

20. **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.

As a firm partner, I will have an entitlement to receive a share of future payments for work performed prior to my departure but paid later pursuant to contingent fee agreements currently in place. Other than that, to the best of my knowledge, I expect to receive no such income or benefits.

21. **Outside Commitments During Court 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.

I have no such plans, commitments or agreements.

22. **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 attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements 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.

I do not expect that I would face any potential conflicts of interest aside from cases involving my partners and other members of my firm. I would follow judicial guidelines for recusal and would take care to err on the side of caution in situations in which the appearance of a conflict is present. I would also recuse myself if Ahold USA or any of its related entities were a party because my spouse, Christine Nickerson, is currently employed by and a lawyer for that company.

- b. Explain how you will resolve any potential conflict of interest, including the

procedure you will follow in determining these areas of concern.

Should a situation arise in which a potential conflict or the appearance of a conflict might realistically be present, I would address the issue with involved counsel, making appropriate disclosures and providing the opportunity to be heard on the issue. As indicated above, I would follow the Code of Conduct for United States Judges and would hope to conduct myself in a manner that retains public confidence in the impartiality and integrity of the judicial system.

25. **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.

Throughout my career I have worked on appointed cases, both state and federal, as a part of my and my firm's commitment to providing high quality legal services even for those without the resources to pay for private counsel. Recently, the Committee for Public Counsel Services appointed me to represent the mother in a termination of parental rights trial, which consumed substantial portions of my available time over the period of more than a year and a half. Because of the compensation rules governing those cases, significant time spent on that case was entirely uncompensated. I also am now a member of the Criminal Justice Act panel, which provides representation to indigent people charged with crimes. In addition, my firm does what it can to slide on fees for those with criminal or employment cases who are of limited means. I have also been a referral attorney for Gay and Lesbian Advocates and Defenders (GLAD) for many years, and this work has also involved some pro bono and sliding scale representation.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 21, 2015, Senators Elizabeth Warren and Edward Markey announced that they were convening their Advisory Committee on Massachusetts Judicial Nominations to consider applications for a federal judicial vacancy in Boston, Massachusetts. On February 23, 2015, I submitted an application to the Committee. On March 25, 2015, I interviewed with the Committee in Boston, Massachusetts. On May 8, 2015, I met with Senators Warren and Markey and members of their staffs in Boston, Massachusetts. On June 4, 2015, I was notified by Senator Warren's staff

that my name had been forwarded to the White House to be reviewed for possible nomination. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 22, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On July 30, 2015, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.