

FOIA MARKER

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Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Victoria Radd

Subseries:

OA/ID Number: 5329

FolderID:

Folder Title:

Lynch, Sandy [3]

Stack:

S

Row:

116

Section:

2

Shelf:

10

Position:

3

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. resume	DOB (Partial) (1 page)	06/09/1994	P6/b(6)
002. resume	DOB (Partial) (1 page)	06/07/1994	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Victoria Radd
OA/Box Number: 5329

FOLDER TITLE:

Lynch, Sandy [3]

2013-0670-F

jm1011

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

006/2500

NUTTER, McCLENNEN & FISH

ATTORNEYS AT LAW

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2699

TELEPHONE: 617 439-2000 FACSIMILE: 617 973-9748

TO VR

CAPE COD OFFICE
HYANNIS, MASSACHUSETTSDIRECT DIAL NUMBER
(617) 439-2342June 18, 1994
99980-22Senator Edward M. Kennedy
315 Russell Senate Office Building
Washington, DC 20510Re: Sandra L. Lynch

Dear Senator Kennedy:

I write to urge you to support the appointment of Sandra L. Lynch to the position of U.S. Circuit Judge for the First Circuit Court of Appeals.

You will likely receive many letters suggesting, and your own investigation will confirm, that Sandra's legal skills and judicial temperament are of the highest calibre. Those of us who know her well respect these traits, demonstrated both in her private practice and in her public and pro bono efforts. I seek to bring to your attention a different dimension of Sandra's character - her strong sense of obligation to the Community.

While she was President of the Boston Bar Association, Sandra approached me to chair a new Committee of the Association, the Summer Job Committee. Our purpose was to design and implement a program (the first of its kind in Boston) to encourage law firms to hire Boston high school students for the summer. Motivated by Sandra's inspiration and working with what was her basic idea, we were able to put together a program that placed 20 Boston high school students in law firms and legal agencies during the Summer of 1993. Later this month we will begin the second year of the program. Without question, the Program could not have been successful without Sandra's unwavering support and personal commitment.

The Summer Jobs Program is just one illustration of Sandra's commitment to her community, as evidenced by the many pro bono projects in which she has been active over the years.

NUTTER. McCLENNEN & FISH

Senator Edward M. Kennedy

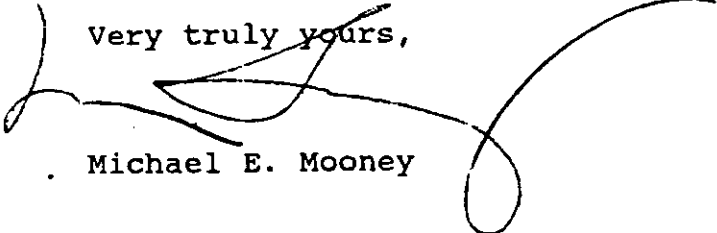
June 18, 1994

Page 2

When submitting Louis D. Brandeis' nomination to the Senate in 1916, President Woodrow Wilson introduced his candidate as a man who "knows more than how to talk about the right, - he knows how to set it forward in the face of its enemies." I can think of no better introduction for Sandra Lynch almost eighty years later.

You will see many candidates with abilities up to the position you seek to fill. You will see few who temper those abilities with the compassion and caring of Sandra Lynch.

Very truly yours,



Michael E. Mooney

MEM/pm

cc: Jeff Blattner, Esquire
Joel I. Klein, Esquire
Senator John F. Kerry

46509

MUST BE DELIVERED BY (time):

☐

am

☐

pm

NUTTER, McCLENNEN & FISH

ONE INTERNATIONAL PLACE

BOSTON, MASSACHUSETTS 02110-2699

TELEPHONE: 617 439-2000 FACSIMILE: 617 973-9748

14 JUN 21 P6:00

MULTI-PARTY FACSIMILE TRANSMITTAL SHEET

*This form must be typed and filled out completely.*Today's Date: 6/21/92 Drop-off Time: _____ User I.D. # 0063 # of Pages: 3From: M. E. Mooney Sender's Direct Dial #: (617) 439- 2342

DELIVER TO:

Name

Fax No.

Telephone No.

Senator Edward M. Kennedy (202) 224-2417

(AREA CODE)

(AREA CODE)

Jeff Blattner, Esquire(202) 456-2883

(AREA CODE)

(AREA CODE)

Joel I. Klein, Esquire(202) 456-2883

(AREA CODE)

(AREA CODE)

Senator John F. Kerry248-3870

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Comments:

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WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence Received (YY/MM/DD) 9/16/20Name of Correspondent: MICHAEL MICONEY☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: LETTER TO SENATOR KENNEDY RE: SANDRA LYNCH TO U.S. COURT OF APPEALS FOR FIRST CIRCUIT

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU OFFICE</u>	ORIGINATOR	<u>9/16/22</u>	<u>1</u>		<u>1</u>
<u>CU 19</u>	Referral Note: <u>Too A</u>	<u>9/16/24</u>	<u>1</u>	<u>C</u>	<u>9/16/29</u>
	Referral Note:	<u>1</u>	<u>1</u>		<u>1</u>
	Referral Note:	<u>1</u>	<u>1</u>		<u>1</u>
	Referral Note:	<u>1</u>	<u>1</u>		<u>1</u>
	Referral Note:	<u>1</u>	<u>1</u>		<u>1</u>

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOP).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

SCANNED

THE WHITE HOUSE
WASHINGTON

August 26, 1994

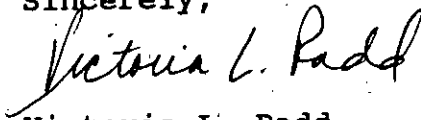
Dear Ms. Stone:

Thank you for writing to the White House to recommend Sandra Lynch for appointment to the U.S. Court of Appeals for the First Circuit.

I can assure you that we will give your endorsement serious consideration as we work with President Clinton to fill this important vacancy.

If you have further questions about this matter, please feel free to contact me at (202) 456-7901.

Sincerely,

A handwritten signature in cursive script that reads "Victoria L. Radd".

Victoria L. Radd
Associate Counsel to the President

Ms. Cathleen Douglas Stone
1615 L Street, N.W.
Suite 850
Washington, D.C. 20036

COPY
August 26, 1994

Dear Ms. Stone:

Thank you for writing to the White House to recommend Sandra Lynch for appointment to the U.S. Court of Appeals for the First Circuit.

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Sincerely,

**Victoria L. Radd
Associate Counsel to the President**

**Ms. Cathleen Douglas Stone
1615 L Street, N.W.
Suite 850
Washington, D.C. 20036**

**PLEASE RETAIN THIS COPY OF THE SIGNED ORIGINAL, FOR
YOUR RECORDS.**

FOLEY, HOAG & ELIOT

1615 L STREET, N.W.

SUITE 850

WASHINGTON, D.C. 20036

TELEPHONE (202) 775-0600

FACSIMILE (202) 857-0140

IN BOSTON, MA

ONE POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

TELEPHONE: (617) 482-1390

CABLE ADDRESS "FOLEY HOAG"

FACSIMILE (617) 482-7347

TELEX 940693

June 16, 1994

Joel I. Klein, Esq.
Deputy Counsel to the President
Second Floor, West Wing
The White House
Washington, D.C. 20500

Dear Mr. Klein:

I would like to recommend Sandra Lynch of Massachusetts for the seat on the United States Court of Appeals for the First Circuit which will be vacated on the elevation of Stephen Breyer to the United States Supreme Court. Her work and reputation are held in high esteem by both the bench and the bar in Massachusetts. I enclose a resume and a few writing samples.

Sandra is the immediate past-President of the Boston Bar Association ("BBA"). As BBA President, she involved the bar in children's and education issues and secured the enactment of major state court reform legislation and the creation of a statewide juvenile court.

She has an extensive background in both private practice and in the public sector, the perspective of a litigator with over twenty years of active trial and appellate litigation, including in some of the most significant and complex cases in Massachusetts. Her personal standards are high. Her leadership abilities and her strong commitment to equality are unshakeable. Perhaps of equal importance, she will bring the lessons in humanity and compassion she has gained from being a mother and from caring about her clients and their causes.

Since her graduation from Wellesley College in 1968 and law school in 1971, Sandy has handled hundreds of matters in litigation and she has earned the respect of the legal and broader community here. To mention only a few of her cases:

1. the Boston School Desegregation case before U.S. District Court Judge W. Arthur Garrity, Jr., where she fought for an end to racial discrimination in schools,

in the trial court, in the First Circuit and in the U.S. Supreme Court.

2. Baird v. Bellotti and Planned Parenthood v. Bellotti, where she fought to protect a woman's right to choose in the U.S. Supreme Court and below. [Planned Parenthood gave her its Distinguished Service Award for this.]
3. The Woburn toxic tort case, the largest, most complex case of its kind in the country in which she was co-trial counsel with our partner Mike Keating, in a jury trial that lasted more than two months.

Her experiences have given her great depth as a trial lawyer. In addition to the Woburn case, she has handled trials from a few days long to thirty-two days on trial. She has handled an extensive number of motions and won a number of cases on dispositive motions. She has argued numerous cases at every level of the court, in master's hearings and arbitrations, and has handled high-level mediations. The cases are complex, the degree of responsibility is great. She has served as a master and an arbitrator. Her resume describes her experience more fully.

Sandy feels passionately about equality under the law and has worked for racial justice and women's and children's rights. Over her career, she has always done significant amounts of pro bono and civil rights work, reflecting her strong preference for accomplishment over rhetoric.

She also feels strongly about the intellectual discipline and rigor of the law. Her work strives to meet standards of excellence and intellectual honesty. She was an editor of her law review. Judges have commonly asked her to speak at programs or write articles. An example was the request by U.S. District Court Judge Douglas Woodlock that she write the article on "Public Institution Litigation in the First Circuit" in a publication devoted to the federal courts in Massachusetts.

While I believe she represented the bar with distinction as President of the Boston Bar Association, her greatest pride is in what she has accomplished through her leadership and her ability to work with others. Within our firm, she was the leader of the Litigation Department, with more than sixty attorneys.

She would be very honored to be considered for the position. It is a position of great importance and the decision will, whatever the outcome, reflect care and diligence. While I believe she is very well known in the legal and larger community here, she undoubtedly is not as well known nationally. She would be very happy to be available for meetings so that there is a greater opportunity to get to know her.

She would very much like to re-enter public service by serving on the Court. Her interest in being on the Court stems from her reasons for going to law school: She saw law as a method for the peaceful resolution of conflicts between different societal interests and a primary method for achieving a more equal society under the Constitution. Thank you for your courtesy.

Sincerely,

Cathleen Douglas Stone
Cathleen Douglas Stone

enc.

Withdrawal/Redaction Marker

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June 9, 1994

RESUME OF SANDRA LEA LYNCH

69 Naples Road
Brookline, MA 02146
Telephone: (617) 277-5942
Date of Birth: (b)(6) [001]
Mother of Stephen Lynch Bowman,
age 11

Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109
Telephone: (617) 482-1390
Fax: 617-482-7347

PROFESSIONAL EXPERIENCE

EMPLOYMENT

1978 to present	Foley, Hoag & Eliot. Partner (1982), Past head of Litigation Department, Pro Bono Coordinator, Professional Responsibility Committee. (See practice experience section below).
1974 - 1978	General Counsel, Massachusetts Department of Education. Represented State Board of Education in Boston School Desegregation case, implemented special education, bilingual education, racial imbalance and educational equity laws, handled other litigation and oversaw office of five attorneys.
1973 - 1974	Assistant Attorney General, Government Bureau, Commonwealth of Massachusetts. Defended constitutionality of state statutes and represented state agencies in federal and state trial and appellate courts. Handled Boston and Springfield racial imbalance school cases. Instructor in Legal Writing, Boston University Law School.
1971 - 1973	Law clerk, Chief Judge Raymond J. Pettine, U.S. District Court, District of Rhode Island.
1968 - 1971	Part-time employment during law school at legal services office, public defenders office, law firm, sponsor of low-income housing.

RESUME OF SANDRA LEA LYNCH

EDUCATION

September 1968- Boston University Law School
June 1971 J.D. cum laude. Articles Editor, Boston University Law Review. Book Awards in Administrative, Corporate Law.

September 1964- Wellesley College, Wellesley, Massachusetts.
June 1968 A.B. in Philosophy. Seven College Scholarship.

September 1960- Lake Highlands High School, Dallas, Texas.
June 1964 Class Salutatorian, Editor of newspaper.

PROFESSIONAL ACTIVITIES

1994 Massachusetts Supreme Judicial Court Committee on Model Rules of Professional Conduct.

American Arbitration Association Panel on Large and Complex Cases.

1993-1994 Advisory Committee on Rules of the U.S. Court of Appeals for the First Circuit.

Board, New England Legal Foundation.

ABA Commission on Partnership Programs.

Wellesley College Business Leadership Conference.

Boston Chamber of Commerce, Leading Industries Committee.

1993 Silver Shingle Distinguished Alumni Award, Boston University Law School.

Member, Commission on Federal Appointments (U.S. District Court, U.S. Attorney and U.S. Magistrate) established by Senators Kennedy and Kerry.

Massachusetts Taxpayers Foundation, Policy Committee.

RESUME OF SANDRA LEA LYNCH

- 1992-1993 President, Boston Bar Association. President of 8,000 member voluntary bar. Accomplished enactment of major court reform legislation resulting in greater accountability and efficiency, focussed bar on children (by sponsoring legislation creating statewide juvenile court, initiating bar involvement in education reform legislation, and summer jobs program for Boston students in law offices), initiated legislation for pay raise for state judiciary, created programs for unemployed lawyers, requested First Circuit initiate gender and racial bias studies.
- 1991-1992 Special counsel to the Commission on Judicial Conduct to prosecute In the Matter of Justice Joseph S. Mitchell (appointed by Supreme Judicial Court).
- President-Elect, Boston Bar Association, author of BBA Study: Courts in Crisis, A Blueprint for Reform.
- 1987-1991 Secretary, Treasurer and Vice President of Boston Bar Association (successively).
- 1986-1989 Chair, BBA Committee on Role of Gender in Practice of Law; co-initiator of BBA Report of same title, which was first gender bias study of a major bar.
- 1986-1988 Member, Joint Bar Committee (advises Governor on Judicial Appointments).
- 1986-1987 Council, Boston Bar Association.
- 1982-1986 Vice Chair, Board of Bar Overseers of Commonwealth of Massachusetts 1985-1986, Member 1982-1986. Bar disciplinary Board (appointed by S.J.C.).
- 1982-1984 Member, Massachusetts Advisory Committee, U.S. Civil Rights Commission.
- 1982-1983 Civil Liberties Union of Massachusetts, Board and General Counsel.
- 1982 Member, Screening Committee for U.S. Magistrate, U.S. District Court (D. Mass).

RESUME OF SANDRA LEA LYNCH

1980-1981 Civil Liberties Union of Massachusetts, Board.
1980 Planned Parenthood League of Massachusetts
Distinguished Service Award.
1977-1978 First Vice President, Civil Liberties Union of
Massachusetts.
Beacon Press School Integration Studies.
1975-1977 Council, Committee on Legal Services to the Poor,
Boston Bar Association.
1974-1975 Women's Rights Project, Civil Liberties Union of
Massachusetts, founder and Steering Committee member.
Advisory Board, Center for Women's Legal Studies.

ADMITTED TO PRACTICE

Commonwealth of Massachusetts (1971).
United States Supreme Court (1974).
United States District Courts, District of Massachusetts (1973) and
District of Rhode Island (1980).
United States Court of Appeals for the First Circuit (1974).

PUBLICATIONS

Damages in Massachusetts Litigation, "Damages in Sale of Goods,
Insurance and Employment", MCLE (1993).
"Beyond Plato", Boston Bar Journal 2 (July/August 1993).
"The 724 Children", Boston Bar Journal 2 (May/June 1993).
"Anatomy of a Success: BBA and Court Reform", Boston Bar Journal 2
(March/April 1993).

RESUME OF SANDRA LEA LYNCH

"Mirror, Mirror On The Wall", Boston Bar Journal 2 (Jan./Feb. 1993).

"High Noon In The Courthouse", Boston Bar Journal 2 (Nov./Dec. 1992).

"Of Mice and Men ... And Women and Children," Boston Bar Journal 2 (Sept./Oct., 1992).

"Public Institution Litigation in the First Circuit," 74 Mass. Law Review 259 (Dec. 1989).

Various Mass. Continuing Legal Education Course Materials, including "Federal Court Motion Practice" (1989), "Avoiding and Litigating Wrongful Termination Cases" (1988), "Third Party Liability for Workplace Injuries" (1987), "Federal Court Practice" (1984).

"The Boston School Desegregation Case", 62 Mass. L. Quarterly 137 (Fall 1977).

"Education Law", 1975 Boston College Annual Survey of Massachusetts Law 396.

"New England Regional Government", in Power, Pollution, and Public Policy, by Project NECAP (New England Coastal Area Planning), M.I.T. Press (1971).

Comment, "Little Ado About Much: Jurisdiction of the Supreme Court to Issue Mandamus," 51 B.U.L. Rev. 106 (1971).

Note, "Can the Section 1331 Amount Requirement Constitutionally Bar a Plaintiff Alleging Violation of His First Amendment Rights from Using the Federal Court to Get an Injunction Against a Federal Officer." 50 B.U. L. Rev. 178 (1970) (Special Issue).

SPEECHES

Speaker, First Circuit Judicial Conference "Lack of Professionalism and Incivility from the Bench" (1993), various ABA and National Conference of Bar Presidents conferences, Bar Leadership Institute, National Institute of Trial Advocacy and various MCLE, MBA, BBA and other programs. Topics include court reform, professionalism, environmental law, employment law, education law, federal court practice, injury in workplace.

RESUME OF SANDRA LEA LYNCH

REPORTED DECISIONS

See attachment.

LEGAL PROFESSIONAL ACTIVITIES

Member, Women's Bar Association, Boston Bar Association, Massachusetts Bar Association, American Bar Association, New England Legal Foundation.

PRACTICE EXPERIENCE

Handled numerous civil litigation matters in trial court and on appeal and criminal grand jury matters and investigations. Represent plaintiffs and defendants, individuals and entities. Representative cases, from the present going back in time, are set forth.

1. Massachusetts Turnpike Authority v. F.L. Roberts, Exxon, Mobil and Canadian/Oxy (1992-1994) (Mass. Superior and Appeals Court)

Represented plaintiff Mass. Turnpike Authority against oil companies who had leased and contaminated service areas along Turnpike since 1956, seeking to recover assessment and clean up response costs and damages for contamination in excess of \$10 million. Briefed and won novel issues of indemnity and application of contribution law to state environmental statute. To reduce costs of litigation and expedite resolution, parties underwent extensive ADR, resulting in agreements in 1993, approved by the court, under which the oil companies are cleaning up the ten sites. Now on appeal taken by non-settling party.

2. Arbitrator - Dalkon Shield Litigation (1993)

Arbitrator for the Center for Dispute Resolution in a case by a woman who claimed injury from her use of the Dalkon Shield IUD. My written opinion found that the medical evidence did not associate the various pelvic diseases she had with use of an IUD.

3. Pension Plan of Public Service Company of New Hampshire v. KMPG Peat Marwick, et al (N.H.)

As Special Counsel to the P.S.N.H. Pension Plan, investigated the loss of \$24 million in plan assets resulting from investments in naked options by an internal fiduciary, who was assisted by the cupidity of a major securities brokerage firm, and the negligent

RESUME OF SANDRA LEA LYNCH

stupidity of the custodial bank, in violation of ERISA and other laws. Cooperated and coordinated with a concurrent Department of Labor investigation. Recovered the amounts lost to the Plan, obtained contributions from culpable parties and now am in litigation with the accounting firm involved for malpractice. Case raised undecided issues of ERISA remedies and liability.

4. In the Matter of Joseph S. Mitchell (S.J.C. 1992)

Appointed by Supreme Judicial Court as Special Counsel to Judicial Conduct Commission to prosecute disciplinary charges against Superior Court Judge Joseph S. Mitchell. I sought his removal from the bench. Judge Mitchell, after proceedings, took early retirement.

5. Korb v. Raytheon, 410 Mass. 581 (1991)

Successfully represented in trial court and on appeal employer in action by a former company Vice President who had been terminated after he made statements at press conference critical of employer's biggest customers at Department of Defense and contrary to employer's interest. Former Vice President, represented by Civil Liberties Union, claimed termination violated his free speech rights under Mass. Civil Rights Act ("MCRA"). I raised issue of First Amendment limits on use of state power (through MCRA) to force defendant to associate with speech with which it disagreed.

Case had originally been removed to federal court because Korb's complaint alleged his First Amendment rights had been violated. Reaching a novel question, the district court held that an action brought under the MCRA in the private free speech context involving competing claims for First Amendment protection did not raise a federal question. Korb v. Raytheon, 707 F. Supp. 63 (D. Mass. 1989) (Woodlock, J.).

6. New Medico Associates, Inc. v. Kleinhenz, 750 F. Supp. 1145 (D. Mass. 1990) (Skinner, J.)

Two former employees, who worked in Illinois, were sued by their former employer under a non-compete clause. They had been forced to sign an agreement containing a forum selection clause which specified Massachusetts. My motion for defendants to transfer the case to Illinois was allowed, one of the few times transfer happened in the face of a forum selection clause under Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988).

RESUME OF SANDRA LEA LYNCH

7. Ms. X v. Company Z, U.S. Dist. Ct., (D. Mass. 1989)

Represented female employee raped by her boss after a company function. Her boss was convicted in state court of crime of rape. I brought civil litigation in 1989 in federal court against her employer, alleging employer had notice of problems with boss and responsibility not to expose her to risk of harm. Case settled. Settlement terms and amount confidential.

8. Gene Trak v. Roche Diagnostic Systems, Inc. (Middlesex Sup. Ct. and Mass. Appeals Ct.)

Successfully defeated at trial court and on appeal attempt to enforce non-compete agreement against my client Roche, who hired scientist to help develop DNA/RNA diagnostic test kits which would enable hospitals to quickly diagnose diseases such as AIDS. Case presented issues of freedom of scientist to leave work on one patented technology he believed would fail in order to work on only technology he believed would succeed. Legal issues involved interplay between the public disclosure policies of patent law and confidentiality policies of trade secret/non-compete law. Case involved explaining in simple terms highly technical scientific concepts. I obtained affidavits from Mass. Dept. of Public Health and a Nobel Laureate on severely adverse public policy impact of enforcing non-compete in this arena.

9. Grand Jury Investigation: Matter of Company Y

Represented company in several year Grand Jury investigation involving numerous witnesses. Target was defense contractor and issues involved pricing on multi-year government contracts from three different company divisions. Following my production of evidence and witnesses to Grand Jury and lengthy proffer to AUSA, government decided not to prosecute either civilly or criminally.

10. Anderson v. Cryovac, Inc. (U.S. Dist. Ct. D. Mass.) (Skinner, J.)

Trial counsel to W.R. Grace in lengthy jury trial in Woburn toxic tort case. Families sued, claiming leukemia in their children had been caused by chemicals in drinking water. First stage of case involved two month trial before federal court jury on complex issues of hydrogeology and causation of contamination in wells. Jury verdict vacated against Grace because jury interrogatories were inconsistent. Case settled.

RESUME OF SANDRA LEA LYNCH

In the face of enormous publicity and a real threat to the ability to find an impartial jury, the trial court issued protective orders prohibiting disclosure of information obtained through discovery except, as needed, to public health and environmental officials. The Boston Globe challenged the orders, asserting there was a public right of access to such materials. We successfully upheld the trial court's orders on appeal. Anderson v. Cryovac, 805 F.2d 1 (1st Cir. 1986).

11. Robinson v. Polaroid Corp., 567 F. Supp. 192 (D. Mass. 1983) (Skinner, J.), aff'd, 732 F.2d 1010 (1984)

Thirty-two day trial in three related class action employment cases against my client Polaroid. Plaintiffs asserted that race discrimination motivated the layoffs of black exempt and non-exempt employees. Defense was that: (1) hourly layoffs were seniority based and, (2) as to salaried employees, Polaroid was exemplary affirmative action employer who took risks in hiring, risks that could not continue in terms of poor performance in time of layoff and that (3) statistical evidence showed no disproportionate impact. Defendants' verdict was affirmed on appeal. Legal issues on appeal involved interplay between disparate impact and discriminatory treatment analyses.

12. Spencer Companies, Inc. v. Agency Rent A Car, 542 F. Supp. 237 (D. Mass. 1982) (Skinner, J.) and Agency Rent A Car v. Connolly, 542 F. Supp. 231 (D. Mass. 1982), vacated and remanded, 686 F.2d 1029 (1st Cir. 1982)

In related litigations, our client Spencer, a local shoe company fought off a greenmail and then take-over attempt by a corporate raider. We convinced the 1st Circuit that a state regulatory order forbidding the raider from purchasing more stock was not preempted by the Williams Act, to require abstention, and to vacate an injunction issued by the district court against enforcement of the state anti-take over statute. The district court had held the statute unconstitutional as an impermissible burden on interstate commerce and declined to abstain.

We ultimately convinced the district court that the raider had violated the provisions of the Williams Act and so it preliminarily enjoined tender offer.

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13. Baird v. Bellotti, 443 U.S. 622 (1979)
Planned Parenthood League of Massachusetts v. Bellotti, 641 F.2d 1006 (1st Cir. 1980)

Represented Planned Parenthood League of Massachusetts in attack on Massachusetts statute unduly burdening access to abortions. Won constitutional challenge to statute in U.S. Supreme Court. Legislature amended the statute by requiring fetal description to be read to woman, 24 hour waiting period and two parent or judicial consent for minors to have abortions. We challenged amendment. First Circuit held portions of statute invalid.

In related action I also argued challenge to statute based on state constitutional guarantees before Supreme Judicial Court. Mary Moe v. Bellotti.

I also represented individual minors who brought Mary Moe petitions in state court, under G.L. c. 112 §12S, seeking court permission for abortions.

14. Boston School Desegregation Case: Morgan v. Kerrigan, 388 F. Supp. 581 (D. Mass. 1975), aff'd, Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1974), denial of stay, 523 F.2d 917, aff'd, 530 F.2d 401 (1st Cir.), cert. denied, 426 U.S. 935 (1976) (remedial plan); Morgan v. Kerrigan, 409 F. Supp. 141 (D. Mass. 1975) (D. Mass. 1974), aff'd, sub nom. Morgan v. McDonough 540 F.2d 527 (1st Cir. 1976), cert. denied, 429 U.S. 1042 (receivership of South-Boston High School).

Before Judge W. Arthur Garrity, Jr., I was counsel to the Massachusetts Board of Education, which was a defendant in the federal case and which had originally brought the state Racial Imbalance case against the Boston School Committee. The Board was held not to have violated plaintiffs' rights. Proceedings ranged from trial before masters on remedial alternatives, to fashioning remedial decrees for students and faculty, to enforcement, to emergency receivership of South Boston High School, and related issues. The First Circuit opinion affirming one of Judge Garrity's orders, at 540 F.2d 527, 532 (1976), quotes from my brief. I handled several appeals to the First Circuit and to the U.S. Supreme Court in addition to several times weekly sessions with the trial court.

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Federal

1. Baird v. Bellotti, 443 U.S. 622 (1979)
2. Schuler v. Polaroid Corp., 848 F.2d 276 (1st Cir. 1988)
3. Johnson v. General Elec., 840 F.2d 132, (1st Cir. 1988), 56 USLW 2490, 46 Fair Empl. Prac. Cas. (BNA) 81
4. Anderson v. Cryovac, Inc., 805 F.2d (1st Cir. 1986), 55 USLW 2343, 6 Fed. R. Serv. 3d 369, 13 Media L. Rep. 1721
5. Robinson v. Polaroid Corp., 732 F.2d 1010 (1st Cir. 1984), 34 Fair Empl. Prac. Cas. (BNA) 1134, 34 Empl. Prac. Dec. P 34,312
6. Baird v. Bellotti, 724 F.2d 1032 (1st Cir. 1984)
7. Agency Rent-A-Car, Inc. v. Connolly, 686 F.2d 1029 (1st Cir. 1982), Blue Sky L. Rep. P 71,773, Fed. Sec. L. Rep. P 98,776
8. Planned Parenthood League of Massachusetts v. Bellotti, 641 F.2d 1006 (1st Cir. 1981)
9. Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976), cert. denied, 429 U.S. 1042
10. Morgan v. Kerrigan, 530 F.2d 401 (1st Cir. 1976), cert. denied, 426 U.S. 935 (1976)
11. Morgan v. Kerrigan, 523 F.2d 917 (1st Cir. 1975)
12. Wiener v. Polaroid Corp., 790 F. Supp. 363 (D. Mass. 1992), 59 Fair Empl. Prac. Cas. (BNA) 1621, 62 Empl. Prac. Dec. P 42,596
13. New Medico Associates, Inc. v. Kleinhenz, 750 F. Supp. 1145 (D. Mass. 1990)
14. Korb v. Raytheon Co., 707 F. Supp. 63 (D. Mass. 1989)
15. Schuler v. Polaroid Corp., 1987 WL 14098, 44 Fair Empl. Prac. Cas. (BNA) 1415 (D. Mass. 1987)
16. Johnson v. General Elec. Co., 1987 WL 14821, 44 F.E.P. Cas. (BNA) 1143 (D. Mass. 1987), aff'd, 840 F.2d 132 (1st Cir. 1988)
17. Crews v. Memorex Corp., 677 F. Supp. (D. Mass. 1987) F.E.P. Cas. (BNA) 1599

18. Planned Parenthood League of Massachusetts v. Bellotti, 608 F. Supp. 800 (D. Mass. 1985)
19. Baird v. Bellotti, 616 F. Supp. 6 (D. Mass. 1984)
20. Crews v. Memorex Corp., 588 F. Supp. 27 (D. Mass. 1984), 120 L.R.R.M. (BNA) 2679, 41 F.E.P. Cas. (BNA) 1318
21. Robinson v. Polaroid Corp., 567 F. Supp. 192, 32 F.E.P. Cas. (BNA) 621, 33 Empl. Prac. Dec. P 34,115 (D. Mass. 1983), aff'd, 732 F.2d 1010 (1st Cir. 1984)
22. Spencer Companies, Inc. v. Agency Rent-A-Car, Inc., 542 F. Supp. 237 (D. Mass. 1982), Fed. Sec. L. Rep. P 98,668
23. Agency Rent-A-Car, Inc. v. Connolly, 542 F. Supp. 231, Blue Sky L.Rep. P 71,736, Fed. Sec. L. Rep. P 98,637 (D. Mass. 1982), rev'd and remanded 686 F.2d 1029 (1st Cir. 1982)
24. Planned Parenthood League of Massachusetts v. Bellotti, 499 F. Supp. 215 (D. Mass. 1980)
25. Armstrong v. Board of School Directors of City of Milwaukee, 616 F.2d 305 (7th Cir. 1980)
26. Morgan v. Kerrigan, 409 F. Supp. 1141 (D. Mass. 1975) (later history omitted)
27. Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1975) (later history omitted)
28. Morgan v. Kerrigan, 401 F. Supp. 270 (D. Mass. 1975) (NO. CIV. 72-911-G) (later history omitted)
29. Morgan v. Kerrigan, 388 F. Supp. 581, 14 F.E.P. Cas. (BNA) 308 (D. Mass. 1975) (later history omitted)

State

30. Korb v. Raytheon Corp., 410 Mass. 581 (1991), 574 N.E.2d 370, 60 USLW 2092, 6 Indiv. Empl. Rts. Cas. (BNA) 1002
31. Mouradian v. General Elec. Co., 23 Mass. App. Ct. 538, 503 (1987) N.E.2d 1318, Mass. App. Ct., Feb. 24, 1987; 43 Fair Empl. Prac. Cas. (BNA) 240, 1 Indiv. Empl. Rts. Cas. (BNA) 1691
32. Wilson v. Brookline Housing Authority, 383 Mass. 878 (1981), 420 N.E.2d 314 (Mass. 1981)

33. Bezio v. Patenaude, 381 Mass. 563 (1980), 410 N.E.2d 1207 (Mass. 1980)
34. Continental-Hyannis Furn. Co., Inc. v. State Tax Commission, 366 Mass. 308, 318 N.E.2d 618 (Mass. 1974)
35. School Committee of Springfield v. Board of Ed., 365 Mass. 215 (1974), 311 N.E.2d 69 (Mass. 1974)
36. School Committee of Boston v. Board of Ed., 364 Mass. 199 (1973), 302 N.E.2d 916 (Mass. 1973)
37. Beaton v. Randall, 326 N.E.2d 302 (Mass. 1975)
38. School Committee of Springfield v. Board of Education, 366 Mass. 315, 319 N.E.2d 427 (Mass. 1974), cert. denied, 421 U.S. 947 (1975)

Of Mice and Men . . . and Women . . . and Children

by Sandra L. Lynch



What is the world we leave our children? It is a world both men and women have tried to shape with the best laid schemes and with good intentions. What of it?

In the 1960s there was eloquent concern that we were moving to two societies—one white and one black. The danger now is that we are moving to two societies—one rich and one poor. That movement has seriously weakened two of the basic functions of American government—our systems of justice and of public education. A stable democracy requires that we strengthen both.

Our Massachusetts state courts are badly in need of managerial reform. They are often unable to handle, much less expeditiously, the cases before them, valiantly though they try. Cases involving children particularly get lost in the cracks, with heartbreaking personal costs. Children do not wait to grow up while courts fail to hear cases of their abuse and neglect. Continuances and delay mean the stability children need is irretrievably lost. This disgraceful condition has prompted a uniquely American and poignant act of faith—a suit filed in the courts against the courts for the failure of the courts to adequately handle the cases of children. In the meantime, those who can afford other methods of dispute resolution simply purchase it on the private market. Private alternative dispute resolution is becoming to the judicial system what Federal Express is to the U.S. Postal System.

Our public elementary and secondary schools fare no better. Presently the state's share of educational costs is at the lowest level in ten years. At the same time, our schools are facing annual enrollment and inflation increases of around 5½%. Massachusetts ranks 43rd in the nation in the level of state aid to elementary and secondary education. As a result, our public schools are unusually reliant on and victims of the local property tax. Our schools are caught between the Scylla of Proposition 2½ and the Charybdis of low state funding. The admirable present efforts at education reform, through legislation or the school financing lawsuit, will and should assist the poorest communities. Such "reform" will be through concepts of "foundation budgets," but most likely capped at levels well below what our good school systems presently spend. How does this reform assist the quality of education in the remaining, often middle class school systems? They must go to the voters for overrides every several years to get adequate funding, running hard just to keep from falling further behind. In the name of "reform," we may just define the lowest common denominator. Excellence has, however, never been defined by the lowest common denominator. In the face of declining quality, those who can afford to will simply purchase education for their children on the private market. And when enough parents do so out of quiet concern, it will be too late to save the public schools.

There is a danger that we will make decisions which suit our present interests and not recognize the consequences for the world we shape for our children. Later generations may view us no more kindly than Churchill viewed Neville Chamberlain, however well intentioned we were. "Peace in our time" may produce chaos thereafter.

Will we leave our children a society in which only the poorest use our courts and our public schools? What will it mean for America when two of the basic components of a stable democracy—a good judicial system and a good public education system—are lost? What will it mean for our profession? As we move toward a two class society, won't lawyers inevitably try to assure that they and their families are among the protected? What does that mean for a profession

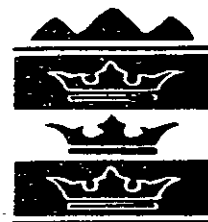
already working harder on average than a decade ago, under pressure about billing rates and efficiency?

Lawyers have a special brief in pushing for court reform, as the BBA has steadfastly done. We should be no less concerned with our public school systems. We are not just lawyers, we are parents and citizens too.

The BBA has formed a Task Force on Public Education, chaired by Robert Fraser, to give us a voice in this most important of public issues—the future of our schools. The BBA's highly successful Task Force on Drugs and Justice significantly influenced our state's response to a major social problem. We seek to do so again. Alexis de Tocqueville observed in the early 1800s:

In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society . . .

Lawyers today should display leadership, so that what our children inherit from us is not the loss of their own futures.



The "724 Children"

by Sandra L. Lynch



Boston City Hospital is on the front lines of medicine where poverty, violence, and urban life intersect. Our legal services programs—GBLS, CASLS, Cambridgeport Problem Center, and others—are on the front lines of law at this same intersection.

What is it like on the front lines? One study has found that 10% of the children treated in a BCH clinic saw a shooting or a stabbing at home or on the street, *before they were six years old*. Sesame Street's Big Bird must seem unreal to them—he isn't afraid of being mugged in his neighborhood. George F. Will recently described a new urban phenomenon, the "724 Children," or "children kept at home, indoors, seven days a week, 24 hours a day, because of the epidemic of violence." The homes in which they are kept may not be safe in other ways: lead paint, inadequate heat, not enough money to go around for food, clothing and medicine. There may not even be a parent in the home. By the year 2000, there will be 72,000 children in this country, according to estimates, who have lost their mothers to AIDS. And the epidemic of violence does not recognize the sanctuary of the home. The Massachusetts Trial Court judges hear more than a thousand petitions a week under Chapter 209A, or a staggering 52,000 such cases a year.

Health professionals may try to approach this complex of issues through family medicine. But lawyers know that in today's world the law touches just about every problem. Perhaps, as this century waxed new and it was possible to live without much attention to law, but it is surely not possible

to do so as the century wanes. By definition, government, including its benefits and regulation, involves law. Society is protected not through vigilante action, but through the criminal laws. Private disputes are expected to be resolved in court, and not by self-help.

The legal profession is not there for substantial numbers of people who need legal help, especially the poor. Here we are, a generation after the creation of the Legal Services program, after the War on Poverty, and the problem of delivery of legal services to the indigent has not disappeared. Indeed, a worsening of the problem has crept up on us.

New England, since 1990, has been in the worst economic shape since the Great Depression. There has been a loss of 750,000 jobs, or 11% of the job base. There has been a related increase in homelessness and domestic violence. Because of constraints on state budgets, state assistance programs have been cut back. Children, it was said, had to be clothed to meet the New England weather on \$79 a year. At a time of increased need, core legal services for poor people have been severely impacted by funding losses.

Each of the sources of funding for the Greater Boston area legal services programs is shrinking. There are four core programs and they have suffered four body blows. The four core programs are Greater Boston Legal Service (GBLS), Cambridge And Somerville Legal Services (CASLS), Cambridgeport Problem Center (CPC) and Volunteer Lawyers Project (VLP). The four body blows come from the sharp drop in IOLTA funds caused by interest rate reduction, the impact of the 1990 census, loss of state Asylum Representation funding, and shortfalls in United Way funding.

In the mid 1980's, the BBA, trying to address the problem of funding for legal services, petitioned the SJC to create an IOLTA program. The SJC did so by rule. The vast majority of IOLTA funding goes to legal services programs through the Massachusetts Legal Assistance Corporation. During FY '93, MLAC is projecting a decline in IOLTA income of about \$2 million. MLAC is attempting to cushion the

blow by exhausting its reserves, but still anticipates a \$1.3 million cut in basic programs in FY '93.

The Greater Boston area programs are also, ironically, victimized by the prosperity of this area in the late 1980's. For the "1990" census is in fact based on data from that earlier period of prosperity, and does not capture the bust that followed. As a result, funding formulas which operate on census data shift funding away from the "prosperous" Boston area. The programs also lost nearly \$200,000 in vetoed state appropriations for representation of immigrants. And United Way, another funding source, anticipates cuts of roughly 7% to all recipients.

The federal government is unlikely to solve the problem, even if there is an increased appropriation for the Legal Services Corporation (LSC). The distance to catch up is too far. For example, the Reagan cuts of 1982 slashed the GBLS budget by \$1.2 million, to a \$2.1 million level. In 1993, more than ten years later, the GBLS grant from LSC is still \$2.1 million, the 1982 level, notwithstanding population growth and inflation.

As a result, the FY '93 funding for GBLS will be reduced by more than \$500,000. Chelsea, the city with the highest percentage of poor people in the state, will be served by one half-time paralegal, to do work formerly done by two full-time attorneys. CASLS may be forced to cut its staff by a quarter. The other programs suffer similarly.

Congress should be asked to significantly increase LSC funding. MLAC'S request for \$900,000 new funding to combat domestic violence should be supported. When programs seek donations from the private bar, the bar should respond because it is the right thing to do.

Some may say that the legal profession should primarily bear the costs of these programs. But the need to deliver legal services to the indigent is a societal need and tax dollars and IOLTA dollars should be used primarily to support the programs. What will happen if programs are not adequately funded? The human costs will be enormous. There will be costs to

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The "724 Children"

continued from page 2

the profession as well. There will be increased calls for mandatory *pro bono* programs and for enforcement of *pro bono* obligations through ethical rules and disciplinary procedures. There will also be definitions of "*pro bono*" work restricting it to legal services to the poor, no matter how worthy the civil rights, gender equality, or administration of justice *pro bono* effort. The recent attacks on the IOLTA program ignore the practical reality that the needs are there, they are enormous, and someone will bear the cost of meeting those needs or the consequences of not meeting them.

Beyond Plato

by Sandra L. Lynch



Philosophers today explore "Communitarian" concepts, focusing on the quandaries and dissatisfactions of modern life. In particular, they attempt to bridge the discontinuity in practice between the idea of "rights" and the idea of "responsibilities."

One such philosopher, Amitai Etzioni, writes, "No society can function well unless most of its members 'behave' most of the time because they voluntarily heed their moral commitments and social responsibilities." To give a graphic example, as was said after the terrorist bombing of the London subway system, "Civilization is when so few can cause so much havoc for so many."

A paradigm shift is occurring in our society. We are all interrelated. "Communitarianism" is an effort to rethink the paradigm of conflict between the individual good and the collective good which has characterized the last quarter century. Ideas count.

What does this have to do with lawyers? A lot. More than anyone else, lawyers champion the idea of "rights." By that we mean the rights of the individual. Our doctrines define the rights of individuals as being juxtaposed against the community. Our doctrines establish the adversary system as the best method of resolving disputes. But at the same time, we live professionally and represent clients in and among institutions and communities. As the *Boston Globe's* David Warsh says, "We live through institutions and must take them seriously."

The interrelatedness of nature is now

well recognized. We use the term "the environment" and analyze "ecosystems." Appreciating this, our laws require an analysis of the impact on the environment of particular actions. No one would now permit an industrial plant to be built without considering its impact on the local environment, from water and air quality to traffic patterns.

Yet we have been slower to recognize both the interrelatedness of our profession and of the justice system within which we work. To give an example, if 100 new police officers are added, there is applause. We have gotten tough on crime. Few consider that those 100 officers will lead to more arrests, which will lead to more prosecutions and require more public defenders, and will add to the criminal caseload of courts, and will require more space to incarcerate prisoners. Without added resources, other components of the justice system may break down, harming the community. Policy has consequences. The consequences for the justice system of a particular policy choice are, however, rarely recognized.

To continue the point, courts hearing more and more criminal cases, without benefit of added resources, will hear fewer civil cases. That, exactly, is one of the real consequences of the "War on Drugs." The delay in hearing civil cases demonstrably drives litigation costs up for the parties. Clients, faced with higher costs, tell lawyers they cannot afford to compensate the waste occasioned by delay, so they no longer want to pay hourly rates. They want lawyers to engage in "creative" billing arrangements in which lawyers share the risks of delay. Not irrationally, clients want to change a system of billing in which lawyers are compensated for the system's waste to one in which lawyers have an economic incentive to control the waste. Clients also seek to avoid courts wherever possible, making use of standard contract clauses requiring ADR. This in turn fundamentally affects how we practice.

These interrelationships require that we in the profession recognize there is a legal community. Survival of the community requires that we transcend

labels such as prosecution and defense counsel, personal injury lawyer and insurance lawyer, labor and management attorneys, poverty lawyers and "establishment" lawyers. Survival of the community means that we must think of responsibilities as well as rights.

All of this makes the role of bar associations even more relevant and more important. The Boston Bar Association is the common meeting ground for the legal community here. The BBA represents and embodies that community. The interests of that community this year have ranged from unemployment of lawyers to law firms being charged with collective guilt for the crimes of the few. The BBA is the institution which advocates on matters of the judicial system—like court reform and judicial pay raises—which affect us all. It is the institution which recognizes the relationships between the legal community's interests and those of the larger community—such as on education reform legislation and the BBA Summer Jobs Program. The BBA is the institution which debunks political mythologies which prevent there being real solutions to palpably real problems. Examples include the BBA's Truth in Sentencing bill, which debunks the myth that the answer to crime is simply to build even more prison cells. The BBA will need your support in the coming years—please give that support. It is a wise investment.

This is my last President's Page. Thank you for the opportunity to serve.

Public Institution Litigation in the First Circuit

BY SANDRA L. LYNCH†

Introduction

From busing in Boston to the building of new jails to cleaning up Boston Harbor, federal courts have shaped the lives of Massachusetts citizens in significant ways. How and why did our federal courts become so involved? This article discusses these two questions and describes some of the major cases.

A prophetic footnote in a Depression-era Supreme Court opinion foretold greater involvement by federal courts when normal political processes had failed to protect certain groups:

[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.¹

Increasingly, the federal courts have protected the rights of individuals against government institutions and have forced the government to comply with the law.

Numerous commentators have attempted to characterize the involvement of federal courts in institutional change. It has been said that until the 1960s, the federal courts had rarely told either federal or state governmental bodies what they must do.²

In the past two decades, however, civil litigation increasingly has involved new procedural and remedial characteristics. It is said that litigation has shifted from a private, two-sided, remedially restricted system to a public, multi-polar, flexible forum for resolving issues of public law and social grievance.³

Courts now issue affirmative injunctions requiring structural changes in government institutions. "[A]n ab-

lication in one branch impels a correlative performance in another.... Here is a new, affirmative conception of checks and balances." When the other branches of government do not act, and when rights have been found to be violated, the courts have "no alternative but to take a more active role in formulating appropriate relief." Rights without remedies are hollow rights.⁴

Critics have branded this correlative duty of action "judicial activism," a purported usurping of powers that are constitutionally reserved to the democratically elected branches. In truth, public sector litigation at times has required courts to exercise what have traditionally been viewed as executive or legislative functions. In promulgating a decree, the court makes a "legislative" choice to expend funds on the particular remedy, and not on competing concerns.⁵ Similarly, a court may become involved in administrative details: Where, for example, should the tainted sludge from the harbor be put?

However, these criticisms insufficiently appreciate the fact that other branches of government may defer, either intentionally or ineptly, hard or unpopular choices to the courts. For example, the Legislature may have believed that there was no constituency for funding prisons and jails, and so confinement conditions were allowed to deteriorate until they offended constitutional standards. Boston Harbor became the toilet for greater Boston's sewage because of the inability of local communities and the state to work out alternatives. The failure of the legislative and executive branches to address public problems often causes public sector litigation to be brought.

†Ms. Lynch is a partner at Foley, Hoag & Eliot. From 1973 to 1978 she was General Counsel of the Massachusetts Department of Education and a counsel in the Boston school desegregation case. Grateful acknowledgment is given to Victoria Silbey and Bradford Swing for their assistance with this article.

1. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

2. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 DUKE L.J. 1265, 1266 (1983) [hereinafter, Horowitz, *Institutions*].

3. Eisenberg and Yeazell, *The Ordinary and the Extraordinary in Institutional Litigation*, 93 HARV. L. REV. 465 (1980). The article notes that decrees are often administrative, affirmative and prospective, and reduce considerably the defendant's discretion in managing the institution. This necessitates continued judicial involvement in the running of an institution, and the implementing or, if necessary, modifying of a decree. The court also monitors compliance with a decree and issues warnings to and sanctions against recalcitrant government bodies. Thus, adjudication becomes part of the larger sys-

tem of public regulation, and the judge becomes an administrator of remedial compliance. *Id.*

4. Horowitz, *Institutions*, *supra* note 2, at 1286. There are, of course, cases which defendants, intransigent institutions or government officials, would like to lose. For example, a judicial decree may be a weapon used against the legislature to augment financial appropriations in a certain area. *Id.* at 1294.

5. Johnson, *The Role of the Federal Courts in Institutional Litigation*, 32 ALA. L. REV. 271, 274 (1981).

6. *Id.*

7. Blurring of the lines of demarcation between judicial and legislative responsibilities does not occur only in the context discussed in this article. The United States Supreme Court decision in *City of Richmond v. Croson*, 109 S.Ct. 706 (1989), may be viewed as having an underlying premise that a legislative body may enact otherwise impermissible race-based remedial laws provided it acts in a judicial fashion by making specific evidentiary findings of discrimination and narrowly tailors the remedy. Ironically, the judicial model has thus become the model for legislative action.

The onset of public institution litigation has spawned complex concerns. Critics have decried judicial activism. Some critics have sought to impose judicial restraint through searches for the "original intent" of the Constitution. But charges of judicial overreaching often are unfair. Indeed, the decisions of the courts of the First Circuit provide lessons of a different sort: of abdication of responsibility by other branches of government; of hard decisions being forced onto the courts because elected officials preferred it that way; and of the difficulty facing any court in trying to achieve an effective remedy that can overcome bureaucratic resistance or inertia.

During the last several decades, federal courts have been integrally involved in the public institutions of the Commonwealth of Massachusetts and of the City of Boston. They have been called upon to resolve disputes about the hiring of minority police and firefighters; to improve deplorable conditions in mental health facilities; to relieve overcrowded jails; to desegregate the Boston public schools; to ensure fair housing; and to clean up the open sewer that was Boston Harbor.⁸ Reluctant at times to intervene before the public institutions have been given every chance to resolve these problems, federal judges, both trial and appellate, have acted in these cases with restraint and courage, with ingenuity and savvy, and have created a legacy, not only of expanded federal remedial law, but also of better conditions for the citizens of Massachusetts. The following areas illustrate how the federal courts have improved the quality of life in this Commonwealth.

Public Employment

Federal court orders have significantly shaped the hiring practices for both police and firefighters in Massachusetts communities. As Judge Coffin noted in the police-hiring case, "[T]his case epitomizes the classic, clumsy and yet unavoidable attempt to rectify, through the courts, long standing though not consciously intended discriminatory selection policies in public employment in a northern community."⁹

The plaintiffs in *Castro v. Beecher* challenged under 42 U.S.C. §1981 and §1983 the police hiring and recruiting practices of the Boston Police Department, the Directors of Civil Service and the Massachusetts Civil Service Commission. The plaintiffs were six black and two Hispanic-surnamed Boston residents who alleged discrimination in the dissemination of information about

employment opportunities, in the use of an irrelevant education requirement, in the one-hundred yard swimming requirement, in a five-foot seven-inch minimum height requirement, and in the imposition of a discriminatory written examination.¹⁰

United States District Judge Charles E. Wyzanski, Jr., found that of those applicants taking the 1970 civil service entrance examination, the pass rate was 65% for whites, 25% for blacks and 10% for Hispanics.¹¹ The court found that the 1970 examinations were not significantly job related and gave a discriminatory advantage to white persons whose primary language was English and who had been trained and educated in the mainstream of American society.¹² Judge Wyzanski ruled that the entrance examination was not "rationally or empirically significantly related to the capacity of applicants to be trained for or to perform a policeman's job."¹³ Although Judge Wyzanski did not find any evidence of discriminatory intent, he held that evidence of intent was not necessary to prove an equal protection violation.¹⁴ The court enjoined issuance of certificates of eligibility based on these examinations or any examination which was not significantly job-related. Finally, the court laid down guidelines which would prima facie accredit new entrance examinations as non-discriminatory and job-related. The district court did not, however, order preferential hiring for Hispanic-surnamed and black applicants.

On appeal, the First Circuit affirmed the district court's ruling that there was an equal protection violation, noting that there was a significant discrepancy between the black population of Boston in 1970 (16.3%) and the black population on the police force (2.3%).¹⁵ It upheld the order to develop a new examination and remanded the case, instructing the district court to create a preferential hiring plan in order to remedy the continuing effects of past discrimination.

On remand, the district court voiced its frustration with the public agencies. When the Massachusetts Civil Service Commission, despite the plain warning from the district and appellate courts, persisted in over-emphasizing "paper and pencil capacities," Judge Wyzanski wrote that the problem in Massachusetts was obvious. When faced by an "obdurate" agency,

[t]he only practical alternative, as a last resort, is for this court to act in this situation the way courts have acted with respect to obdurate local school boards which would not in the spirit and letter of the Constitution carry out the Constitutional

8. The roles of the state judiciary in such public institution cases, as well as the federal judges elsewhere in the First Circuit, are worthy of comment, but those topics lie beyond the scope of this article.

9. *Castro v. Beecher*, 459 F.2d 725, 727 (1st Cir. 1972).

10. *Castro v. Beecher*, 334 F. Supp. 930, 934-35 (D. Mass. 1971), *aff'd*, 459 F.2d 725 (1st Cir. 1972).

11. *Id.*, 334 F. Supp. at 942.

12. *Id.* at 943-44.

13. *Id.* at 942. The court upheld as significantly job related the five-

foot seven-inch minimum height requirement, the use of a one-hundred yard swimming test and the requirement of a high school diploma or equivalent. It also ruled that the recruiting had been conducted adequately. *Id.* at 938-41.

14. *Id.* at 935. This case preceded *Washington v. Davis*, 426 U.S. 229 (1976), which, in circumstances similar to *Castro*, held that the use of a police entrance exam with a discriminatory impact could not be held to violate equal protection absent a showing of discriminatory intent.

15. 459 F.2d at 728.

command to give due process and equal protection to children who were on racial grounds denied educational opportunity. In those cases courts have appointed receivers.... But, after all, that is what federal courts have often done when other forms of administering justice under law have failed.... Enough, and more than enough, time has been allowed to the local authorities to set their houses in order.¹⁶

The district court ultimately went beyond the scope of its original decision and enforced a consent decree which called for the preferential hiring of minorities and the maintenance of separate civil service lists.¹⁷ The consent decree has retained its basic structure, and is still in force under the supervision of United States District Judge Andrew A. Caffrey.

In December 1975, the decree specified only two groups from which future certifications of eligibility would be made. These groups provided for a one-to-one (minority to non-minority) ratio in Boston and Springfield and a one-to-three (minority to non-minority) ratio elsewhere.¹⁸ In 1981, Judge Caffrey amended the decree for the police force and the fire department because of a new and unforeseen condition, that is, the approval of Proposition 2½, which was expected to entail a significant number of firings in both forces.¹⁹ The court held that it possessed the power to amend the decree where a refusal to do so would eradicate progress made with respect to minority hiring. The amended decree forbids the Police Commissioner from reducing the number of minorities below a certain percentage.²⁰ This amendment overrode a state statute which provides for a strict seniority system in layoffs.²¹ The court of appeals affirmed.²²

The federal court's involvement has not ended. In September 1989, white plaintiffs who had passed examinations and had been passed over for Boston police and Boston firefighter positions in favor of black and Hispanic-surnamed candidates sued city officials in fed-

eral court, asserting that the consent decree impermissibly discriminated against white persons by making selection decisions based on race.²³

Institutions for the Mentally Retarded

In 1972, a class action suit was brought on behalf of mentally retarded residents of the Belchertown State School. The plaintiffs alleged that conditions at the school were so inadequate that they violated the residents' constitutional right of due process and statutory right to treatment.²⁴ As in the hiring cases, federal court involvement in this lawsuit challenging the conditions at an institution for the mentally retarded included the enforcement of a consent decree. But unlike the hiring cases, the consent decree in the mental retardation cases was not preceded by a finding of liability. At least initially, the public institution litigation in this case fostered a cooperative effort among the legislative, executive and judicial branches of government.

Soon after the suit was brought, United States District Court Judge Joseph L. Tauro, accompanied by various state and federal officials, took a view of conditions at Belchertown.²⁵ As a result of what officials saw, Governor Dukakis and then Attorney General Francis X. Bellotti²⁶ made a judgment that the level of care did not reach [a] constitutional level of care, and, as a result, concluded that 'the case would be indefensible.'²⁷

The state defendants worked hard with the plaintiffs and the court to fashion comprehensive remedial programs for the institutions. In July 1977, at an open court hearing, various state officials, including Governor Dukakis and then Attorney General Bellotti, signed interim consent decrees. At that hearing, then-Speaker of the Massachusetts House of Representatives, Thomas McGee, responded to the court's invitation to speak by stating, "[W]e are committed to the job that you want done, the people involved want done, and we'll do it."²⁸

16. Opinion of March 22, 1973, printed in *Castro v. Beecher*, 365 F. Supp. 655, 666 (D. Mass. 1973).

17. A similar remedial decree was imposed after a liability finding with respect to hiring practices in the fire departments of Boston and other cities and towns. *NAACP v. Beecher*, 371 F. Supp. 507 (D. Mass.), *aff'd*, 504 F.2d 1017 (1st Cir. 1974), *cert. denied*, 421 U.S. 910 (1975). United States District Judge Frank H. Freedman held that the use of a civil service entrance examination in the hiring process violated title VII rather than the fourteenth amendment. 371 F. Supp. at 509.

18. *Castro v. Beecher*, Consent Decree, December 1975, 1121-23.

19. *Castro v. Beecher*, 522 F. Supp. 873, 877 (D. Mass. 1981), *aff'd sub nom.*, *NAACP v. Beecher*, 679 F.2d 965 (1st Cir. 1982), *vacated as moot*, 461 U.S. 477 (1983).

20. *Id.*

21. G.L.M. c.31, §99.

22. *NAACP v. Beecher*, 679 F.2d 965 (1st Cir. 1982) [subsequent history omitted].

23. *Fagan v. City of Boston*, No. 89-2076-N (D. Mass.), and *Mackin v. City of Boston*, No. 89-2025-N (D. Mass.). These suits may have been prompted by the recent United States Supreme Court ruling that white firefighters in Birmingham, Alabama, could challenge the al-

legedly discriminatory promotional practices of that city despite the fact that the city's promotional decisions were made in accordance with, and in reliance on, a consent decree entered in United States District Court, and even though the white firefighters had failed to intervene in this earlier employment discrimination action. *Martin v. Wilks*, 109 S. Ct. 2180, 2188 (1989).

24. The complaints alleged deprivation of the plaintiffs' due process rights to minimally adequate care and treatment, and their rights under certain federal and state statutes, including §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, title XIX of the Social Security Act, 42 U.S.C. §1396 *et seq.*, and G.L.M. c.19 and c.123. During the next three years, actions were brought on behalf of residents at four other state institutions. In each suit, various state officials with responsibility for the operations of institutions for the retarded were named as defendants. By an order of the court, the cases were consolidated. The history of the cases is set forth in *Ricci v. Okin*, 537 F. Supp. 817 (D. Mass. 1982).

25. Views were later taken at the other institutions as well.

26. *Massachusetts Ass'n for Retarded Citizens v. King*, 668 F.2d 602, 604 (1st Cir. 1981) [quoting then Attorney General Francis X. Bellotti].

27. *Ricci v. Okin*, 537 F. Supp. at 820.

However, it was not until 1978—after a year of “prolonged negotiations,” “innumerable meetings” and skillful steps by the trial judge—that the final personnel decree setting an acceptable level of staffing was signed.²⁸ According to Judge Tauro, “The final version of the decree was the culmination of a thorough, complex, and cooperative process.”²⁹ In the decree, approved by the court in August 1978,³⁰ the defendants agreed to comply with the personnel standards for care and treatment set forth in title XIX of the Social Security Act.³¹

With the change in administration from Governor Dukakis to Governor King, it became necessary for the court to become involved in enforcing the terms of the decree. In June 1981, the defendants notified the court that they intended to decrease the staffing level at the state schools by 408 positions. The plaintiffs would not agree to the planned reductions. Although the personnel decree provided that the parties bring such disagreement to the court’s attention for resolution, the defendants stated that they did not believe the court’s approval was required before the adjustments could be instituted. The court rejected this contention, however, and denied the defendants’ requested staff cut. It stated that such a cut would violate the “clear and unambiguous” requirement of the personnel decree that the defendants comply with federal statutory and regulatory standards.³² The court did, however, permit a cut of 84.5 positions, and specified exactly which positions could be cut.³³ In doing so, the court affirmed the role it had assumed in protecting the mentally retarded against the failings of the political process:

Today’s fiscal problems do not alter the fact that these decrees are essential to insure that there will be no return to the “indefensible” conditions of the past. The retarded have no potent political constituency. They must rely on the good will of those of us more fortunate than they, and the Constitution which controls the manner in which all of us must meet our varied responsibilities.³⁴

Finally, in 1986, the court observed that “[t]he filth, squalor and unsafe conditions that once characterized these institutions no longer exists,”³⁵ and it concluded that it could withdraw from extended involvement with institutions for the mentally retarded.

As a condition of the withdrawal, it ordered the governor to establish an Office of Quality Assurance to “en-

sure that all class members receive the services to which they are entitled under the consent decrees, and that the Commonwealth comply with all federal and state laws, rules, regulations and standards that are applicable to these class members.”³⁶

Charles Street Jail

In 1973, the federal court was drawn into remedying conditions at the Charles Street Jail.³⁷ Charles Street Jail inmates sued the Sheriff of Suffolk County, the master of the jail, the Commissioner of Correction, the mayor, and Boston City Council members, contending that the conditions of the jail contravened the eighth and fourteenth amendments to the Constitution.³⁸

The Charles Street Jail has been used continuously since 1848.³⁹ It originally was built to house one inmate per cell, but by the mid-1970s two inmates were regularly housed per cell.⁴⁰ Most inmates at the time of the suit (85%) were pretrial detainees who had not been convicted of the crime for which they had been arrested.⁴¹ After viewing the jail during an overnight stay, United States District Judge W. Arthur Garrity, Jr., called the conditions in the jail a “soul-chilling inhumanity.”⁴² Judge Garrity ruled that conditions at the Charles Street Jail were unconstitutional, in that they violated the presumption of innocence and the detainees’ right of due process.⁴³

Judge Garrity’s decision confronted directly the traditional “hands-off” doctrine which had prohibited federal courts from interfering with the operation of state and county correctional institutions.⁴⁴ The court permanently enjoined the defendants from housing two inmates in a cell after November 30, 1973 and from housing any inmate awaiting trial at the Charles Street Jail after June 30, 1976.⁴⁵ The court also ordered that visiting hours be expanded, that detainees be allowed out of the cell for four hours each day, that physical examinations be available, and that progress reports be filed by the defendants.⁴⁶

The defendants did not appeal. However, the district court postponed the order prohibiting incarceration of pretrial detainees at Charles Street Jail, first until July 1, 1977, and then until November 1, 1977, because the defendants could not arrange replacement facilities.⁴⁷ On November 2, 1977, the district court ordered the City

28. *Id.* at 821.

29. *Id.*

30. *Id.*

31. 42 U.S.C. §1396a.

32. 537 F. Supp. at 829.

33. *Id.* at 837-38.

34. *Id.* at 836.

35. *Ricci v. Callahan*, 646 F. Supp. 378, 379 (D. Mass. 1986).

36. *Id.* at 381.

37. *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676, 685 (D. Mass. 1973), *aff’d*, 494 F.2d 1196 (1st Cir.), *cert. denied*, 419 U.S. 977 (1974).

38. 360 F. Supp. 676.

39. *Id.* at 679.

40. *Id.*

41. *Id.* at 685.

42. *Id.* at 684.

43. *Id.* at 686.

44. In 1972, the Supreme Court had highlighted a new principle: “[F]ederal courts sit not to supervise prisons but to enforce the constitutional rights of all ‘persons’ which include prisoners.” *Cruz v. Beto*, 405 U.S. 319, 321 (1972), quoted in *Inmates of Suffolk County*, 360 F. Supp. at 684.

45. 360 F. Supp. at 691.

46. *Id.*

47. See *Inmates of Suffolk County Jail v. Kearney*, 573 F.2d 98, 99 (1st Cir. 1978).

Council to appropriate funds to establish a "constitutionally adequate pretrial detention center" and delayed closing Charles Street Jail until five weeks after the appropriation by the Council.⁴⁸ The City Council appealed and the court of appeals stayed the order.⁴⁹

The City Council finally voted on March 1, 1978, to appropriate \$10 million to correct constitutional deficiencies at the Charles Street Jail,⁵⁰ but by then it was too late. The Sheriff of Suffolk County, the master of the jail and the Commissioner of Correction had already filed a joint report declaring that a new jail should be constructed, and they had established a process for designing a new facility which would regularly report to and receive reports from the plaintiffs. The court of appeals called the City Council's vote to appropriate \$10 million "an ostrich-like wish that the necessity to settle on a site and make available adequate funds would disappear."⁵¹ The court termed the Council's five-year delay to secure basic constitutional rights "unconscionable" and affirmed the order prohibiting the incarceration of pretrial detainees at Charles Street Jail.⁵² The court held that after October 2, 1978, the Charles Street Jail would be closed to any pretrial detainee.⁵³ The court left open the possibility that it would withdraw the order if the City Council outlined a full plan for development of a new facility, including the site, the funding and the target dates for completion of construction, which plan was to be consistent with constitutional standards.⁵⁴

Such a plan was developed and the old jail remained open while a new one was built. Evidently, it was the court's threat of actually closing the jail that spurred the government, after five years of litigation, to take unpopular action.⁵⁵

In the years it took to build the new jail, scheduled to open in early 1990, Charles Street became more and

more crowded, perhaps a result of the mandatory sentencing laws.⁵⁶ Under a "no double-bunking" order, the sheriff has been forced to transport extra Charles Street prisoners to other county jails, often hours away, where they are double-bunked. At times, using an emergency procedure, a superior court judge has been required to decide which inmates to release. Some have thought that the lack of space at the jail has had an adverse effect on law enforcement, particularly in Boston's war against drugs.⁵⁷

Construction of the new jail facility has not ended the federal court's involvement.⁵⁸ As of the date of this article, the new jail is not even completed, but predictions are that it may be too small, and that the parties may have to return to court to determine if the no double-bunking order will govern the new jail.⁵⁹

Boston School Desegregation

The Boston school desegregation case may be the most visible example of both the deficiencies of political processes and the federal court's deep involvement in a public institution. In 1972, parents of black school children, appalled by the conditions of their inner-city schools, sought to remedy violations of their constitutional right of equal protection by bringing suit in federal court. The defendants were the Boston School Committee, the Superintendent of Schools and the Massachusetts Board of Education. Later, the Home and School Association and the Massachusetts Teachers Association intervened.⁶⁰

United States District Judge W. Arthur Garrity, Jr., found that the Boston School Committee had "knowingly carried out a systematic program of segregation affecting all of the city's students, teachers and school facilities and [had] intentionally brought about and

48. *Id.* at 99.

49. *Id.* at 98-99.

50. *Id.* at 99.

51. *Id.* at 100.

52. *Id.*

53. *Id.*

54. *Id.* at 101.

55. See generally Coffin, *The Frontier of Remedies: A Call For Exploration*, 67 CALIF. L. REV. 983 (1979).

56. See, e.g., G.L.M. c.94C, §32E.

57. *Drugs and Justice. A System Abandoned*, Boston Bar Association Report of Task Force on Drugs and the Courts, p. 6 (1989). "The result was bizarre. People charged with trafficking cocaine, an illegal drug, were eligible for release to halfway houses, and in some instances to the street, because there wasn't enough room at the Charles Street Jail, while people charged with operating under the influence of an illegal drug were kept locked up." *Id.*

58. Enforcement of the order to construct a new jail has not been the exclusive province of the federal courts. Since 1984, the Supreme Judicial Court for Suffolk County, through Justice (now Chief Justice) Paul J. Liacos, sitting as a single justice, also has exercised jurisdiction over actions concerning the Charles Street Jail. In October, 1984, with double-bunking continuing, the Attorney General of the Commonwealth sued the sheriff. The sheriff then sued the Mayor, the City Council, and the Commissioner of Corrections. All parties be-

fore the single justice agreed that a new jail had to be built. The City Council had espoused a plan for building a thirteen-story structure to house the 309 prisoners provided for in the consent decree, and for rehabilitating at least part of the existing jail. All other parties favored a seventeen-story plan with 435 cells. Justice Liacos concluded that the thirteen-story plan could be modified to include additional stories, and ordered that the plaintiffs in the federal litigation seek modification of the pertinent federal orders. The Supreme Judicial Court affirmed Justice Liacos's order. *Attorney General v. Sheriff of Suffolk County*, 394 Mass. 624 (1985). After the full bench of the Supreme Judicial Court upheld the single justice's order, Justice Liacos retained jurisdiction over the case. He has continued to monitor problems of overcrowding at the Charles Street Jail, approved a change in construction sites, and monitored the planning and construction of the new jail on Nashua Street in Boston.

59. The federal court in Massachusetts also has been involved in remedying conditions at county jails other than the Charles Street Jail. For example, in 1984, prisoners of the Norfolk County Jail brought an action alleging that conditions there violated their constitutional rights. United States District Court Judge Walter Jay Skinner found that certain conditions violated the plaintiffs' constitutional rights and granted a preliminary injunction that set a population cap at the jail. See *Libby v. Marshall*, 653 F. Supp. 359, 360 (D. Mass. 1986).

60. *Morgan v. Hennigan*, 379 F. Supp. 410, 482 (D. Mass.), *aff'd sub nom. Morgan v. Kerrigan*, 509 F.2d 580, 588 (1st Cir. 1974), *cert. denied*, 421 U.S. 963 (1975). For further description, see Lynch, *The Boston School Desegregation Case*, 62 MASS. L. Q. 137 (1977).

maintained a dual school system."⁶¹ Having found a violation of the fourteenth amendment, the court was obligated by Supreme Court precedent to order an "effective" remedy.⁶² The normal pattern in school desegregation cases was to require the local school authorities, who have the most knowledge of the demographics, facilities and other aspects of the school system, to propose a desegregation plan and Judge Garrity so ordered.⁶³ However, the Boston School Committee's response was to refuse to provide a plan to the court, preferring to be found in contempt.⁶⁴

As a result, the court then appointed a panel of four distinguished masters to conduct hearings and to attempt to devise a plan. But the masters' efforts at a plan were undercut by the school authorities' provision of inaccurate demographic data. The court modified the masters' plan and adopted it as its desegregation order. The First Circuit repeatedly affirmed the orders of the district court.⁶⁵

The desegregation plan adopted by the court was unique and innovative in its efforts to improve the quality of education. Many of the features of the plan laid the groundwork for the better aspects of the school system of the 1980s. Under the desegregation plan, for the first time the Boston business community became involved in the schools, and business leaders such as Edward G. Phillips of New England Mutual Life Insurance Company devised specific programs of support. Universities were paired with individual Boston schools, and parents became more involved in the operation of the schools.

The School Committee's defalcations did not end with its refusal to submit a desegregation plan. Violence and threats to the students' safety marred the desegregation of particular schools, especially South Boston High School.⁶⁶ After the School Committee refused to take any steps to guarantee the safety of students and rock-throwing mobs surrounded school buses, the federal court intervened and placed South Boston High School into receivership, most likely preventing deaths by doing so. After reviewing the pattern of obstruction, the U.S. Commission on Civil Rights recommended that the entire school system be placed into receivership.⁶⁷

Although the degree of involvement of the federal court in the administration of the Boston schools was unusual, so was the obduracy of the local officials. This

stubbornness posed a singularly difficult remedial problem for the district court: that is, how to disengage from the receivership and return control of the schools to local authorities without permitting these authorities to subvert and circumvent the desegregation plan. The court used a variety of devices. Two experts, appointed to assist the court and given access to school system personnel, provided information about compliance. In late 1982, the court shifted to the Massachusetts Board of Education the responsibility of monitoring compliance and making periodic reports.

On September 3, 1985, the district court issued final orders closing the case⁶⁸ and in September 1987, the First Circuit returned control over student assignments to the Boston School Committee, finding a unitary system had been achieved to the extent possible.⁶⁹ Changes in the method of electing Boston School Committee members, changes in the superintendency, and changes in the political climate in Boston eventually made it possible, more than a decade after the original plan, to return control to the local authorities. Fittingly, the same district court judge who had initiated desegregation was the one who pushed the parties towards disengagement.

Housing

The Boston housing cases,⁷⁰ like the prison and school cases, show that obtaining judicial relief, at times, may be a painfully slow process. They also prove once again that when public officials repeatedly fail to meet their obligations, resort to the lengthy judicial process may be necessary.

Beginning at the end of the 19th century, racial segregation and discrimination in public and private housing was firmly entrenched in Boston. In the 1970s, the black population of Boston was 22% and, by 1980, it increased to 30%.⁷¹ During the same period, the available housing for low-income families with children decreased significantly, leaving only a 3.7% vacancy rate.⁷² The shrinkage in the low income housing market may have been due to "gentrification" of previously marginal housing and to the condemnation of 4,000 units of public housing administered by the Boston Housing Authority.⁷³ Those conditions led United States District Judge Walter Jay Skinner to conclude in 1983, "There is a housing emergency in Boston."⁷⁴

61. 379 F. Supp. at 482.

62. *Id.* at 482.

63. *Id.* at 410 and Lynch, *supra* note 60.

64. For a description of the school committee's actions and of the remedial plan ordered by the court, see Morgan v. Kerrigan, 401 F. Supp. 216, 226 (D. Mass. 1975), *aff'd*, 530 F.2d 401 (1st Cir.), *cert. denied*, 426 U.S. 935 (1976).

65. See Morgan v. Kerrigan, 530 F.2d 401 (1st Cir.), *cert. denied*, 426 U.S. 935 (1976), and Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976), *cert. denied*, 429 U.S. 1042 (1977). See generally Coffin, *supra* note 55.

66. U.S. Commission on Civil Rights, *Desegregating the Boston Public Schools: A Crisis in Civic Responsibility* (August, 1975).

67. *Id.*

68. Morgan v. Nucci, 617 F. Supp. 1316 (D. Mass. 1985).

69. Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987).

70. There have been numerous housing cases instituted in federal court, not all of which will be discussed here. For example, in May, 1988, the NAACP filed a class action suit against the Boston Housing Authority alleging racial discrimination in the selection of tenants for particular projects. Judge Tauro was actively involved in the parties' efforts to work out a settlement, which was reached after lengthy negotiations on October 4, 1989. Boston Globe, October 8, 1989, p. 29.

71. NAACP v. Harris, 567 F. Supp. 637, 640 (D. Mass. 1983).

72. *Id.*

73. *Id.*

74. *Id.*

Despite laws prohibiting discrimination, the neighborhoods of Boston remained racially and ethnically discrete. The racial and ethnic make-up of public housing projects reflected the composition of their neighborhoods. Boston city government had not created a monitoring system to implement fair housing practices.⁷⁵

In 1977, Congress established a new program under the Housing and Community Development Act⁷⁶ for the funding of urban housing. The Act earmarked \$400 million per year for three years for cities to "take advantage of unique opportunities to attract private investment, stimulate investment in restoration of deteriorated or abandoned housing stock, or solve critical problems resulting from loss of employment or chronic unemployment in the community."⁷⁷ Only cities which had shown a commitment to housing low- and moderate-income citizens and to fund equal opportunities for minority groups could receive Urban Development Action Grant (UDAG) funds. The Act further designated specific state agencies to conduct reviews of applications. The Massachusetts Commission Against Discrimination (MCAD) was designated to review any UDAG applications for compliance with applicable civil rights law.

The City of Boston applied to the Department of Housing and Urban Development (HUD) for \$27.46 million to cover four projects: the Charlestown shipyard, Blue Hill Avenue in Roxbury, the South Boston industrial park and Lafayette Place in downtown Boston. MCAD recommended in February, 1978 that HUD not fund the proposals for UDAG funds without imposing fair housing and employment conditions. HUD, however, ignored this recommendation and approved \$10.48 million grants to the city for the Charlestown and Lafayette Place projects.⁷⁸

In March 1978, two public interest groups filed an administrative complaint against HUD. The complaint disputed HUD's determination that Boston had provided opportunities to minorities and was therefore eligible for a UDAG grant. Alleging that, with respect to the grant of UDAG funding to the Charlestown and Lafayette Place projects, HUD had failed to enforce constitutional and statutory proscriptions against discrimination,⁷⁹ the plaintiffs sought a temporary restraining order and a permanent injunction against disbursement of the UDAG funds. Judge Skinner dismissed the claim, ruling that neither the individual plaintiffs nor the NAACP had standing to challenge the disbursement of

UDAG funds. The First Circuit affirmed in part and vacated in part, holding that individuals who had sought "decent low-cost housing in an integrated neighborhood" without success had standing to sue HUD, and remanded the case to the district court.⁸⁰

On remand, the district court decided the case on the merits.⁸¹ The court took judicial notice that Boston's neighborhoods were racially separate and that Boston had a history of racial discrimination in housing.⁸² The court found that the low-income housing shortage impacted more heavily on black families than on white, and that the city, aware of these facts, had not effectively enforced fair housing requirements.⁸³ The court found further that HUD had not required the city to provide an assessment of special needs of low-income families, in violation of title VIII of the Civil Rights Act of 1968.⁸⁴ Judge Skinner instructed the parties to submit proposed forms of remedy.⁸⁵

The City of Boston gave HUD a minority needs assessment plan and in 1985 the district court found that the filing of the assessment plan cured HUD's violation of its own regulation. The court ruled that the award of further relief under the complaint was not appropriate because Congress had committed agency compliance to agency discretion.⁸⁶ The NAACP appealed to the First Circuit. The court reversed and remanded, holding that a pattern of inaction was not exempted from judicial review under the Administrative Procedure Act.⁸⁷

On remand, the court, attempting a creative remedial approach, ordered mediation under the auspices of the Community Relations Service of the Department of Justice. The parties, however, reported in December 1988 that all attempts to reach a resolution had failed. The district court issued its own remedial order in June 1989.⁸⁸

The court found that there had been no showing that conditions had substantially improved over the previous decade. In fashioning a remedy, the court candidly articulated certain practical constraints:

Prudence requires the acknowledgment of certain political imperatives. The appropriation of funds for urban development is committed to Congress, and the allocation of such funds among the various sections of the country is committed to the discretion of the defendant. Imposition of restrictions that made Boston an unattractive candidate for federal funding may ultimately defeat the laudable purposes which plaintiff seeks to achieve.⁸⁹

75. *Id.* at 641.

76. 42 U.S.C. §§5301 *et seq.*

77. H.R. Rep. No. 95-236, 95th Cong., 1st Sess. 9 (1977), reprinted in (1977) U.S. Code Cong. & Admin. News, 2384, 2392.

78. NAACP v. Harris, 607 F.2d 514, 517 (1st Cir. 1979).

79. Title I of the Housing and Community Development Act, 42 U.S.C. §5301 *et seq.* and 24 C.F.R. §570.601; title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*, the regulations at 24 C.F.R. §§1.1-1.12, title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 *et seq.*, and the fifth amendment due process clause.

80. 607 F.2d at 524.

81. 567 F.Supp. 637 (D. Mass. 1983).

82. *Id.* at 641.

83. *Id.*

84. *Id.* at 644.

85. *Id.*

86. NAACP v. Pierce, 624 F.Supp. 1083, 1084-35 (D. Mass. 1985), vacated *sub nom.* NAACP v. HUD, 817 F.2d 149 (1st Cir. 1987), limited by 880 F.2d 603 (1st Cir. 1989).

87. NAACP v. HUD, 817 F.2d 149 (1st Cir. 1987).

88. NAACP v. Kemp, C.A. No. 78-850-S, slip op. at 4 (D. Mass. June 23, 1989).

89. *Id.* at 13.

While the court declined to order HUD to fund particular projects, it did order significant relief. Although there had been no specific findings about suburban opportunities, there had been findings about the lack of safe housing for persons of color in white areas of Boston, and findings that HUD had failed to encourage construction of integrated housing in the city. These findings led to an order compelling HUD to require private landlords of HUD-assisted housing throughout the metropolitan area to market their housing affirmatively to low-income persons in Boston. The court also ordered HUD to impose on the city and state a series of fair housing conditions, designed to enhance access to low-income housing by black households and to remedy housing discrimination. The plaintiffs were thus successful in forcing HUD to impose fair housing obligations on the City of Boston prior to granting the city federal assistance.

Boston Harbor

The Boston Harbor case is another example of a federal court forcing a city and, initially, a federal agency to comply with federal law. The environment, rather than low-income persons or minorities, was the victim in this case. The battle over Boston Harbor has involved the state legislature, the federal government, conservation groups and inhabitants of bayside towns.⁹⁰

In 1983, the Conservation Law Foundation (CLF) charged the Metropolitan District Commission (MDC) and the Environmental Protection Agency (EPA) with violating the Federal Water Pollution Control Act⁹¹ (FWPCA), the discharge permit issued by the EPA to the MDC under the FWPCA, and several EPA compliance orders. The CLF alleged that the MDC, the regional agency responsible for sewage disposal in Massachusetts, was violating the FWPCA and its own permit by dumping improperly treated and raw sewage into the harbor.⁹² In 1985, the United States, at the request of the administrator of the EPA, filed a separate suit against the Commonwealth of Massachusetts, the MDC, the Massachusetts Water Resources Authority (MWRA)⁹³ and the Boston Water and Sewage Commission. This further

litigation may have resulted from a growing perception that the defendants would not voluntarily cooperate in the cleaning of the harbor.⁹⁴ The district court consolidated the CLF and United States cases and granted a motion by the City of Quincy to intervene.⁹⁵ The Town of Winthrop intervened a few months later.⁹⁶

In September 1985, United States District Court Judge A. David Mazzone found the MDC and MWRA to be in violation of the FWPCA, the permit issued by the EPA, and the 1980 administrative order.⁹⁷ The plaintiffs worked with the MWRA to create a long-term, enforceable scheduling order to make sewage discharge comply with the FWPCA. In 1986, the court issued target dates and a scheduling order for construction of a secondary sewage treatment plant.⁹⁸ Under the schedule, the MWRA would build a primary treatment facility on Deer Island. This treatment plant would provide minimal sewage treatment, including removal of solids and chlorination. The remaining sewage would then be pumped into the bay. The facility is scheduled to provide treatment by 1994.⁹⁹

The MWRA provides monthly progress reports which a compliance monitor reviews. The federal court issues a monthly order assessing the progress or lack of progress and directing further steps. If the MWRA cannot comply with an order during a particular month, the MWRA outlines the problem and steps it will take to conform to the schedule as rapidly as possible.

Occasionally, the court has had to apply additional pressure to the state. For example, in the spring of 1989, the MWRA sought to relocate its headquarters from Charlestown to Roxbury. The City of Quincy, however, objected to this siting, arguing that if it were required to house a landfill for the solid sewage, it should also have the benefit of housing the headquarters of the MWRA. Judge Mazzone responded that he was watching carefully the delays caused by the legislative fighting: "I told the Authority when I established the schedules that they would not hear from me as long as the deadlines are met.... I would not hesitate to use the inherent powers of the court to enforce its judgment."¹⁰⁰ Michael Deland, chief of the EPA's New England office, suggested the

90. *United States v. Metropolitan District Commission*, 16 ENVTL. L. REP. 20621, 20622 (D. Mass. 1985).

91. 33 U.S.C. §1251 *et seq.*

92. In 1979, the MDC filed an application for a waiver of secondary treatment requirements in sewage disposal, under 33 U.S.C. §1311(h). In 1980, the EPA issued an administrative order finding that the MDC had violated its permit from the EPA by not completing a secondary treatment and sludge management facility. Despite a pending waiver, the MDC was ordered to implement a schedule for proceeding with the treatment facilities. The administrative order also allowed a third person to enforce the permit's requirement. In 1983, the EPA tentatively denied the MDC's waiver application, and the MDC filed an amended application for waiver the following year. In 1984, the EPA issued another administrative order citing violation of the permit and the 1980 administrative order. The 1984 administrative order requires the MDC to comply with the 1980 administrative order limits until it constructs facilities and can thereby comply with the permit limits. 16 ENVTL. L. REP. at 20623.

93. The Massachusetts Water Resources Authority succeeded the MDC as an autonomous body in control of the metropolitan sewage system in 1985. The district court held in 1985 that the MWRA would be liable for the MDC's acts despite the MWRA enabling legislation which limited its pollution liability. The court held that the FWPCA preempted the enabling provision, and that due to similarity in purpose the MWRA is subject to successor liability. 16 ENVTL. L. REP. at 20621.

94. *Id.* at 20622.

95. The City of Quincy had previously sued the MDC in Massachusetts superior court but failed to reach an agreement on a schedule to clean up the harbor. 16 ENVTL. L. REP. 20622.

96. *Id.*

97. *Id.* at 20623.

98. *Id.*

99. *Id.*

100. Boston Globe, July 11, 1989, p.8.

MWRA be fined up to \$180,000 a day if cleanup deadlines are missed.¹⁰¹

The delay in implementation of the harbor cleanup has been costly to Massachusetts. The cost of the cleanup is estimated at \$6.1 billion.¹⁰² In 1976, the federal government had offered to pay 75% of the cost of a secondary treatment plant. Fifteen percent more would have come from state funds, leaving only 10% of the total bill to the city to pay. However, that federal grant had a sunset provision and ended in 1987. Since then, the MWRA has been seeking additional federal funding to finance its cleanup efforts.

Conclusion

The cases discussed above lead to some modest observations. First, in these cases there is no evidence of judicial overreaching. In each of the cases, the judiciary at first deferred to the state and local authorities in order to give them the opportunity to remedy the problem identified. In some cases, the district courts, although finding the institutions liable for constitutional violations, were reluctant to issue intrusive remedial decrees until instructed to do so by the First Circuit.

Second, the cases show that public officials have repeatedly been unable or unwilling to address problems, and quite willing to hand the problems back to the courts. Even in the mental retardation cases, where public officials agreed that conditions at the state hospitals

were unconstitutional and unconscionable, public officials did not remedy conditions until shamed into doing so by a court which skillfully focused media attention on the issues and on the parties. The reverse is also true: public officials at times have viewed litigation against them as an opportunity to use the added clout of the court, and its accompanying media attention, to reach results perhaps not otherwise attainable. The Boston Harbor case may be an example of this dynamic.

Third, public institution cases place the courts into difficult situations not only politically but also jurisprudentially. It is not only that federal judges face intransigence from public officials and that the judges do not want to administer public institutions. It is also that, despite the enormous public impact of rulings, the courts are dependent on the information developed through the traditional methods of the judicial process. The traditional methods of case adjudication have significant limits. The success of that litigation often depends on the competence of the parties and counsel and on whether the parties perceive it to be in their interests to present certain facts to the court. The court may be frustrated by the limited information presented to it. The frustration felt by the trial judges is often palpable in their opinions. It has, in some cases, led courts to seek and to use more creative methods of case adjudication, such as special experts and masters.

In the end, and despite these problems, the courts are doing what the Constitution envisioned: acting as "a check" on other branches of government to constrain them from violating the constitutional rights of individuals.

101. *Id.*

102. *Id.*

COPY
August 26, 1994

Dear Mr. Dailey:

Thank you for writing to the White House to recommend Sandra Lynch for appointment to the U.S. Court of Appeals for the First Circuit.

I can assure you that we will give your endorsement serious consideration as we work with President Clinton to fill this important vacancy.

If you have further questions about this matter, please feel free to contact me at (202) 456-7901.

Sincerely,

Victoria L. Radd
Associate Counsel to the President

Mr. Edward J. Dailey
Blue Cross Blue Shield of Massachusetts
100 Summer Street, 31st Floor
Boston, Massachusetts 02110-2190

PLEASE RETAIN THIS COPY OF THE SIGNED ORIGINAL, FOR
YOUR RECORDS.



BlueCross BlueShield
of Massachusetts

VR
14 JUN 31 P 6:23

100 Summer Street, 31st Floor, Boston, Massachusetts 02110-2190
Telephone: 617.548.6060 • Telecopier: 617.350.4277

Edward J. Dailey
General Counsel and Chief Legal Officer

June 24, 1994

Joel I. Klein, Esq.
Deputy Counsel to the President
West Wing
The White House
Washington, DC 20500

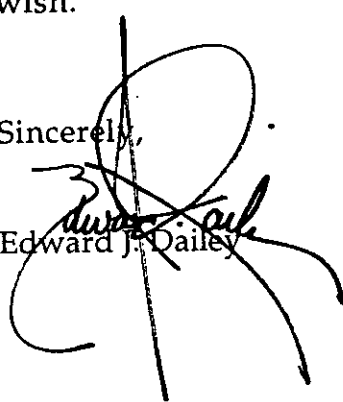
RE: Sandra L. Lynch, Esq.

Dear Mr. Klein:

I am writing to recommend Sandra L. Lynch of Boston for appointment to the United States Court of Appeals for the First Circuit. For your information and the President's consideration, I am enclosing a copy of my letter to Senator Kennedy. As noted in my letter, I believe Ms. Lynch is exceptionally well qualified for the appointment to the federal bench.

I will be pleased to discuss Sandra Lynch's qualifications further if you wish.

Sincerely,


Edward J. Dailey



BlueCross BlueShield
of Massachusetts

100 Summer Street, 31st Floor, Boston, Massachusetts 02110-2190
Telephone: 617.348.6060 • Telecopier: 617.350.4277

Edward J. Dailey
General Counsel and Chief Legal Officer

June 24, 1994

Hon. Edward M. Kennedy
United States Senate
315 RSOB
Washington, DC 20510

COPY

RE: Sandra L. Lynch, Esq.

Senator Kennedy:

It is my great pleasure to write and recommend Sandra L. Lynch for appointment to the United States Court of Appeals for the First Circuit. She is exceptionally skilled, has served our community and our profession for more than 20 years, and is a superb model for women and men in our profession. Unquestionably, Sandy Lynch is most qualified for the President's appointment.

In offering this recommendation, I am mindful of Sandy's quiet resolve as counsel for the Commonwealth in the most wrenching lawsuit of the last twenty years, the Boston school desegregation case. I am mindful also of her grace, whether as president of the Boston Bar Association, or as an advocate for professional women. And I am well aware of her determined skill as a lawyer - having faced her across the table in a number of disputes.

I urge you to recommend Ms. Lynch to the President for this key appointment.

My regards,

Edward J. Dailey

THE WHITE HOUSE
WASHINGTON

August 26, 1994

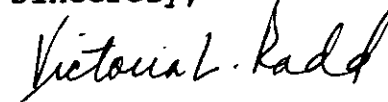
Dear Ms. Sarrouf:

Thank you for writing to the White House to recommend Sandra Lynch for appointment to the U.S. Court of Appeals for the First Circuit.

I can assure you that we will give your endorsement serious consideration as we work with President Clinton to fill this important vacancy.

If you have further questions about this matter, please feel free to contact me at (202) 456-7901.

Sincerely,

A handwritten signature in dark ink, reading "Victoria L. Radd". The signature is written in a cursive style with a large, stylized "V" and "R".

Victoria L. Radd
Associate Counsel to the President

Ms. Camille F. Sarrouf
Sarrouf, Tarricone & Flemming
95 Commercial Wharf
Boston, Massachusetts 02110

COPY
August 26, 1994

Dear Ms. Sarrouf:

Thank you for writing to the White House to recommend Sandra Lynch for appointment to the U.S. Court of Appeals for the First Circuit.

I can assure you that we will give your endorsement serious consideration as we work with President Clinton to fill this important vacancy.

If you have further questions about this matter, please feel free to contact me at (202) 456-7901.

Sincerely,

Victoria L. Radd
Associate Counsel to the President

Ms. Camille F. Sarrouf
Sarrouf, Tarricone & Flemming
95 Commercial Wharf
Boston, Massachusetts 02110

PLEASE RETAIN THIS COPY OF THE SIGNED ORIGINAL, FOR
YOUR RECORDS.

SARROUF, TARRICONE & FLEMMING

LAWYERS

95 COMMERCIAL WHARF
BOSTON, MASSACHUSETTS 02110

TELEPHONE (617) 227-5800

CAMILLE F. SARROUF
ANTHONY TARRICONE
JOHN B. FLEMMING
GEORGE J. LEARY, JR.
FRANK C. CORSO
ERIC J. PARKER
DANIEL J. GIBSON
SHERYL M. BOURBEAU

FAX: (617) 227-5470

OF COUNSEL
ANNA M. DIGENIO
BARRY S. SCHEER

June 14, 1994

Joel I. Klein, Esq.
Deputy Counsel to the President
2nd Floor - West Wing
White House
Washington, D.C. 20500

Dear Mr. Klein:

I understand that you are the President's counsel involved with the appointment process for the Federal Judiciary. I enclose herewith a letter I have sent to my senior Senator concerning the candidacy of Sandra L. Lynch, Esq.

I respectfully ask for your consideration of this candidacy.

Thank you.

Very truly yours,

CAMILLE F. SARROUF

CFS/amr
enc.

SARROUF, TARRICONE & FLEMMING

LAWYERS

CAMILLE F. SARROUF
ANTHONY TARRICONE
JOHN B. FLEMMING
GEORGE J. LEARY, JR.
FRANK C. CORSO
ERIC J. PARKER
DANIEL J. GIBSON
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95 COMMERCIAL WHARF
BOSTON, MASSACHUSETTS 02110
TELEPHONE (617) 227-5800

FAX: (617) 227-5470

OF COUNSEL
ANNA M. DIGENIO
BARRY S. SCHEER

June 14, 1994

Honorable Edward M. Kennedy
United States Senator
315 Russell Building
Washington, D.C. 20510

Dear Senator Kennedy:

I am writing to endorse the candidacy of Attorney Sandra L. Lynch for appointment to the vacancy on the Court of Appeals for the First Circuit.

I have known Sandy Lynch for the past fifteen years. I have as much respect for her as a person and as a lawyer as anyone I know at the Bar.

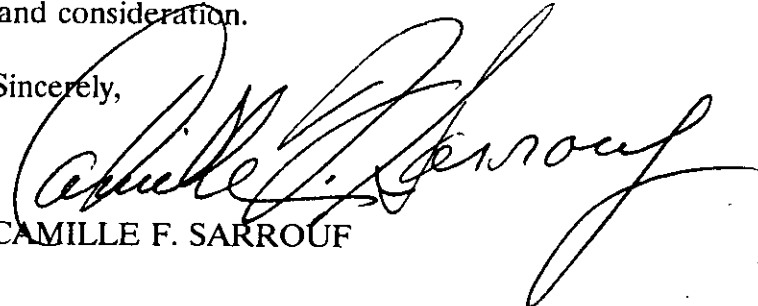
Sandy is very intelligent, possesses superb judgment, is extremely articulate and her integrity is evident in everything she does. In every endeavor I have interfaced with her, she has earned my respect and admiration. She is possessed of a keen mind and a commitment to our system of justice that has been repeatedly demonstrated in her legal work as an attorney, her leadership positions in Bar activities and her willingness to perform judicial, legal and civic responsibilities that are asked of her.

Senator, Sandy Lynch's appointment would be very well received by the members of the Bar of this Commonwealth. She would be a credit to your already superb list of recommendations for the past thirty years.

I am enclosing herewith Sandy's resume which details her many accomplishments.

Thank you for your time, courtesy and consideration.

Sincerely,


CAMILLE F. SARROUF

CFS/amr
enc.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. resume	DOB (Partial) (1 page)	06/07/1994	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Victoria Radd
OA/Box Number: 5329

FOLDER TITLE:

Lynch, Sandy [3]

2013-0670-F

jm1011

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

June 7, 1994

RESUME OF SANDRA LEA LYNCH

69 Naples Road
Brookline, MA 02146
Date of Birth: [redacted]

(b)(6)

[002]

Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109
Telephone: (617) 482-1390

PROFESSIONAL EXPERIENCE

EMPLOYMENT

1978 to present	Foley, Hoag & Eliot. Partner (1982), Past head of Litigation Department, Pro Bono Coordinator, Professional Responsibility Committee. (See practice experience section below).
1974 - 1978	General Counsel, Massachusetts Department of Education. Represented State Board of Education in Boston School Desegregation case, implemented special education, bilingual education, and educational equity laws, handled other litigation and oversaw office of five attorneys.
1973 - 1974	Assistant Attorney General, Government Bureau, Commonwealth of Massachusetts. Defended constitutionality of state statutes and represented state agencies in federal and state trial and appellate courts. Handled Boston and Springfield racial imbalance school cases. Instructor in Legal Writing, Boston University Law School.
1971 - 1973	Law clerk, Chief Judge Raymond J. Pettine, U.S. District Court, District of Rhode Island.
1968 - 1971	Part-time employment during law school at legal services office, public defenders office, law firm, sponsor of low-income housing.

RESUME OF SANDRA LEA LYNCH

EDUCATION

September 1968- Boston University Law School
June 1971 J.D. cum laude. Articles Editor, Boston University Law Review. Book Awards in Administrative, Corporate Law.

September 1964- Wellesley College, Wellesley, Massachusetts.
June 1968 A.B. in Philosophy. Seven College Scholarship.

September 1960- Lake Highlands High School, Dallas, Texas.
June 1964 Class Salutatorian, Editor of newspaper.

PROFESSIONAL ACTIVITIES

1994 Massachusetts Supreme Judicial Court Committee on Model Rules of Professional Conduct.

American Arbitration Association Panel on Large and Complex Cases.

1993-1994 Advisory Committee on Rules of the U.S. Court of Appeals for the First Circuit.

Board, New England Legal Foundation.

ABA Commission on Partnership Programs.

Wellesley College Business Leadership Conference.

Boston Chamber of Commerce, Leading Industries Committee

1993 Silver Shingle Distinguished Alumni Award, Boston University Law School.

1993 Member, Commission on Federal Appointments (U.S. District Court, U.S. Attorney and U.S. Magistrate) established by Senators Kennedy and Kerry.

1992-1993 President, Boston Bar Association. President of 8,000 member voluntary bar. Accomplished enactment of major court reform legislation resulting in greater accountability and efficiency, focussed bar on children (by sponsoring legislation creating statewide

RESUME OF SANDRA LEA LYNCH

juvenile court, initiating bar involvement in education reform effort, and summer jobs program for Boston students in law offices), initiated legislation for pay raise for state judiciary, created programs for unemployed lawyers, training for lawyers on listening skills.

- 1991-1992 Special counsel to the Commission on Judicial Conduct to prosecute In the Matter of Justice Joseph S. Mitchell (appointed by Supreme Judicial Court).
- President-Elect, Boston Bar Association, author of BBA Study: Courts in Crisis, A Blueprint for Reform.
- 1987-1991 Secretary, Treasurer and Vice President of Boston Bar Association (successively).
- 1986-1989 Chair, BBA Committee on Role of Gender in Practice of Law; co-initiator of BBA Report of same title, which was first gender bias study of a major bar.
- 1986-1988 Member, Joint Bar Committee (advises Governor on Judicial Appointments).
- 1986-1987 Council, Boston Bar Association.
- 1982-1986 Vice Chair, Board of Bar Overseers of Commonwealth of Massachusetts 1985-1986, Member 1982-1986. Bar disciplinary Board appointed by S.J.C.
- 1982-1984 Member, Massachusetts Advisory Committee, U.S. Civil Rights Commission.
- 1982-1983 Civil Liberties Union of Massachusetts, Board and General Counsel.
- 1982 Member, Screening Committee for U.S. Magistrate, U.S. District Court (D. Mass).
- 1980-1981 Civil Liberties Union of Massachusetts, Board.
- 1980 Planned Parenthood League of Massachusetts Distinguished Service Award.
- 1979 Counsel to NAACP on appeal in Milwaukee School

RESUME OF SANDRA LEA LYNCH

Desegregation Case.

- 1977-1978 First Vice President, Civil Liberties Union of Massachusetts.
- Beacon Press School Integration Studies
- 1975-1977 Council, Committee on Legal Services to the Poor, Boston Bar Association.
- 1974-1975 National Endowment for the Humanities Fellowship on Constitutional Law, Women's Rights Project, Civil Liberties Union of Massachusetts, founder and Steering Committee member Advisory Board, Center for Women's Legal Studies.

ADMITTED TO PRACTICE

Commonwealth of Massachusetts (1971).

United States Supreme Court (1974).

United States District Courts, District of Massachusetts (1973) and District of Rhode Island (1980).

United States Court of Appeals for the First Circuit (1974).

PUBLICATIONS

Damages in Massachusetts Litigation, "Damages in Sale of Goods, Insurance and Employment", MCLE (1993).

"Beyond Plato", Boston Bar Journal 2 (July/August 1993).

"The 724 Children", Boston Bar Journal 2 (May/June 1993).

"Anatomy of a Success: BBA and Court Reform", Boston Bar Journal 2 (March/April 1993).

"Mirror, Mirror On The Wall", Boston Bar Journal 2 (Jan./Feb. 1993).

"High Noon In The Courthouse", Boston Bar Journal 2 (Nov./Dec. 1992).

"Of Mice and Men ... And Women and Children," Boston Bar Journal 2 (Sept./Oct., 1992).

RESUME OF SANDRA LEA LYNCH

"Public Institution Litigation in the First Circuit," 74 Mass. Law Review 259 (Dec. 1989).

Various Mass. Continuing Legal Education Course Materials, including "Federal Court Motion Practice" (1989), "Avoiding and Litigating Wrongful Termination Cases" (1988), "Third Party Liability for Workplace Injuries" (1987), "Federal Court Practice" (1984).

"The Boston School Desegregation Case", 62 Mass. L. Quarterly 137 (Fall 1977).

"Education Law", 1975 Boston College Annual Survey of Massachusetts Law 396.

"New England Regional Government", in Power, Pollution, and Public Policy, by Project NECAP (New England Coastal Area Planning), M.I.T. Press (1971).

Comment, "Little Ado About Much: Jurisdiction of the Supreme Court to Issue Mandamus," 51 B.U.L. Rev. 106 (1971).

Note, "Can the Section 1331 Amount Requirement Constitutionally Bar a Plaintiff Alleging Violation of His First Amendment Rights from Using the Federal Court to Get an Injunction Against a Federal Officer." 50 B.U. L. Rev. 178 (1970) (Special Issue).

SPEECHES

Speaker, First Circuit Judicial Conference "Lack of Professionalism and Incivility from the Bench" (1993), various ABA and National Conference of Bar Presidents conferences, Bar Leadership Institute, National Institute of Trial Advocacy and various MCLE, MBA, BBA and other programs. Topics include court reform, professionalism, environmental law, employment law, education law, federal court practice, injury in workplace.

REPORTED DECISIONS

See attachment.

LEGAL PROFESSIONAL ACTIVITIES

Member, Women's Bar Association, Boston Bar Association, Massachusetts Bar Association, American Bar Association, New England Legal Foundation.

RESUME OF SANDRA LEA LYNCH

PRACTICE EXPERIENCE

Handled numerous civil litigation matters in trial court and on appeal and criminal grand jury matters and investigations. Represent plaintiffs and defendants, individuals and entities. Representative cases, from the present going back in time, are set forth.

1. Massachusetts Turnpike Authority v. F.L. Roberts, Exxon, Mobil and Canadian/Oxy (1992-1994) (Mass. Superior and Appeals Court)

Represented plaintiff Mass. Turnpike Authority against companies who had leased and contaminated service areas along Turnpike since 1956, seeking to recover assessment and clean up response costs and damages for contamination in excess of \$10 million. Briefed and won novel issues of indemnity and application of contribution law to state environmental statute. To reduce costs of litigation and expedite resolution, parties underwent extensive ADR, resulting in agreements in 1993, approved by the court, under which the oil companies are cleaning up the ten sites. Now on appeal taken by non-settling party.

2. Arbitrator - Dalkon Shield Litigation (1993)

Arbitrator for the Center for Dispute Resolution in a case by a woman who claimed injury from her use of the Dalkon Shield IUD. My written opinion found that the medical evidence did not associate the various pelvic diseases she had with use of an IUD.

3. Pension Plan of Public Service Company of New Hampshire v. KMPG Peat Marwick, et al

As Special Counsel to the P.S.N.H. Pension Plan, investigated the loss of \$24 million in plan assets resulting from investments in naked options by an internal fiduciary, assisted by a major securities brokerage firm, and involving negligence by the custodial bank in violation of ERISA and other laws. Cooperated and coordinated with a concurrent Department of Labor investigation. Recovered the amounts lost to the Plan, obtained contributions from culpable parties and now am in litigation with the accounting firm involved for malpractice. Case raised undecided issues of ERISA remedies and liability.

4. Korb v. Raytheon, 410 Mass. 581 (1991)

Successfully represented in trial court and on appeal employer

RESUME OF SANDRA LEA LYNCH

in action by a former company Vice President who had been terminated after he made statements at press conference critical of employer's biggest customers at Department of Defense and contrary to employer's interest. Former Vice President, represented by Civil Liberties Union, claimed termination violated his free speech rights under Mass. Civil Rights Act ("MCRA"). I raised issue of First Amendment limits on use of state power (through MCRA) to force defendant to associate with speech with which it disagreed.

Case had originally been removed to federal court because Korb's complaint alleged his First Amendment rights had been violated. Reaching a novel question, the district court held that an action brought under the MCRA in the private free speech context involving competing claims for First Amendment protection did not raise a federal question. Korb v. Raytheon, 707 F. Supp. 63 (D. Mass. 1989).

5. New Medico Associates, Inc. v. Kleinhenz, 750 F. Supp. 1145 (D. Mass. 1990)

Two former employees, who worked in Illinois, were sued by their former employer under a non-compete clause. They had been forced to sign an agreement containing a forum selection clause which specified Massachusetts. My motion for defendants to transfer the case to Illinois was allowed, one of the few times transfer happened in the face of a forum selection clause under Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988).

6. Ms. X v. Company Z, U.S. Dist. Ct., D. Mass. 1989

Represented female employee raped by her boss after a company function. Her boss was convicted in state court of crime of rape. I brought civil litigation in 1989 in federal court against her employer, alleging employer had notice of problems with boss and responsibility not to expose her to risk of harm. Case settled. Settlement terms and amount confidential.

7. In the Matter of Joseph S. Mitchell (S.J.C. 1992)

Appointed by Supreme Judicial Court as Special Counsel to Judicial Conduct Commission to prosecute disciplinary charges against Superior Court Judge Joseph S. Mitchell. I sought his removal from the bench. Judge Mitchell, after proceedings, took early retirement.

RESUME OF SANDRA LEA LYNCH

8. Gene Trak v. Roche Diagnostic Systems, Inc. (Middlesex Sup. Ct. and Mass. Appeals Ct.)

Successfully defeated at trial court and on appeal attempt to enforce non-compete agreement against my client Roche, who hired scientist to help develop DNA/RNA diagnostic test kits to enable hospitals to quickly diagnose diseases such as AIDS. Case presented issues of freedom of scientist to leave work on one patented technology he believed would fail in order to work on only technology he believed would succeed. Legal issues involved interplay between the public disclosure policies of patent law and confidentiality policies of trade secret/non-compete law. Case involved explaining in simple terms highly technical scientific concepts. I obtained affidavits from Mass. Dept. of Public Health and a Nobel laureate on severely adverse public policy impact of enforcing non-compete in this arena.

9. Grand Jury Investigation: Matter of Company Y

Represented company in several year Grand Jury investigation involving numerous witnesses. Target was defense contractor and issues involved pricing on multi-year government contracts from three different company divisions. Following my production of evidence and witnesses to Grand Jury and lengthy proffer to AUSA, government decided not to prosecute either civilly or criminally.

10. Anderson v. Cryovac, Inc. (U.S. Dist. Ct. D. Mass.)

Trial counsel to W.R. Grace in lengthy jury trial in Woburn toxic tort case. Families sued, claiming leukemia in their children had been caused by chemicals in drinking water. First stage of case involved two month trial before federal court jury on complex issues of hydrogeology and causation of contamination in wells. Jury verdict vacated against Grace because jury interrogatories were inconsistent. Case settled.

In the face of enormous publicity and a real threat to the ability to find an impartial jury, the trial court issued protective orders prohibiting disclosure of information obtained through discovery except, as needed, to public health and environmental officials. The Boston Globe challenged the orders, asserting there was a public right of access to such materials. We successfully upheld the trial court's orders on appeal. Anderson v. Cryovac, 805 F.2d 1 (1st Cir. 1986).

RESUME OF SANDRA LEA LYNCH

11. Robinson v. Polaroid Corp., 567 F. Supp. 192 (D. Mass. 1983), aff'd, 732 F.2d 1010 (1984)

Thirty-two day trial in three related class action employment cases against my client Polaroid. Plaintiffs asserted that race discrimination motivated the layoffs of black exempt and non-exempt employees. Defense was that: (1) hourly layoffs were seniority based and, (2) as to salaried employees, Polaroid was exemplary affirmative action employer who took risks in hiring, risks that could not continue in terms of poor performance in time of layoff and that (3) statistical evidence showed no disproportionate impact. Defendants' verdict was affirmed on appeal. Legal issues on appeal involved interplay between disparate impact and discriminatory treatment analyses.

12. Spencer Companies, Inc. v. Agency Rent A Car, 542 F. Supp. 237 (D. Mass. 1982) and Agency Rent A Car v. Connolly, 542 F. Supp. 231 (D. Mass. 1982) vacated and remanded 686 F.2d 1029 (1st Cir. 1982)

In related litigations, our client Spencer, a local shoe company fought off a greenmail and then take-over attempt by a corporate raider. We convinced the 1st Circuit that a state regulatory order forbidding the raider from purchasing more stock was not preempted by the Williams Act, to require abstention, and to vacate an injunction issued by the district court against enforcement of the state anti-take over statute. The district court had held the statute unconstitutional as an impermissible burden on interstate commerce and declined to abstain.

We ultimately convinced the district court that the raider had violated the provisions of the Williams Act and so it preliminarily enjoined tender offer.

13. Baird v. Bellotti, 443 U.S. 622 (1979)
Planned Parenthood League of Massachusetts v. Bellotti, 641 F.2d 1006 (1st Cir. 1980)

Represented Planned Parenthood League of Massachusetts in attack on Massachusetts statute unduly burdening access to abortions. Won constitutional challenge to statute in U.S. Supreme Court. Legislature amended the statute by requiring fetal description to be read to woman, 24 hour waiting period and two parent or judicial consent for minors to have abortions. We challenged amendment. First Circuit held portions of statute invalid.

RESUME OF SANDRA LEA LYNCH

In related action I also argued challenge to statute based on state constitutional guarantees before Supreme Judicial Court. Mary Moe v. Bellotti.

I also represented individual minors who brought Mary Moe petitions in state court, under G.L. c. 112 §12S, seeking court permission for abortions.

14. Boston School Desegregation Case: Morgan v. Kerrigan, 388 F. Supp. 581 (D. Mass. 1975), aff'd, Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1974), denial of stay, 523 F.2d 917, aff'd, 530 F.2d 401 (1st Cir.), cert. denied, 426 U.S. 935 (1976) (remedial plan); Morgan v. Kerrigan, 409 F. Supp. 141 (D. Mass. 1975) (D. Mass. 1974), aff'd, sub nom. Morgan v. McDonough 540 F.2d 527 (1st Cir. 1976), cert. denied, 429 U.S. 1042 (receivership of South Boston High School).

Before Judge W. Arthur Garrity, Jr., I was counsel to the Massachusetts Board of Education, which was a defendant in the federal case and which had originally brought the state Boston Racial Imbalance case against the Boston School Committee. The Board was held not to have violated plaintiffs' rights. Proceedings ranged from trial before masters on remedial alternatives, to fashioning remedial decrees for students and faculty, to enforcement, to emergency receivership of South Boston High School, and related issues. The First Circuit opinion affirming one of Judge Garrity's orders at 540 F.2d 527, 532 (1976) quotes from my brief. I handled several appeals to the First Circuit and to the U.S. Supreme Court in addition to several times weekly sessions with the trial court.

Federal

1. Baird v. Bellotti, 443 U.S. 622 (1979)
2. Schuler v. Polaroid Corp., 848 F.2d 276 (1st Cir. 1988)
3. Johnson v. General Elec., 840 F.2d 132, (1st Cir. 1988), 56 USLW 2490, 46 Fair Empl. Prac. Cas. (BNA) 81
4. Anderson v. Cryovac, Inc., 805 F.2d (1st Cir. 1986), 55 USLW 2343, 6 Fed. R. Serv. 3d 369, 13 Media L. Rep. 1721
5. Robinson v. Polaroid Corp., 732 F.2d 1010 (1st Cir. 1984), 34 Fair Empl. Prac. Cas. (BNA) 1134, 34 Empl. Prac. Dec. P 34,312
6. Baird v. Bellotti, 724 F.2d 1032 (1st Cir. 1984)
7. Agency Rent-A-Car, Inc. v. Connolly, 686 F.2d 1029 (1st Cir. 1982), Blue Sky L. Rep. P 71,773, Fed. Sec. L. Rep. P 98,776
8. Planned Parenthood League of Massachusetts v. Bellotti, 641 F.2d 1006 (1st Cir. 1981)
9. Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976), cert. denied, 429 U.S. 1042
10. Morgan v. Kerrigan, 530 F.2d 401 (1st Cir. 1976), cert. denied, 426 U.S. 935 (1976)
11. Morgan v. Kerrigan, 523 F.2d 917 (1st Cir. 1975)
12. Wiener v. Polaroid Corp., 790 F. Supp. 363 (D. Mass. 1992), 59 Fair Empl. Prac. Cas. (BNA) 1621, 62 Empl. Prac. Dec. P 42,596
13. New Medico Associates, Inc. v. Kleinhenz, 750 F. Supp. 1145 (D. Mass. 1990)
14. Korb v. Raytheon Co., 707 F. Supp. 63 (D. Mass. 1989)
15. Backman v. Polaroid Corp., 677 F. Supp. 50, Fed. Sec. L. Rep. P 93,601 (D. Mass. 1987)
16. Schuler v. Polaroid Corp., 1987 WL 14098, 44 Fair Empl. Prac. Cas. (BNA) 1415 (D. Mass. 1987)
17. Johnson v. General Elec. Co., 1987 WL 14821, 44 F.E.P. Cas. (BNA) 1143 (D. Mass. 1987), aff'd, 840 F.2d 132 (1st Cir. 1988)
18. Crews v. Memorex Corp., 677 F.Supp. (D. Mass. 1987) F.E.P. Cas. (BNA) 1599

19. Planned Parenthood League of Massachusetts v. Bellotti, 608 F. Supp. 800 (D. Mass. 1985)
20. Baird v. Bellotti, 616 F. Supp. 6 (D. Mass. 1984)
21. Crews v. Memorex Corp., 588 F. Supp. 27 (D. Mass. 1984), 120 L.R.R.M. (BNA) 2679, 41 F.E.P. Cas. (BNA) 1318
22. Robinson v. Polaroid Corp., 567 F. Supp. 192, 32 F.E.P. Cas. (BNA) 621, 33 Empl. Prac. Dec. P 34,115 (D. Mass. 1983), aff'd, 732 F.2d 1010 (1st Cir. 1984)
23. Spencer Companies, Inc. v. Agency Rent-A-Car, Inc., 542 F. Supp. 237 (D. Mass. 1982), Fed. Sec. L. Rep. P 98,668
24. Agency Rent-A-Car, Inc. v. Connolly, 542 F. Supp. 231, Blue Sky L.Rep. P 71,736, Fed. Sec. L. Rep. P 98,637 (D. Mass. 1982), rev'd and remanded 686 F.2d 1029 (1st Cir. 1982)
25. Planned Parenthood League of Massachusetts v. Bellotti, 499 F. Supp. 215 (D. Mass. 1980)
26. Morgan v. Kerrigan, 409 F. Supp. 1141 (D. Mass., Dec. 16, 1975) (later history omitted)
27. Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass., June 05, 1975) (later history omitted)
28. Morgan v. Kerrigan, 401 F. Supp. 270 (D. Mass., May 28, 1975) (NO. CIV. 72-911-G) (later history omitted)
29. Morgan v. Kerrigan, 388 F. Supp. 581, 14 F.E.P. Cas. (BNA) 308 (D. Mass., 1975) (later history omitted)

State

30. Korb v. Raytheon Corp., 410 Mass. 581 (1991), 574 N.E.2d 370, 60 USLW 2092, 6 Individ. Empl. Rts. Cas. (BNA) 1002
31. Mouradian v. General Elec. Co., 23 Mass. App. Ct. 538, 503 (1987) N.E.2d 1318, Mass. App. Ct., Feb. 24, 1987, 43 Fair Empl. Prac. Cas. (BNA) 240, 1 Individ. Empl. Rts. Cas. (BNA) 1691
32. Wilson v. Brookline Housing Authority, 383 Mass. 878 (1981), 420 N.E.2d 314 (Mass. 1981)
33. Bezio v. Patenaude, 381 Mass. 563 (1980), 410 N.E.2d 1207 (Mass., Sep. 22, 1980)
34. Continental-Hyannis Furn. Co., Inc. v. State Tax Commission, 366 Mass. 308, 318 N.E.2d 618 (Mass. 1974)

35. School Committee of Springfield v. Board of Ed., 365 Mass. 215 (1974), 311 N.E.2d 69 (Mass. 1974)
36. School Committee of Boston v. Board of Ed., 364 Mass. 199 (1973), 302 N.E.2d 916 (Mass. 1973)
37. Beaton v. Randall, 326 N.E.2d, 302 (Mass. 1975)
38. School Committee of Springfield v. Board of Education, 366 Mass. 315, 319 N.E.2d 427 (Mass. 1974), cert. denied, 421 U.S. 947 (1975)

JOHN JOSEPH MOAKLEY

9th DISTRICT, MASSACHUSETTS

COMMITTEE ON RULES
CHAIRMAN

JOHN WEINFURTER
CHIEF OF STAFF

235 CANNON BUILDING
(202) 225-8273
FAX: (202) 225-3984

Congress of the United States

House of Representatives

Washington, DC 20515-2109

August 16, 1994

file
ROGER KINEAVY
DISTRICT DIRECTOR

WORLD TRADE CENTER
SUITE 220
BOSTON, MA 02210
(617) 565-2920
(617) 737-9055
FAX: (617) 439-5157

4 COURT STREET
TAUNTON, MA 02780
(508) 824-6676

BROCKTON FEDERAL BUILDING
166 MAIN STREET
BROCKTON, MA 02401
(508) 586-5555

Ms. Veronica Biggens
Assistant To The President For Personnel
The White House
Washington, D.C. 20500

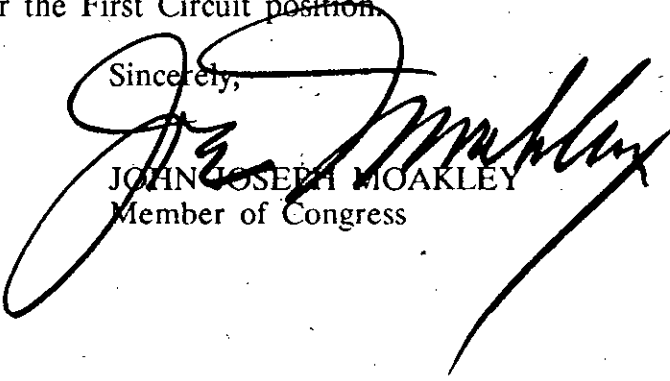
Dear Ms. Biggens:

I am writing on behalf of Sandra Lynch, Esquire, concerning her interest in being considered for the vacant First Circuit opening in the United States Court of Appeals. I consider it a privilege to recommend Ms. Lynch for Judge Breyer's seat in the Court of Appeals.

As of this writing, you know of Ms. Lynch's academic and judicial accomplishments better than me. What I can and will comment on, however, is the spirit and determination she would bring with her performance of the considerable responsibilities of that position. She is a good judge of character, deft in her dealings with people and surefooted in the pursuit of justice. I can think of no one that could fill Judge Breyer's shoes more effectively and with greater distinction than Sandra Lynch.

She has my complete support for the First Circuit position.

Sincerely,



JOHN JOSEPH MOAKLEY
Member of Congress

JJM:mc

October 28, 1994

Dear Mr. White:

Thank you for writing to the President to express your enthusiasm for the nomination of your partner, Sandra L. Lynch, to the U.S. Court of Appeals for the First Circuit.

We all look forward to a speedy confirmation process next year.

If you have further questions about this matter, please feel free to contact me at (202) 456-7901.

Sincerely,

Victoria L. Radd
Associate Counsel to the President

Mr. Barry B. White
Foley, Hoag & Eliot
One Post Office Box Square
Boston, Massachusetts 02109-2170

PLEASE RETAIN THIS COPY OF THE SIGNED ORIGINAL, FOR
YOUR RECORDS.

080853cm
1833590

FOLEY, HOAG & ELIOT

ONE POST OFFICE SQUARE

BOSTON, MASSACHUSETTS 02109-2170

TELEPHONE: (617) 482-1390

CABLE ADDRESS "FOLEYHOAG"

FACSIMILE (617) 482-7347

TELEX 940693

IN WASHINGTON, D.C.

1615 L STREET, N.W.

SUITE 850

WASHINGTON, D.C. 20036

TELEPHONE (202) 775-0600

BARRY B. WHITE

September 21, 1994

4 SEP 29 PG 16

The Honorable William J. Clinton
President of the United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

I want to congratulate you on nominating my partner, Sandra L. Lynch, Esquire, to become a judge of the United States Circuit Court of Appeals for the First Circuit. I know that you and the country will be exceptionally well served by Sandy. She is an outstanding choice.

I am sure that you do not remember, but when I attended a function at the White House this Spring for members of the Democratic Business Leadership Forum, I had a very brief opportunity to discuss with you Sandy's qualifications. I was very impressed by your ability and willingness, amidst the turmoil surrounding you, to focus on her and the appointment.

Please keep up the good fight! You are focusing on the right issues and the citizens of this country are discussing solutions to critical problems that your predecessors have ignored. I know that the people of this country will grow to appreciate what you and your administration are doing.

We are counting on you.

Very truly yours,


Barry B. White

BBW:dgb

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☒ I - INCOMINGDate Correspondence Received (YY/MM/DD) 94, 09, 29Name of Correspondent: Barry B. White☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Congratulations on Selection of Barry White
Sandra Lynch to Court of Appeals**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUMIKV		ORIGINATOR	94, 09, 29		C	94, 09, 29
CJ AT 19 (Radd)		Referral Note: A	94, 10, 03		A	94, 10, 28
		Referral Note:				
		Referral Note:				
		Referral Note:				
		Referral Note:				

ACTION CODES:

A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

A - Answered
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FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
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Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

SCANNED

Edward M. Kennedy
Massachusetts



United States Senate

WASHINGTON, DC 20510

file

August 13, 1994

The Honorable William J. Clinton
The President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

I am pleased to recommend to you Ms. Sandra L. Lynch of Brookline, Massachusetts for the position of Judge of the United States Court of Appeals for the First Circuit.

I am confident that you will find that she has outstanding character and qualifications and that she will fairly and faithfully enforce the laws of the United States.

Respectfully,

A handwritten signature in dark ink, appearing to be "E. Kennedy", written over a horizontal line.

Edward M. Kennedy

PHOTOCOPY
MISC. HANDWRITING



file: Lynch
none.

AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary

1800 M Street, NW
Washington, DC 20036
(202) 331-2210

DETERMINED TO BE AN
ADMINISTRATIVE MARKING

INITIALS: JAM DATE: 8/9/13
2013-0670-F

CONFIDENTIAL

September 20, 1994

Victoria L. Radd, Esq.
Associate Counsel to the President
The White House
Washington, D.C.

RE: Sandra Lea Lynch
United States Court of Appeals
for the First Circuit

Dear Ms. Radd:

As a result of our investigation our Committee is
unanimously of the opinion that Sandra Lea Lynch is
Well Qualified for appointment as Judge of the United
States Court of Appeals for the First Circuit.

Sincerely,

Bill Willis
William E. Willis
Chair

cc: All Committee Members

CHAIR

William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498

FIRST CIRCUIT

Michael S. Greco
19th Floor
One International Place
100 Oliver Street
Boston, MA 02110

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23rd Floor
1585 Broadway
New York, NY 10036

THIRD CIRCUIT

Victor F. Battaglia, Sr.
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Charles E. English
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Sylvia H. Walbolt
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INITIALS: JAM DATE: 8/9/13
2013-0670-P

~~CONFIDENTIAL~~

September 20, 1994

Sandra Lea Lynch, Esq.
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109

Dear Ms. Lynch:

Congratulations on your nomination for appointment
as Judge of the United States Court of Appeals for the
First Circuit.

At the invitation of the United States Senate
Committee on the Judiciary, we have today sent a letter
to them reporting on our evaluation of your
qualifications. A copy of this letter is enclosed for
your information.

Sincerely,

Bill Willis
William E. Willis
Chair

(Enclosure)

cc: All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson

CHAIR
William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498

FIRST CIRCUIT
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2013-0670-F

~~CONFIDENTIAL~~

September 20, 1994

Committee on the Judiciary
ATT: Hon. Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

RE: Sandra Lea Lynch
United States Court of Appeals
for the First Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Sandra Lea Lynch for appointment as Judge of the United States Court of Appeals for the First Circuit.

Our Committee is unanimously of the opinion that Ms. Lynch is Well Qualified for this appointment.

A copy of this letter has been sent to Ms. Lynch for her information.

Sincerely,

Bill Willis
William E. Willis
Chair

cc: Sandra Lea Lynch, Esq.
All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson

CHAIR

William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498

FIRST CIRCUIT

Michael S. Greco
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(202) 331-2210

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INITIALS: *JAM* DATE: *8/9/13*
2013-0670-F

~~CONFIDENTIAL~~

September 14, 1994

Professor Karen Nelson Moore
Case Western Reserve University
School of Law
11075 East Boulevard
Cleveland, OH 44106

Dear Professor Moore:

Congratulations on your nomination for appointment
as Judge of the United States Court of Appeals for the
Sixth Circuit.

At the invitation of the United States Senate
Committee on the Judiciary, we have today sent a letter
to them reporting on our evaluation of your
qualifications. A copy of this letter is enclosed for
your information.

Sincerely,

Bill Willis
William E. Willis
Chair

(Enclosure)

cc: All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson
Victoria L. Radd, Esq. ✓

CHAIR
William E. Willis
125 Broad Street
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Standing Committee on
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(202) 331-2210

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INITIALS: JAM DATE: 8/9/13
2013-0670-E

CONFIDENTIAL

September 14, 1994

Committee on the Judiciary
ATT: Hon. Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

RE: Karen Nelson Moore
United States Court of Appeals
for the Sixth Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Karen Nelson Moore for appointment as Judge of the United States Court of Appeals for the Sixth Circuit.

A substantial majority of our Committee is of the opinion that Ms. Moore is Qualified for this appointment. A minority found her to be Well Qualified.

A copy of this letter has been sent to Ms. Moore for her information.

Sincerely,

William E. Willis
Chair

cc: Professor Karen Nelson Moore
All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson
Victoria L. Radd, Esq. ✓

CHAIR
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125 Broad Street
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11-26-44

Dear Pres. Clinton -

I read in A Times, D.C. headline writer, that all judicial appointments would have to be thrown out the window now the Senate has gone Republican & Sen. Burton Hatch chairman of the when Congress reconvenes 1/20/45. I hope this isn't true. I sent you articles re my Sandy who was appointed by you to fill Judge Bryan position on the 1st District Circuit Court of appeals. She is well qualified for the position & non political & was recommended because of her ability & on merit only. Submit her name to the Sen. Judiciary etc of approval since you have 2 more years as Pres. don't care in because Congress has gone Republican. I hope you have already sent in to the etc. so that they are just late in giving her appointment to appear. The process has been moving since Aug. - a long time - very slow. I'm glad you didn't care in to blast mail by Dole & Helen Smith came in on any thing - stick to your guns - & don't show any weakness or Rep. will gun for you even more than in past. Sincerely,
Mrs. Eugenia Lynch

5265 Gonzaga St
Ventura CA 93003



PLEASE
EARLY FOR
CHRIST



Pres. Bill Clinton

The White House

Washington, D.C. 20575

Sandy Lynch?
1st Dist Ct of Appeals

President's Personal Correspondence

WASHINGTON

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COMMITTEE ON THE JUDICIARY
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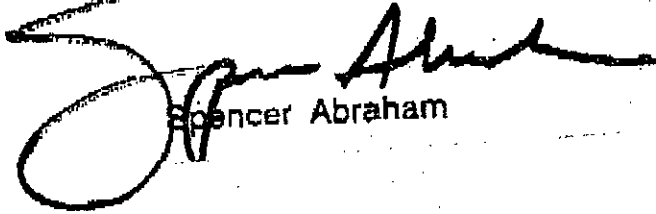
February 9, 1995

Senator Orrin Hatch
Chairman, Senate Judiciary Committee
Dirksen Office Building, Suite 224
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find questions in writing for all judicial nominees with regard to whom a hearing was held yesterday. I would appreciate your transmitting these questions to the nominees.

Sincerely,


Spencer Abraham

Lynch

CCA

S. Lynch
file

This was failed to all nominees who had hearing
Nancy

Written questions for all nominees

- (1) As a newcomer to the Senate Judiciary Committee, I have been getting quite a few questions about how I am planning on approaching my "advice and consent" responsibilities. Do you have any thoughts on this question? Have you taken a position on it in the past, before you were a judicial nominee, in connection with the nominations of others? If so, what was your position?
- (2) It would also help me to understand your view of the role of a judge if you could share with me any positions you may have taken in support of or opposition to past judicial nominations where there have been conflicting views on the qualifications of the nominee. In light of the limited time, you may if you choose confine your answers to nominations for the courts of appeals and the Supreme Court.