

The Big Picture

Corporate law, in-house lawyers and the chatter among the state's largest law firms

'Looks like' trouble

When you're one of the most powerful lawyers in Massachusetts, your words can come back to haunt you.

In the course of a September interview with a Boston Globe reporter about **Paul G. Kirk Jr.**, the **Sullivan & Worcester** lawyer who was named as the interim replacement for the late Senator Edward M. Kennedy last month, **Mintz, Levin, Cohn, Ferris, Glovsky & Popeo** Chairman **R. Robert Popeo** let fall a seemingly innocent remark:

"He has the stature and a presence. He certainly has intelligence. If you look at him, doesn't he look like a U.S. senator?"

Unfortunately, to some ears, that description of the white and male Kirk comes with baggage. **Lauren S. Rikle**n, a **Bowditch & Dewey** partner and the executive director of the Bowditch Institute for Women's Success, cited Popeo's statement as a "textbook example of unexamined bias" in an op-ed in the Boston Herald. She compared it to Rick Holmes, an editor at The MetroWest Daily News, recently dismissing as "bright, charming and attractive" the female candidate for Kennedy's Senate seat, Massachusetts Attorney General **Martha Coakley**.

"A man is described as looking like a senator, but a woman is described as charming and attractive," Rikle

n lamented, adding: "Our next senator — or any future officeholder — should be selected based upon his or her experience, competence and stances, not whether he or she fits our preconceived notion of how a leader is supposed to look."

Rikle

n didn't name either man who made the comments. Instead, she referred to Popeo as "a commentator."

When asked why, she told *Lawyers Weekly*: "It's the same reason I wouldn't use anybody's name. It's irrelevant. It's not fair to make that the story. The issue is: How can we all understand what unexamined bias is and do our best to overcome it? That's the critical part of this: Every single person has unexamined biases, and every single person needs to think about that."

But Christina Knowles, the executive director of the Massachusetts Chapter of the National Organization for Women, thought Popeo's identity relevant enough to name him in a letter to the editor to the *Globe*, which the broadsheet declined to publish.

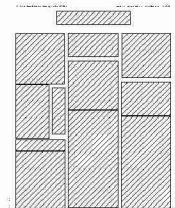


AP PHOTO

SEN. KIRK



POPEO



The hottest legal news.
LAWYERS WEEKLY
AUGUST 2009
ISSUE 10

“The Massachusetts Chapter of NOW took note of both Robert Popeo’s comment that Paul Kirk ‘look[s] like a US Senator’ and of the Globe’s decision to include that comment in its article,” Knowles wrote in the letter. “Mr. Popeo is right, of course, that Senator Kirk does look like most U.S. senators: white and male. But that narrow idea of what a senator ‘looks like’ reinforces the very stereotypes that keep women and people of color out of politics. Mass. NOW looks forward to the day when our elected representatives truly mirror all people in our society, so that we’d hear statements like Mr. Popeo’s said about a more diverse range of politicians.”

“I don’t think that Mr. Popeo at all intended anything negative by it,” Knowles tells Lawyers Weekly. “That’s not the point we’re trying to make. It’s more the fact that things are said, and people say them all the time, and there’s just no awareness of why this may not be the best thing to say, or why saying it might be an issue.”

When asked to respond to the dual feminist critiques of his statement, Popeo — who is backing Coakley for Senate — issued a statement of his own in which he said that he thinks “Senators like Dianne Feinstein, **Kirsten Gillibrand**, Olympia Snowe and the other distinguished women who serve in the United States Senate” look like senators, too.

“Describing the presence and bearing of an individual in political life is commonplace and, certainly in my case, it was not meant as a commentary on gender or race, and it would be quite a stretch to consider it so,” he elaborated.

Then, as if to hammer the point home, Lawyers Weekly received an unsolicited phone call from the “bright, charming and attractive” Coakley herself.

“I want to make sure that we don’t overreact when comments are made about the race,” Coakley said. “Bob Popeo is a great leader of that firm, and I believe I have his support because he believes I’m the best candidate for the job.”

Big firms and the bench

Over the past year, only three of the 28 lawyers appointed to judgeships in Massachusetts have come directly from the ranks of the big firms, easily outnumbered by their colleagues in the public sector and small practices.

That pattern is part a reflection of **Gov. Deval L. Patrick’s** pledge to cull judges from diverse geographic, racial and economic backgrounds, and part a product of the economic reality that judgeships, with a starting pay of \$129,000, are a major come-down for most big-firm partners, attorneys say.

“Certainly the governor has cast a wider net in terms of the types of individuals that he is interested in putting on the bench,” said **Martin W. Healy**, general counsel of the Massachusetts Bar Association and executive secretary of the Joint Bar on Judicial Appointments. “I think the previous governors played it a little safe in terms of going to some of the more traditional prosecutorial backgrounds.”

Over the past year, Patrick has nominated 13 judges from the public sector, nine from solo or small firms, two academics and

one in-house counsel. Three judges — **Laurence D. Pierce** and **Mitchell Kaplan**, both from **Choate, Hall & Stewart**, and **Judith C. Cutler** from **Kopelman & Paige** — came from big firms.

But people familiar with the nominating process say those numbers can be misleading. First, many of the governor's appointments had big-firm experience before joining the public sector, such as recently appointed Supreme Judicial Court Justice **Ralph D. Gants**, who was a partner at **Palmer & Dodge** for six years before he took a seat as a Superior Court judge in 1997. Or **Kimberly Budd**, who practiced at **Mintz Levin** as well as the U.S. Attorney's Office in Boston and Harvard University before filling the vacancy created by Gants' elevation.

Lisa Goodheart, chairwoman of the Judicial Nominating Commission, said the numbers are also influenced by the types of judicial positions that are open. Of the 28 positions that have been filled, 16 are in the district, juvenile and Boston Municipal courts, areas where big-firm partners seldom practice.

And the JNC's mandate is to "look for top quality" candidates for each job while paying attention to their practice background, life experience, race, ethnicity and gender. "We find top quality people among a very diverse group of people, and that includes — but certainly isn't limited to — the big firms," Goodheart said.

"In making judicial appointments, the governor has sought the highest standards of excellence from the full cross-section of our community," said **Ben Clements**, the governor's chief legal counsel. "The result has been appointments of superbly qualified judicial officers who come from all across the commonwealth and reflect the racial, ethnic, and gender diversity of our citizens, as well as the professional diversity of our lawyers."

And then there's the money. Starting associates at Boston's biggest firms make more than a newly appointed judge. So many big-firm lawyers only look toward the judge's bench when they are ready to devote their career to public service.

"[Judges] who come from big-firm settings are often more seasoned individuals, folks that have probably educated their children, have been at the bar for decades and decide that they have the interest in public service," said Healey, of the MBA.

Still, Healey said, that perspective might be changing in this down economy.

"I've heard from some that ... because of the uncertainties and vagaries of the economy, at least an appointment to the bench has security, and it comes with a pretty healthy package in terms of retirement and other benefits," he said.

Hinckley headed to Superior Court

Appellate courts have now twice rejected claims by a Boston law firm being sued by a former associate who claims he was fired for refusing to destroy child pornography from a client's computer.

In May, the Appeals Court ruled that the associate, **Kevin**

M. Plante, could move forward with a 2007 wrongful-termination suit against his former employer, **Hinckley, Allen & Snyder**. Now, the SJC has refused to hear Hinckley's appeal of that ruling, attorneys involved in the case say.

Plante, who worked in Hinckley's litigation and environmental practice groups in 2005 and 2006, claimed that partners at the 150-lawyer firm in Boston let him go after he told them he would not delete the images from a client's hard drive.

"Stripped to the bare essentials, the plaintiff asserts that certain partners of the law firm asked him to research the firm's obligations upon inadvertently finding possible child pornography on the computer of an important client or the computer of an executive of an important client," the Appeals Court wrote this spring.

That decision reversed a dismissal order entered in the firm's favor by Superior Court Judge **Herman J. Smith Jr.**

Plante's Boston attorney, **Kevin G. Powers of Rodgers, Powers & Schwartz**, says the SJC's ruling means the case is headed back to Superior Court where a judge other than Smith will likely handle the matter.

"At this point, I think [Hinckley] was hoping that the SJC would take the case and reverse the Appeals Court, but that obviously didn't happen, so now they're in a quandary," says Powers. "They have to proceed with discovery or they have to settle the case."

When asked whether he has had any discussions about a resolution, Powers says he has not talked settlement with Hinckley's counsel, **Alan D. Rose**, for more than six months.

"It would seem reasonable that we might have some settlement discussions in light of the SJC's determination," he says. "I am certainly agreeable to that. I don't know what [Rose's] position is going to be, though."

Rose, who practices at **Rose, Chinitz & Rose** in Boston, declines to comment.

Plante, who is now in-house counsel for a company he does not wish to identify, says the whole ordeal has been "very difficult for me. I was put in a tough position and did what I know was right. Ultimately what I wanted to do was follow the law for the sake of the firm and for myself. That's exactly what I did."



AP PHOTO/LISA POOLE

Gov. Deval Patrick, left, looks on as Justice Ralph Gants speaks to members of the media