

CURRICULUM VITAE

- 2020-

Judge Nancy Gertner (Ret.)
Senior Lecturer
Harvard Law School
Langdell 328
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138

Date of Birth:

[REDACTED]

Admitted to Practice:

[REDACTED]

LEGAL EDUCATION

Yale University, J.D. (1971)
Yale Law Journal, Board of Editors

GRADUATE EDUCATION

Yale University, Department of Political Science
M.A. Degree 1971 (Completion of all course requirements towards Ph.D.)

UNDERGRADUATE EDUCATION

Barnard College, Columbia University
B.A. June, 1967 (Major in Political Science)
Cum Laude, with Honors in Government

EMPLOYMENT/ TRUSTEE RECORD

<u>Employer</u>	<u>From</u>	<u>To</u>	<u>Nature of Work</u>
United States D.Ct. (D.Mass)	4/94	8/11	U.S. Judge
Harvard Law School	9/11 9/14	6/2014 present	Professor of Practice Senior Lecturer
Yale Law School	9/20	1/21	Cabella Visiting Lecturer
Fick & Marx	9/16	present	Of counsel
Scheck, Neufield, Brustin	4/13	9/18	Special Counsel
Guttman, Buschner, Brooks	4/19	present	Of counsel
MGH Center Law, Brain & Behavior	9/16	present	Managing Director
Bondex Trust	12/2014	present	Trustee
Takata Airbag restitution Fund	4/2018	present	Reviewer
Clapp v. Accordia Life Settlement	1/120	present	Reviewer
Network Scholar of The MacArthur Foundation Research Network on Law And Neuroscience	7/12	present	Member
Rockefeller Foundation, Bellagio Residency	9/30/14	10/23/14	academic work
Resolutions, LLC	9/11	present	mediation, etc.

Southeast Mediation, Arbitration & Compliance	9/16	present	mediation, etc.
Boston Globe	9/15	present	op ed writer
NPR	9/16	present	commentator
Law Offices N. Gertner	9/11	present	limited practice

BOARDS/COMMITTEE

Senior Advisor, President's Counsel of Advisors on Science And Technology	2015	2016	
Member, Mass. Forensic Science Oversight Board	6/19	present	
Chair, Warren-Markey Judicial Selection Committee	10/11	present	
Member, Executive Session of On the Future of Justice Policy Columbia Univ.	5/18	present	
Aleph Advisory Board	7/19	present	
The Sentencing Project	9/14	present	
Int'l Center for Research on Women	9/13	7/19	
Wheelock Family Theatre	9/11	9/18	
Amer. Constn. Society	9/14	9/19	
Juvenile Law Center	6/18	present	

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American College Trial
Lawyers 1994 present

PUBLICATIONS

Books

1. Incomplete Sentences: Memoir of Sentencing Judge (forthcoming)(Beacon)
2. Collected Opinions and Dissents of Justice Ruth Bader Ginsburg (forthcoming)(Talbot Publishing)
3. **"Loser's Rules,"** reprinted in Malveaux and Coleman, **A Guide to Civil Procedure: Integrating Critical Legal Perspectives** (forthcoming)
4. "Robust Speech, Robust Democracy," in Fight for Liberty: Defending Democracy in the Age of Trump," (2018) (Mark Lasswell, ed.)
5. "Employment Law: Implicit Bias in Employment Discrimination Litigation," in Implicit Racial Bias Across the Law (2012) (Justin D. Levinson & Robert Smith, eds.)
5. The Law of Juries, co-authored with Judith Mizner (2018) (Thomson-Reuters)(update forthcoming)
7. In Defense of Women: Memoirs of an Unrepentant Advocate, (April 2011) (Beacon Press)
8. Comments - Offense/Offender Distinction and Competence, in Criminal Law Conversations (ed. Paul H. Robinson, Stephen P. Garvey, Kimberly Kessler Ferzan) (Oxford University Press, 2009)
9. "The Failure of the United States Sentencing Commission" in Penal Populism: Sentencing Councils and Sentencing Policy, Arie Freiberg and Karen Gelb, ed., (Fall 2007)
10. "Interference with Reproductive Rights," Reproductive Laws for the 1990s, Rutgers Law School (Sherrill Cohen & Nadine Taub eds., 1988)

Articles/Publications

1. "Women and Sentencing," 57 Am. Crim. L. Rev. 1401 (Fall, 2020)
2. "Sexual harassment and the Bench", 71 Stan. L. Rev. Online 88 (2018)
3. "Against These Guidelines," 87 U. Missouri-Kansas City School of Law 49 (2018)
4. "What to Avoid: The American Experience of Sentencing," in "the Promise of Law: Essays marking the retirement of Dame Sian Elias as Chief Justice of New Zealand," (December 2019)
5. (With Joseph Sanders) "Alternatives to Traditional Adversary Methods of Presenting Scientific Expertise in the Legal System," 147 Daedalus 135 (Fall, 2018)
6. "The 'Lower' Federal Courts: Judging in a Time of Trump," 93 Ind. L.J. 83 (2018)
7. "Opinions I Should Have Written" 110 Nw. U. L. Rev. 423 (2016)
8. "Neuroscience and Sentencing," 85 Fordham L. Rev. 399
9. A Critique of Judge Pryor's Proposals, Federal Sentencing Reporter, December 1-2016-February 1, 2017
10. "How To Talk about Sentencing Policy – and Not Disparity," 46 Loyola Law Journal 313 (2014)
11. "The Judicial Repeal of the Johnson/Kennedy Administration's 'Signature' Achievement," SSRN: <http://dx.doi.org/10.2139/ssrn.2406671>
12. (With Judith Resnik), "Keep Female Prisoners Close to Family," September 3, 2013, <http://www.bostonglobe.com/opinion/2013/09/03/keep-female-prisoners-close-family/eOf4dCawmOGmO41Ap53GxL/story.html>

13. "Which Judges Breached the Rules?," November 3, 2013, NYTimes Room for Debate, <http://www.nytimes.com/roomfordebate/2013/11/03/judges-appearance-of-impartiality/which-judges-breached-the-rules>
14. Keynote, symposium, "Bombshell or Baby Step? The Ramifications of Miller v. Alabama for Sentencing Law and Juvenile Crime Policy," "Miller v. Alabama: What it Is, What it May Be, What it is not" 78 Mo.L. Rev. 1041 (2013)
15. 'Losers' Rules, 122 Yale L. J. ONLINE 109 (2012), <http://yalelawjournal.org/2012/10/16/gertner.html>
16. "Feminism, Stalled: Thoughts on the Leaky Pipeline," 2012 Mich.St. L. Rev 1473 (2012)
17. (With Elizabeth Schneider), "Only Procedural: Thoughts on the Substantive Law Dimensions of Preliminary Procedural Decisions in Employment Discrimination Cases," 57 New York Law Review 767 (2012/13)
18. Judge Identifiers, TRAC, and a Perfect World, 25 Federal Sentencing Reporter (September 2012)
19. Justice Ruth Bader Ginsburg Distinguished Lecture on Women and the Law, "The Uniqueness of Her Voice," New York City Bar Association, February 13, 2013
20. Rick Kern: A Remembrance, 25 FSR 158 (2013)
21. Paul Cassell and Nancy Gertner, Public Defenders Fall to the Sequester, Wall Street Journal, August 20, 2013, <http://online.wsj.com/news/articles/SB10001424127887324635904578644173998221896>
22. Privilege Precludes Asking, What was the Judge Thinking (December 19, 2012); <http://bostonbarjournal.com/tag/nancy-gertner/>
23. 'Melissa's Law,' the Mass. Three Strikes Bill, Will Have Identifiable Victims, Too, Boston Globe (August 2, 2012)

24. "Law Doesn't Justify Trayvon Martin's Death," Boston Globe (June 1, 2012)
25. Be Tough, and Smart, on Crime, Boston Globe (May 30, 2012)
26. Having the Right to Appeal is an Issue of Fairness, New York Times, Room For Debate Blog (August 19, 2012)
27. A Judge Hangs Up Her Robes, 38 Litigation, American Bar Association (Winter, 2012)
28. From "Rites" to "Rights": The Decline of the Criminal Jury Trial, 24 Yale L.J. & Human. 433 (2012)
29. (With Barry Scheck) "How to Rein in Rogue Prosecutors," Wall Street Journal (March 15, 2012)
30. Mandatory Minimum Sentencing Through a Judges Eye, Massachusetts Lawyers Weekly (March 22, 2012)
31. The Media's Reporting on Justice is Criminal, NPR's Cognoscenti (September 4, 2012)
32. National Academy of Sciences Report: A Challenge to the Courts, 27 Criminal Justice (Spring 2012)
33. Commentary to Mnookin, et al. The Need for Research Culture in the Forensic Sciences, 58 UCLA Law Review 789 (February, 2011)
34. Juries and Originalism: Giving "Intelligible Content" to the Right to a Jury Trial, 71 Ohio State Law Journal 935 (2011) (paper given at a conference on "Originalism and the Jury," Ohio State University Moritz College of Law)
35. "A Short History of American Sentencing: Too Little Law, Too much Law or Just Right, 100 Northwestern Journal of Criminal Law & Criminology 101" (2010) (paper given at conference celebrating the centennial of the NW Journal of Criminal Law and Criminology)
36. Tradeoffs of Candor: Does Judicial Transparency Erode Legitimacy, 64 N.Y.U.

- Ann. Surv. Am. L. 449 (2009)
37. Kimbrough, Gall and Me, Ohio St. L. J. Crim.L. Amici: Views from the Field, at 4 (January 2008), available at <http://osjcl.blogspot.com>.
 38. Supporting Advisory Guidelines, 3 Harvard Law & Policy Review 237 (2009)
 39. Rita Needs Gall -- How to Make the Guidelines Advisory, 85 Denver University Law Review 63 (2007)
 40. Alternatives to the Carceral State: The Judge's Role, 74 Social Research (No.2) (Summer 2007)
 41. From Omnipotence to Impotence: American Judges and Sentencing, 4 Ohio State Journal of Criminal Law 523 (Spring 2007) (Justice Harry A. Blackmun Lecture)
 42. 12 Angry Men (and Women) in Federal Court, 82 Chi-Kent L. Rev. 613 (2007)
 43. Thoughts on Reasonableness. 19 Fed. Sent. R. 165 (February, 2007)
 44. What Yogi Berra Teaches About Post-Booker Sentencing, July 03, 2006, Pocket Part, A Companion to the Yale Law Journal (on-line at: <http://thepocketpart.org/2006/07/gertner.html>)
 45. The Philip D. Reed Lecture Series: Panel Discussion: Federal Sentencing Under 'Advisory' Guidelines: Observations by District Court Judges, 75 Fordham L. Rev. 1 (October 2006)
 46. Distinguished Jurist-in-Residence Lecture, Sentencing Reform: When Everyone Behaves Badly, 57 Me. L. Rev. 569 (2005)
 47. The Globalized District Court, 26 U. Haw. L. Rev. 351 (2004)
 48. To Speak or Not to Speak: Musings on Judicial Speech, 32 Hofstra Law Review 1147 (Summer 2004)
 49. Videoconferencing: Learning Through Screens, 12 William and Mary Bill of

- Rights Journal 769 (2004)
50. Women Offenders and the Sentencing Guidelines, 14 Yale Journal of Law & Feminism 291 (2002)
 51. What Has Harris Wrought? 15 Fed. Sentencing Reporter 83 (2002)
 52. Electronic Case Filing Is Here to Stay, Boston Bar Journal (May/June, 2002)
 53. Federal Sentencing Guidelines, A View from the Bench, American Bar Association; 29 Hum. Rts. Mag. 6 (Spring, 2002)
 54. Apprendi and the Return of the Criminal Code, 37 Criminal Law Bulletin 553 (2001)
 55. "Circumventing Juries, Undermining Justice: Lessons from Criminal Trials and Sentencing," 32 Suffolk U. L. Rev. 419, 421 (1999) (Donahue Lecture)
 56. Teaching Judges How to Sentence, with Judge Michael M. Mihm, 11 Federal Sentencing Reporter 96 (1998)
 57. Book Review: Is the Jury Worth Saving? The Jury: Trial and Error in the American Courtroom, Stephen J. Adler; 75 Boston University Law Review 923 (1995)
 58. Jury Selection in Massachusetts, Massachusetts Criminal Procedure, (E. Blumenson, Editor) (1991)
 59. Occupational Health and Safety: The Special Problem of Tort Liability for Reproductive Hazards, MCLE-NELI Paper (Winter, 1991)
 60. Money Laundering Crimes and the Sentencing Guidelines, ABA Federal Sentencing Guidelines Institute, ABA (May 16, 1991); Champion (December, 1990)
 61. Prosecutorial Misconduct in the Grand Jury: Life After Mechanik and Bank of Nova Scotia, ABA Panel (October 24, 1990)

62. Fighting Discrimination Through the Law, Berlin Journal of Sociology (December 1991); Paper also presented to a symposium in Germany sponsored by the International Research & Exchange Board in connection with Humboldt University, Berlin, Germany
63. Organization and Litigation Strategy for Comparable Worth, 20 U. Mich. J.L. Reform 163 (1986)
64. On Trial! A Disciplinary Rule that Limits Attorney Subpoenas, 1 Criminal Justice 2 (Fall, 1986)
65. Chapter on Employment Discrimination, Callaghan & Co. A Comprehensive Guide to Labor & EEOC Law (1985)
66. "The Impact of Bakke on Sex Discrimination: Pedestal or Cage," 14 Harvard Civil Liberties Civil Rights Law Review 173 (1979)
67. Book Review: Sex Based Discrimination, Ginsburg, Davidson & Kay; Boston University Law Review 55 (October, 1974)
68. "Rehabilitation, Investigation, and the Welfare Home Visit," 79 Yale L.J. 746 (March 1971)

HONORS AND AWARDS

1. Member, American Academy of Arts & Sciences, voted April 2019
2. Electronic Privacy Information Center, Champion of Freedom Award (2016)
3. Stephen Hamblett First Amendment Award (NEFAC) (2015)
4. ABA Margaret Brent Award (2014)
5. Honorary Degree, Doctor of Law, Wheaton College, Norton, Massachusetts (2013)

6. Justice Ruth Bader Ginsburg Distinguished Lecture on Women and the Law (February, 2013)
7. MACDL Judicial Excellence Award (January 2013)
8. The Lelia J. Robinson Award from the Women's Bar Association (November 2012)
9. Champions for Choice, NARAL Pro-Choice of Massachusetts (October 2012)
10. Arabella Babb Mansfield Award for contributions to women in the law and society from the National Association of Women Lawyer (July, 2012)
11. The Massachusetts Bar Association's Hennessey Award for Judicial Excellence (May, 2011)
12. Honorary Degree, Doctor of Laws, Brandeis University (May, 2011)
13. The Morton A. Brody Distinguished Judicial Service Award from Colby College (2010)
14. The Thurgood Marshall Award, American Bar Association, Section of Individual Rights and Responsibilities. (Former awardees include Justice Ruth Bader Ginsburg) (August, 2008)
15. Federal Bar Association, Judicial Excellence Award (2008)
16. Charles P. Kindregan Award from Suffolk University Law School (2007)
17. "Judicial Excellence" Citation from the Boston Bar Association in May (2006)
18. "Great Friend of Justice" Award from the Massachusetts Bar Foundation (2006)
19. Massachusetts Lawyer's Weekly Judge Twoomey Judicial Excellence award (2005)
20. Massachusetts Lawyer's Weekly - one of "The Most Influential Lawyers Of The Past 25 Years"
21. Massachusetts Lawyer's Weekly - voted by readers as the "best" federal judge

in Boston (1999)

22. Public Service Award for Recognition of Outstanding Contributions Towards Building the Foundation for Civil Rights Through Public Service from The Lawyers Committee for Civil Rights Under the Law of the Boston Bar Association (September 15, 1999)
23. Judicial Recognition Award presented by the National Association of Criminal Defense Lawyers (1999)
24. Charles R. Merriam Distinguished Professor at Arizona State Law School (February 2002)
25. New York State Association of Criminal Defense Lawyers, Hon. William Brennan Award, (2000)
26. Honorary Degree, Juris Doctor, Northeastern University School of Law, Boston, Massachusetts (1999)
27. Lawyers Committee for Civil Rights, Boston, Massachusetts, Award for The Advancement of Civil Rights (1999)
28. Honorary Degree, Juris Doctor, Suffolk University Law School (1997)
29. Abigail Adams Award, presented by the Massachusetts Women's Political Caucus Education Fund - June, 1994
30. Distinguished Jurist Award, presented by the Massachusetts Association of Women Lawyers - June 1996
31. Listed in "Best Lawyers in America," Steven Naifeh and Gregory White Smith, 1991 - 1993, in two categories: Labor Law and Criminal Law
32. Black Educators' Alliance Award, Professional Service to Education - June, 1983 (For representation of the Concerned Black Educators of Boston in the Boston Desegregation case)
33. Abraham T. Alper Award for Excellence in Civil Liberties, awarded May, 1980,

Civil Liberties Union of Massachusetts

LECTURES AND PANELS

International

I have been the keynote speaker at a variety of conferences concerning civil rights, civil liberties, employment and criminal justice and procedural issues. I have participated extensively in events and panels involving the United States Sentencing Guidelines, judicial independence, human rights and women's rights, throughout the United States and abroad: through the ABA CEELI Institute -- programs in Prague involving judges from Eastern and Central Europe, defense lawyers from Kosovo; through the Yale Law China Project and the Wellesley Center on Women, programs in China, Vietnam, Cambodia; through Fordham Law School Law and Ethics program, programs in Israel; through the Lawyer's Committee for Human Rights, programs in Turkey; through the Kennedy School, Women and Public Policy, and Israel, Turkey, Prague - through the ABA CEELI Institute.

I have given papers on sentencing in Glasgow, Scotland, University of Strathclyde, Melbourne, Australia, Monash University School of Law, and in Budapest, Hungary, at the Eotvos Lorand University (Suffolk University Law School's International LL.M Program). I have also lectured at Central European University, Budapest Hungary on race and gender and the criminal law.

Trial Practice/ Civil Procedure

Before becoming a judge, I taught courses sponsored by the Massachusetts Continuing Legal Education - New England Law Institute (MCLE-NELI) and the National Institute of Trial Advocacy nearly every year since August of 1978. In addition, I have served as a teacher in Harvard Trial Advocacy Workshops for the training of Harvard law students.

I am a regular lecturer at Yale Law School on civil procedure and the civil rules. I have lectured around the country on those topics, including - Berkeley Law School, Northwestern Law School, University of Illinois.

Criminal Law and Procedure

Before I became a judge I participated in programs on a number of criminal law topics including programs on lawyer subpoenas, NACDL, August, 1986, the problems of victims of rape and child abuse (National Conference of Women Judges, September, 1984); jury selection issues (First Circuit Judicial Conference, September, 1981); and crime and punishment issues (Northeastern University, June, 1980); Massachusetts Correctional Association (1989); "date rape," the National Judicial

Institute (1992); Superior Court of Massachusetts (November, 1992), complex criminal litigation, including "Super Star" Panel, Florida Public Defenders (December, 1986); National Association of Criminal defense Lawyers and American Bar Association panels on white collar crime (1981-1992); Massachusetts Academy of Trial Lawyers (March, 1980, March, 1981); NCLE-NELI (November, 1978, July, 1980, March, 1984). After leaving the bench, I was the keynote at NYU Center on the Administration of Criminal law, Criminal Procedure and the Modern Court, April 2013; Harvard Medical School – Memory in the Court: Fixed Fallible or Fleeting, January 2013.

Women's Rights and Civil Rights

Before I became a judge, I participated in panels involving reproductive rights, sexual harassment, prosecuting of women for carrying drugs in utero before the Massachusetts bar Association, Labor Law Section (1979, 1980, 1990; Planned Parenthood Association (February, 1982); Kennedy School of Government (November, 1991); Victim's Rights and the Constitution (Superior Court Judges, November, 1984); National Women's Association of America (February, 1982); National Women's Studies Association (July, 1983); Georgetown University, (Fall, 1990); American College of Psychiatrists, (Winter, 1991); International Research and Exchanges Board, (Spring, 1991); Sex Discrimination in United States, Berlin, Germany (1990).

While a judge, I was determined to raise issues with regard to women at every occasion whenever I was honored or privileged to be a keynote speaker, for example, the Massachusetts Women's Bar Association Keynote (2003), conference, Women lawyers and Obstacles to leadership (2007).

After leaving the bench, my activities continued: Keynote (Women's Power Summit, April 2013, University of Texas School of Law); 7th Annual Darrow K. Soll Memorial Criminal Law and Justice Lecture, November 2013: Loser's Rules- Judicial Repeal of the Civil Rights Act of 1964; Frank M. Coffin Lecture on Law and Public Service, October 2013, "When Courthouse Doors are Shutting."

AFFILIATIONS

1. Board of Directors, International Committee for Research on Women
2. Board of Directors, The Sentencing Project

3. Board of Directors, Wheelock Family Theatre
4. Board of Editors, Federal Sentencing Reporter
5. Faculty, MGH Center for Law, Brain & Behavior
6. Equality Commission, formed by various Mass. Bar Associations
7. National Association of Women Judges, federal judges committee (current)
8. American College of Trial Lawyers, fellow, and member Criminal Litigation Committee (current)
9. Chair, Department of Justice Dialogue Committee; Joint Committee of the ABA and the National Association of Criminal Defense Lawyers (1990 -1992)
10. Chair, (Public Defenders Board) (1988-1990) - Committee for Public Counsel Services (Member since its inception)
11. Member, Governor's Anti-Crime Council (1984-1990) (Counsel formed by Governor Dukakis to oversee criminal justice issues)
12. Delegate, American Bar Association, Criminal Justice Section (1987-1988)
13. Chair, American Bar Association Subcommittee on Witness Harassment, Litigation Section (1985-1986) (Specifically charged with reviewing 18 U.S.C. §151, obstruction of justice statute)
14. Vice-Chair, American Bar Association Grand Jury Committee, Criminal Defense Function (Principally involved in preparing testimony and guidelines for the issuance of attorney subpoenas)
15. Member, Massachusetts Citizen's Advisory Committee on Probation, (1984-1990) (Oversight to Massachusetts Probation Service)

16. Delegate at Large (1986-1990), Massachusetts Bar Association, Labor Law Committee; Bench Bar News Committee; Section on Individual Rights and Responsibilities
17. Board of Directors, National Association of Criminal Defense Lawyers (NACDL) (1986 - 1994); Chair, Lawyer's Assistance Strike Force; Elections Committee
18. Boston Bar Association, Member, Civil Justice Advisory Committee to the U.S. District Court (Charged with implementing the Biden Committee reforms)
19. Member, Advisory Committee, U.S. Court of Appeals, First Circuit
20. Fellow of the American Bar Foundation (December 2002)
21. Advisory Committee, National Judicial Education Program to Promote Equality for Women and Men in Courts; National Organization of Women- Legal Defense Fund and the National Judicial Institute (1992 - 1993)
22. Member, Lawyers Committee for Civil Rights Under Law of the Boston Bar Association, Steering Committee Member (from 1979 - 1994)
23. American Civil Liberties Union, Board of Directors (1977-1984)
24. Massachusetts Civil Liberties Union, Board of Directors; Women's Rights Committee
25. Women and the Law Conference, former member, Steering Committee, Board of Directors (1973-1985)
26. American Bar Association - Central and Eastern European Law Initiative Advisory Council (2002)
27. Member/Adviser, American Law Institute - American Bar Association

28. Honorary Lifetime Member, National Association of Criminal Defense Lawyers
29. METCO, former member, Board of Directors
30. Massachusetts Academy of Trial Lawyers
31. Massachusetts Half-Way Houses, Incorporated, House Committee
32. Vice Chair, Basic Trial Advocacy Course Committee, ATLA (1985-1986)
29. Louis Stein Center for Law and Ethics (Fordham Law School) Board of Advisor
30. American Judicature Society, Center for Forensic Science and National Judicial College; proposed project on judicial awareness of developments in forensic science