

# The First Circuit's First

**For the Honorable Sandra Lynch, the most important decision is about the case that isn't in front of you**  
By Art Jahnke

LATE ONE NIGHT, when the tourists had returned to their hotels and the streets of Isla Verde, Puerto Rico, were all but deserted, a young woman stepped out of her car, and a man's voice immediately ordered her back in. The man, holding a knife, forced her to drive to a deserted beach, where he brandished a gun and raped her. Sometime later, when the police found the woman running along the road frantically waving her arms, she was so traumatized she could not speak.

The weapon-wielding assailant was convicted of carjacking, and ten years were added to his sentence because the crime involved serious bodily injury. But when the case was appealed, the ten-year premium was dropped. A three-judge panel of the First Circuit Court of Appeals found that under statutory definition, rape was not a serious bodily injury.

A petition for a rehearing was filed with the full six-judge Court of Appeals, and one of its members, a woman relatively new to the court, read the panel's opinion and wrote the following: "The victim was taken to a remote beach by a man with weapons, forced to strip, and then raped. To say that this testimony provides 'no record of support' for a finding that the attack on the victim involved extreme physical pain ignores the reality of what she went through."

"Congress," she went on to write, dissenting from the court's denial of the rehearing, "would be appalled at this outcome."

As it turned out, the Honorable

Sandra L. Lynch was right. Congress was appalled. Lynch's dissent caught the attention of a congressional staffer, also a woman, who persuaded a legislator to author a bill making it clear that the term "serious bodily injury" includes rape.


"Apparently the bill flew through both houses in two weeks," says Lynch (LAW'71). "I thought it was lucky that there was a woman staffer in Congress who saw the issue the way I did and had the willpower to bring it up."

At the time, in June of 1996, Sandra Lynch was the only woman serving on the First Circuit Court of Appeals and the only woman who had ever had served on it. Lynch had arrived on the bench thirteen months earlier, chosen by President Bill Clinton to fill the seat vacated by newly appointed Supreme Court Justice Stephen Breyer (HON.'95).

For Lynch, the appointment was another in a string of career firsts. She had been the first woman to clerk for a federal judge in Rhode Island and the first woman to head the litigation department at the Boston law firm Foley, Hoag & Eliot. And now there is another first. Last June, she became the first woman to serve as chief judge of the First Circuit Court.

Michael Keating, a friend and former colleague at Foley Hoag, as the firm is now called, recalls the scene at Lynch's induction into the federal judiciary: "When you looked at the lineup of new judges, it looked like the first tee of a golf club. There

# Woman



Sandra Lynch is known as a pragmatic, no-nonsense jurist who wears her role-model status lightly.

# Decisions, Decisions /// Law

## professors rate Supreme Court worthies

In 2004, two law professors, one at Berkeley and one at Georgetown, conducted an academic exercise that used objective criteria to identify the most qualified candidates for a seat on the Supreme Court. Their study, titled "Choosing the Next Supreme Court Justice: An Empirical Ranking of Judge Performance" and published in the *Southern California Law Review*, placed circuit court judges "in a tournament based on relative objective measures of judicial merit and productivity."

The two legal scholars created a series of "measures of merit" focusing on productivity, opinion quality, and judicial independence and applied data on opinions written by active federal circuit court judges from the beginning of 1998 to the end of 2000.

Among the ninety-eight federal circuit court judges studied, the Honorable Sandra Lynch (LAW'71) scored at or near the top on several important measurements.

To determine opinion quality, the authors looked at how often a judge's opin-

ions were cited by courts in other circuits (using a judge's top twenty citation-receiving opinions). In that category, Lynch was the highest-ranking judge. On the tournament's "Quality and Respect" measure, which tallied "total outside citations," Lynch had the third highest score.

Finally, when the authors excluded two judges who overwhelmingly dominated a contest of "measures for judges under sixty-five with various weightings (quality, productivity, independence)," the number-one scoring judge — among a more diverse field of winners — was Lynch, who, incidentally, was appointed to the First Circuit Court when Stephen Breyer (Hon.'95) moved up to the high court.

Do those numbers mean that Lynch has a shot at a seat on the highest court? Most prognosticators place several candidates in line before her, but some of Lynch's friends hold out enough hope that they refuse to talk about the possibility, for fear of jinxing any chance she may have.

were all these old white guys. And there was Sandy."

In her new role, Lynch heads a court that handles appeals in civil and criminal cases from federal district courts in Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico. She is also responsible for the dispensation of misconduct complaints against seventy-five federal judges — a task, says former chief judge Michael Boudin, that can involve "painful issues and painful relationships."

Lawyers who appear in Lynch's court describe her as no-nonsense, a jurist who knows her facts cold, whose opinions are not colored by ideology. Her decisions have overturned a jury verdict ordering Massachusetts General Hospital and one of its brain surgeons to pay \$8 million to the families of

brain tumor patients who died after receiving experimental treatment decades ago. (In that case, Lynch found that testimony against the hospital was based on research published after the patient experiments were completed.) They have denied requests for a new trial by plaintiffs who claimed that a Cape Cod wind farm was built without proper oversight by the state. (In that case, the court found that the state had no authority over federal waters, which begin three miles from shore.) And they have ruled that a Lexington, Massachusetts, parent cannot sue the town because the high school newspaper refused to print an ad for sexual abstinence.

"My job isn't boring," says Lynch. "It presents very hard problems. We may have a problem that has implications

for a whole industry or a whole segment of society. The hardest part is thinking through the ramifications of whatever articulation of law you come up with, for the next case, the case that isn't in front of you. You are worried all the time about whether you have articulated a rule that makes sense, that will work in the future, and that you haven't set up a rule that is going to cause injustice or cause irrational results."

Lynch typically hears about 180 cases a year and writes summary dispositions on hundreds more. Her caseload ranges from ordinary civil cases, such as contract or employment discrimination, to terrorism cases to death penalty litigation. The court receives appeals from federal courts and federal administrative agencies, as well as habeas corpus petitions from state and federal prisoners, and also some original proceedings.

"The hardest cases have been figuring out not only what Congress meant," says Lynch, "but also thinking through the ramifications. If I answer the question one way, it will have these ramifications; if I answer it the other way, it will have these ramifications. And very often, Congress uses ambiguous language because it's the only way it can compromise and get a bill through. And then it falls to the courts to work out exactly what Congress meant. You really have to enjoy solving problems."

"Judge Lynch is first and foremost pragmatic," says Amanda Teo, who clerked for Lynch as a Harvard Law student three years ago. "She is interested in what makes good law and what would resolve the dispute for the parties. That allows her to get to the core of a case and actually do good law, which is something that is an accidental by-product in many courtrooms. And she is, of

course, a great role model.”

Lynch’s take on her status as a role model is nothing if not judicious. “My generation of women is used to being the first,” she says matter-of-factly. “Sometimes we are the only women in a particular position of responsibility. So what you find in the first woman role is you are a symbolic figure, and you know that. Whether you choose to be or not, you are a role model and so you feel a special burden to perform well.”

In fact, Lynch has attracted public attention since she was in high school near Dallas, Texas. There, as editor of the high school paper, she penned editorials decrying the town’s practice of maintaining segregated drinking fountains. “That was not,” she recalls, “a popular position.”

Lynch says her childhood as an Army brat, which included long stints in Italy and Germany, set her priorities, placing principles well above popularity. “I had an unusually strong sense of America as a constitutional democracy, where values like freedom of speech, equality of opportunity, and fairness under the law were very important,” she says. “I was raised not only to take on responsibility, but with a sense of obligation to one’s country that you needed to use your life in a meaningful way.”

After Wellesley College and BU School of Law, she clerked with U.S. District Judge Raymond J. Pettine in Rhode Island. She next served as general counsel for the Massachusetts Department of Education, where she helped to push through a state gender equality law and a special needs statute. She also worked as a Massachusetts assistant attorney general, representing the commonwealth in a school desegregation case against the Boston School Committee.

In 1978, Lynch joined Foley Hoag, a firm known for its absence of an old boy network. She was soon leading the firm’s litigation practice.

“Sandy is the person you want in the foxhole with you,” says Keating, who worked with Lynch on the defense team for chemical company W. R. Grace, a legal battle that is portrayed in the book and movie *A Civil Action*. “She is smart, diligent, and she never asks anyone to do anything that she wouldn’t do.”

B. J. Trach, an assistant U.S. attorney, who clerked for Lynch four years ago, believes that Lynch’s years as a litigator made her the detail-minded judge she is today. “Some judges will have the clerks read the briefs and do a memo to the judges,” says Trach. “Judge Lynch does all the prep work herself. She is completely aware of everything in both parties’ briefs. The benefit for people who argue in front of her is that they know the work they’ve done is being taken very seriously.”

The downside for lawyers, Trach says, is that she expects them to be equally prepared.

“Sandy is a very determined person,” says Keating. “She doesn’t suffer fools gladly, in or out of the courtroom.”

And she never did. Sitting in

audience, “we had a contracts professor who used the Socratic method. Normally, in any given hour, a professor will call on half a dozen students. This male professor called on a female student for the entire hour, not just the first day. He called on her every day for the entire hour. Finally, on Friday, she misunderstood a question and she gave a wrong answer. That was what he had been waiting for. He turned to the class with a look of triumph on his face and said, ‘Well, class, now we know why women aren’t noted for their beautiful minds.’ At that point, I stood up, very publicly. I closed my books. I looked at the other women in the class, and I led a walkout.”

Lynch pauses. From her desk, she can look northeastward, across Boston Harbor and East Boston and on toward New Hampshire and Maine, the northern reaches of the territory whose plaintiffs and defendants end up arguing in her court.

“To its credit,” she says, “at a time when many law schools were admitting 3 or 4 percent women, BU made a commitment to admit at least 10 percent women. It was a radical idea — to teach women to be lawyers. But the school did

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her spacious office in the John Joseph Moakley United States Courthouse, the chief judge recalls an incident decades ago, from her days as a student at LAW.

“In my first year,” she begins, speaking with the resolve of someone whose occupation demands that her opinions disappoint 50 percent of her

reflect the stereotypes of the times.”

Another pause, then Lynch continues, “I’m grateful to BU, not just because I was admitted, but because it forced me to confront some of these issues, and I emerged stronger for it. Had I not gone through it, it might have been harder to have the career I’ve had.” ■