



THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Organized labor of love

Lawyer Harold Lichten's suits on both sides of the affirmative-action issue have put him in the hot seat

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By Irene Sege, Globe Staff | February 16, 2005

The holiday party of the Massachusetts Employment Lawyers Association was well underway when suddenly, amid the chitchat and noshing on turkey and cookies, attorney Wendy Kaplan screamed at attorney Harold Lichten.

You're a racist, she yelled. You shouldn't be here, she insisted, which was awkward given that they were standing in the library of Lichten's law firm.

The reason for the dust-up? Lichten had successfully overturned minority hiring quotas in Boston's fire and police departments, and MELE is an organization of progressive lawyers committed to affirmative action. Lichten had recently won the police case, and the next day he would file a similar reverse-discrimination suit against the city of Newton.

But still further in the future was a complaint filed this month that thrust him in the news yet again -- this time on behalf of four African-American aspiring firefighters suing the city of Lynn, which no longer uses quotas, and the state for relying on a civil service exam they allege discriminates against minority candidates.

"It was not a good place to do it, but I did call him a racist," Kaplan, who is white, says in a conversation that takes place before Lichten files the Lynn litigation. "I don't know what's in his heart. I know what he does. What he's doing is supporting white supremacy and fighting affirmative action."

Harsh as Kaplan's words were, they reflect a discomfort Lichten himself shares as he moves from a Newton case he calls his last reverse-discrimination suit to a Lynn case he hopes restores his frayed reputation as an advocate for the underdog.

"The question is whether I really believed that taking the Boston cases was going to help attack the root problem, which was the exam, or whether I was just doing it to win some cases and make some money. The Lynn case strikes me as the litmus test on that issue," says Lichten, who is 52.

"I have no reason to think minorities won't fare just as well as Caucasians in a test that's really looking for who the best firefighter is," he adds. "If you have a fire in your home, you really don't care whether someone got a 99 on the exam. You want someone who's tough, courageous, strong, and willing to walk through a fire to save you."

At 235 pounds and 6 feet 4 inches tall, the former college basketball player is an imposing presence in the courtroom and in the world of employment law. His affable, easygoing manner outside of court belies his reputation as a tough, aggressive attorney whose regular clients include a number of firefighter and police unions. Before the reverse-discrimination cases, Lichten was known for landmark victories on behalf of disabled workers, a specialty he stumbled into as a young legal services attorney in Maine when a dwarf walked into his office complaining he'd been denied a job at Bath Iron Works. "That was the late '70s," Lichten says, "and handicapped rights were the new thing." He won the case.

Almost a quarter-century later, in 2002 in Boston, a federal judge ordered United Airlines to hire John Sprague, a mechanic Lichten represented, after United withdrew its job offer because Sprague is deaf. The previous year, in a case involving another Lichten client, a hearing-impaired police recruit named Richard Dahill, the Supreme Judicial Court pushed state law beyond federal safeguards by ruling that people with handicaps that are correctable -- with hearing aids, for instance -- are nonetheless protected by disability law.

In 2003, Lichten represented 15 bilingual teachers in Lawrence placed on unpaid leave after failing an English fluency test. To settle the suit, the school committee offered language training, interim jobs as substitute teachers, and the promise of reinstatement as classroom teachers once the affected educators passed the exam.

Yet no cases attracted more notice than the ones that, in 2003 and 2004, toppled a quota system established in 1974 consent decrees to increase minority representation among Boston's firefighters and police officers. Under the decrees, the city kept separate lists of white and minority candidates, each arranged by exam score, and hired one minority candidate for each white one.

The cases landed Lichten on the cover of Massachusetts Super Lawyers magazine last November and earned him "lawyer of the year" honors from Massachusetts Lawyers Weekly in 2003, each time with articles touting his initial hesitation to take the cases. MELA, miffed that Lichten was affiliated in print with the association, discussed taking a stand against him.

Now comes the Lynn suit, which, if Lichten prevails, could change the way police and firefighters are hired in communities across the state. "It sounds like a powerful, very progressive case," says attorney Paul Merry, president of MELA. "I'm not sure Harold's seeking redemption, but this might serve that purpose." Kaplan remains skeptical. "He's either trying to mend his reputation -- I doubt he's seen the light of day -- or he's responding to the onslaught of criticism," she says.

'Fighting for the underdog'

Lichten's involvement in the Boston cases began with a telephone call in 2001 from Roger Kendrick, a white man frustrated by his unsuccessful attempts to become a Boston firefighter despite scoring 100 on the exam.

"He said, 'Would you be interested in this case? Me and a group of white people cannot get hired in Boston,'" Lichten recalls. "I thought about it. I spoke to other lawyers in my office. They said they would not help me."

Lichten took the case anyway. "The way they were going about hiring in the city of Boston was nuts. Although there should be affirmative action, the quota system they were using didn't make a lot of sense. If I could successfully end these quota systems, I thought that perhaps then we could attack the real problem," Lichten says. "If someone's going to do it, I thought it's better it be me, who would be more sympathetic to the minority interests than someone from a right-wing think tank."

Shannon Liss-Riordan is one partner in Lichten's firm who refused to help him. "We didn't need to be the ones who were reversing this decades-old consent decree," she says. "We have other clients, other priorities."

Now she is his co-counsel on the Lynn case. "He's been my mentor," says Liss-Riordan, 35. "He's an incredibly smart lawyer from whom I've learned a great deal. He's brilliant in the courtroom. He has cutting-edge legal strategies. He loves what he does. He loves fighting for the underdog."

Lichten grew up in New Jersey, where his parents owned a clothing store in Pleasantville. He describes them as "pretty liberal," by which he means that they, like only 37 percent of Garden State voters, cast ballots for George McGovern in 1972. Relatives used to regale Lichten with stories of their involvement in the civil rights movement. "I grew up thinking I'd do good in the world," he says.

At age 12 he pitched on a team that almost made it to the 1965 Little League World Series. "Horse" Lichten played baseball and basketball at Atlantic City High School, ran a losing bid for class president using the slogan "The Horse, of course," co-chaired an unsuccessful campaign to lower the state's voting age to 18, and then headed to the University of Pennsylvania. He arrived on campus in 1970 with long, bushy hair, which he cut very short at the basketball coach's command. A few months later the coach ordered another haircut. Lichten refused and was kicked off the team.

"People judged you back then by the length of your hair, so I decided not to get a haircut. I didn't want people to think I was in ROTC or anything like that," Lichten says. "I missed it terribly. I missed basketball."

Lichten's downtown office is decorated with photographs of old firehouses, and his computer screen saver displays a photograph of Checkers, the pony of one of his 6-year-old twin daughters. He views his affection for firefighters and horses with bemusement. Not what you'd expect, he jokes, of a Jewish boy from Jersey.

"Interestingly, I had that sort of Jewish middle-class liberal bias against firefighters and police officers before I represented them. I've just really come to change my view of that," he says. "I really think they have a difficult job, and I'm really happy they're there. I'd assumed most police officers and firefighters were conservative and would be

motivated more by self-interest. What I've discovered is some of the police and firefighter unions I represent are incredibly like a brotherhood. If one of their members gets in trouble, especially firefighters, they will go to whatever extent it takes to make sure that firefighter is taken care of."

From country to courtroom

Lichten has lived since 2003 in a century-old converted greenhouse on 2 1/2 acres in Hamilton, "Horse" Lichten in horse country, near the Myopia Hunt Club, which he sheepishly acknowledges he wouldn't mind being asked to join. The property is next door to the home of the nanny who introduced his daughters to riding when the family lived in Manchester-by-the-Sea. Now Lichten owns two ponies and an old quarter horse. His redheaded twins, Kate and Maddie, have collected almost three dozen riding ribbons between them.

Lichten comes late -- and only after several years of therapy -- to family life.

"I dated a lot and couldn't commit. Whenever someone was starting to get serious, I was trying to bail out. The other thing is because I'm actually shy, I could never tell people that I didn't want to see them. I would just try to hem and haw and not be available," he says. "So I went into therapy, which helped a lot."

In 1996, when he was 44, he married Susanne Csongor, an interior designer 10 years his junior. He quit therapy and the men's group he'd joined. "I'm about as happy as a guy could be," he says.

Weekend mornings find Lichten, his face perpetually sunburned from all his time outdoors, up early mucking the horses' stalls, listening to rock 'n' roll on the radio. He puts hay at the edge of his rolling pastures and leads the horses to the field for the day. "It's very calming," he says. "It's so different from what I do."

In a cramped Suffolk County courtroom, as Lichten defends a police union and one of its officers accused of sexual harassment recently, his size is striking as he stands to cross-examine the plaintiff. This is a part of his work he particularly enjoys.

"He can really rip a witness apart," Liss-Riordan says. "I remember the doctor who testified in the Richard Dahill trial for the Boston Police Department was really reduced to smithereens during Harold's scathing cross-examination."

On this winter morning, however, the plaintiff is a diminutive former union employee who claims she lost her job after refusing Lichten's client's advances. Here, in a case he would win a few days later, Lichten is restrained as he asks her about the bitterly contested election that forced her old boss from office.

"It's very important when you're cross-examining a sympathetic witness who claims to be the victim of discrimination that you not seem like you're trying to tear into her, which is different from when you cross-examine a corporate official," Lichten says. "I was trying not to get loud with her."

Other times -- say, when he's representing labor against management -- he might employ his full voice.

"I represent unions," Lichten says. "They love it when I'm there attacking one of their managers. It's what they've always wanted to do but can't." ■