



**GERARD LYNCH**  
**Nominee to the United States Court of Appeals for the Second Circuit**

United States District Court Judge Gerard Lynch has been nominated to a seat on the United States Court of Appeals for the Second Circuit. The Court often presides over Wall Street financial cases. Judge Lynch will be a welcome addition to the bench; he is a highly qualified jurist with an exemplary record. His nomination is indicative of President Obama's thoughtful selection of individuals who will approach each case with an open mind, make fair decisions based upon the merits of the case, and apply the Constitution and the law to provide equal justice for all.

**QUALIFICATIONS**

Judge Lynch is widely considered an intellectual force. He received his B.A. from Columbia, where he was valedictorian, and his J.D. from Columbia Law, again graduating first in his class. He clerked for Judge Wilfred Feinberg on the U.S. Court of Appeals for the Second Circuit, and Justice William Brennan on the Supreme Court. Judge Lynch has spent many years teaching law at his alma mater, Columbia Law, where he also served as vice dean for five years. Lynch worked in the U.S. Attorney's Office for the Southern District of New York, first as assistant U.S. attorney where he prosecuted white-collar criminal cases and served as chief appellate attorney, and later as the Chief of its Criminal Division. He was an associate counsel in the Office of Independent Counsel during the Iran-Contra affair; Lynch briefed and argued the prosecution in the appeal of Oliver North. He also spent time in private practice. From 2000 to the present, he has served as a federal judge on the United States District Court for the Southern District of New York.

The American Bar Association's Standing Committee on the Federal Judiciary gave Judge Lynch it's highest level of support bestowed upon a nominee, a rating of "well qualified."<sup>1</sup>

**BACKING**

Judge Lynch enjoys the backing of both his home state senators. Senior Senator from New York Charles Schumer stated, "Judge Lynch is a class act, a world-class legal mind, and one of the sagest judges on the district court. We could not have a better nominee to this critical court."<sup>2</sup>

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<sup>1</sup> American Bar Association, Ratings of Article III Judicial Nominees 111th Congress, Apr. 2, 2009, <http://www.abanet.org/scfedjud/ratings/ratings111.pdf>.

<sup>2</sup> Larry Margasak, Obama Taps Two More for Federal Appeals Courts, AP, April 2, 2009, <http://www.wtop.com/?nid=104&sid=1640426>.

Senator Kirsten Gillibrand echoed these sentiments. “Judge Gerard Lynch is an exceptional judge, brilliant legal mind, and a man of outstanding character,” she said. “His accomplished and distinguished background make him an excellent nominee to the U.S. Court of Appeals for the Second Circuit. I commend President Obama for his decision.”<sup>3</sup> Dean of Columbia School of Law David M. Schizer expressed his support stating, “Professor Lynch is a gifted and popular teacher, whose wisdom and commitment to service inspires colleagues and students alike.”<sup>4</sup>

## CASES

Judge Lynch has developed a strong record in his nine years on the bench. The Second Circuit has not reversed the result of a single trial over which he has presided. In nominating Judge Lynch, President Obama put forth a candidate whose record demonstrates he will keep faith with our nation’s core constitutional values of equality and justice for all. The following are among his prominent cases:

*Browne Sanders v. Madison Square Garden*, 525 F. Supp. 2d 364 (S.D.N.Y. 2007).

Ms. Sanders worked as an executive with the New York Knicks, initially as vice-president of Marketing and later as senior vice-president of Marketing & Business Operations. During her first three years on the job, she received positive performance reviews and many bonuses. In 2003, Isaiah Thomas was hired as president of Basketball Operations. Soon thereafter, Sanders and Thomas conflicted over job responsibilities. In 2005, Sanders accused Thomas of unwanted sexual advances (it is undisputed that in December of 2005, at a Knicks game, Thomas attempted to kiss Sanders on the cheek; when she pulled away Thomas replied, “no love today?”). After an internal investigation finding that, *inter alia*, Thomas should receive sensitivity training, the report recommended Sanders be fired. Following her dismissal, Sanders filed a Title VII complaint alleging that she was discriminated against on the basis of her sex and was retaliated against for filing a sexual harassment claim. Judge Lynch denied the basketball team’s motion for summary judgment; the jury returned a verdict totaling \$11.7 million for Sanders and the case was subsequently settled.

*Disability Advocates, Inc. v. New York State Office of Mental Health*, No. 02-CV-4002 (S.D.N.Y. 2002).

Judge Lynch conducted a two-week bench trial on the treatment of mentally ill inmates in the New York State prison system, resulting in a settlement establishing major improvements in care. Petitioners Disability Advocates, the Legal Aid Society’s Prisoners’ Rights Project, and Prisoners’ Legal Services alleged that the use of lengthy solitary confinement (totaling 23 hours a day), severe visitation and property restrictions, and non-existent outside of cell activities violated the Eighth Amendment prohibition on cruel and unusual punishment. The condition of mentally ill prisoners was often exacerbated in such conditions; many experienced psychiatric

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<sup>3</sup> Press Release, Senator Kirsten Gillibrand, Gillibrand Statement on President Obama’s Announcement of Gerard Lynch to the United States Court of Appeals for the Second Circuit, (Apr. 2, 2009), <http://gillibrand.senate.gov/newsroom/press/release/?id=3601BE89-0224-4B2C-B902-0DF7B83B66AE> <http://leahy.senate.gov/press/200903/031709b.html>.

<sup>4</sup> Press Release, Columbia Law School, Professor Gerard Lynch '75 Nominated for the Second Circuit, (Apr. 3, 2009), [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2009/april2009/lynch](http://www.law.columbia.edu/media_inquiries/news_events/2009/april2009/lynch).

deterioration and even committed suicide. Judge Lynch, during a court conference, stated that the New York State system of solitary confinement is, “almost guaranteed to worsen the mental condition of just about anyone but certainly those with vulnerable psyches.” The settlement agreement reached by the parties created new programs for prisoners, required more out of cell treatment, and greatly improved New York’s prison mental health screening procedures.

*Center for Constitutional Rights v. Bush*, 1:06-cv-00313 (S.D.N.Y. 2006).

In January of 2006, the Center for Constitutional Rights filed a lawsuit in Judge Lynch’s court against President Bush, the National Security Agency (“NSA”), and others seeking injunctive relief to halt the NSA’s program of warrantless surveillance within the United States. At the time the suit was filed, many considered the government’s actions violative of the Foreign Intelligence Surveillance Act (“FISA”), a law requiring the government to obtain a warrant from a secret FISA court before wiretapping the international communications of Americans for national security purposes. Plaintiffs alleged that hundreds, if not thousands, of American citizens’ communications were being illegally monitored. Judge Lynch waited until September 2006 before holding a hearing. While he expressed considerable skepticism about the government’s case, particularly any inherent presidential power to direct actions that conflict with federal statutes, Judge Lynch failed to rule on the matter, thus allowing the alleged illegal monitoring to continue. In December of 2006, the Judicial Panel on Multidistrict Litigation ordered the case transferred to the Northern District of California, where several similar cases were being heard by Judge Vaughn Walker.

*Mental Hygiene Legal Service v. Spitzer*, 2007 U.S. Dist. LEXIS 85163 (S.D.N.Y. Nov. 16, 2007), *aff’d* 2009 U.S. App. LEXIS 4942 (2nd. Cir. 2009).

In a decision illustrating his strict adherence to the law, Judge Lynch granted a preliminary injunction barring the enforcement of certain provisions of New York’s new Mental Hygiene Law, which governs the civil commitment of sex offenders. Lawyers for Mental Hygiene Legal Services represented Shawn Short, a man who served time in prison after a sex offense conviction. Two years after completing his sentence, police picked him up and held him in a local jail. Officials claimed that he should remain detained until a determination was made as to whether he should continue to be supervised under the new law. However offensive his earlier conduct, the law was clear: Mr. Short could not be held prior to an individualized finding that he posed a continuing danger to society. Judge Lynch also enjoined the state from civilly committing anyone charged with, but never convicted of, a sex offense because of their mental incapacity to stand trial, unless a court or jury has found beyond a reasonable doubt that the person committed a sex offense. A unanimous panel of the Second Circuit recently affirmed Judge Lynch’s decision in full.