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Thomas Jefferson, Abraham Lincoln, Louis Brandeis and the Mystery of the Universe

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THOMAS JEFFERSON, ABRAHAM LINCOLN, LOUIS BRANDEIS AND THE
MYSTERY OF THE UNIVERSE

1. I am honored to have been asked to speak to you, the members of the Boston Patent Law Association, tonight. At first glance, however, it is the sort of honor that one would rather receive than endure. I have, therefore, reflected on why this invitation seemed initially so intimidating.
2. Federal judges are used to doing many difficult things. There is a wide body of law that we are called upon to administer, if not to master. Patent cases, however, seem especially daunting because they are frequently very complex, often involving a great mass of detail. In addition, there are no members of the federal bench in Boston who practiced patent law before they became federal judges. Patent law is, therefore, an area with which we are not familiar until we become educated by the lawyers and their witnesses. Thus, I am tempted to tell you a few jokes and sit down. My colleagues and I, however, have too much respect for the Patent Bar for me to take that easy way out.
3. As I reflected on patent law, I realized that it is not separate from the primary work of the federal courts. It should not be considered the province of a very specialized bar and that bar only. Nor should patent lawyers regard themselves as so specialized as to think that they are unaffected by the challenges to the federal administration of justice generally. Rather, members of the Patent Bar ought to be alert to the threats to the federal administration of justice and be involved in addressing them.
4. Patent law seeks to resolve fairly the tension between principles that are fundamental to the meaning of America. We believe deeply in competition as an engine of freedom and of progress. Generally, we abhor monopoly. Historically, however, we have also believed strongly in encouraging and rewarding innovation, which enhances knowledge and contributes to the prosperity that is necessary to the full enjoyment of freedom.
5. As I sat at my desk and gazed around my chambers, I realized that my personal heroes were people who had engaged in our nation's enduring effort to achieve an elusive equilibrium between these important, competing principles. When I sit at my desk and look up to the wall on the right, I see a print of Thomas Jefferson. Jefferson's portrait, of course, also hung in the rotunda of the old Patent Office

Building, in Washington, D.C., along with portraits of Benjamin Franklin, Eli Whitney and Robert Fulton.¹

6. Jefferson was an inventor. He invented a superb, innovative plough.² He also invented a pedometer and the collapsible folding chair, which can be used as a cane and then can be opened to provide a seat.³
7. Jefferson's refinement of the plough, which he had developed for his estate in Virginia, had the potential to make him extraordinarily wealthy. Yet Jefferson never applied for a patent.⁴ Instead, Jefferson freely gave all of his inventions to the public. Benjamin Franklin also never sought a patent for any of his inventions, including the Franklin stove.⁵
8. Jefferson's generosity was not always fully appreciated. He had his political enemies and they were cynical. When Jefferson invented the swivel chair, his Federalist opponents dubbed it "Jefferson's whirligig," and said that he designed it so he could look all ways at once.⁶
9. At first, Jefferson was skeptical about the value of patent laws. He once wrote that he did not mind that the Articles of Confederation, which preceded the Constitution, provided no patent protection.⁷ His views, however, evolved. Ultimately, Jefferson came to believe that constitutional protection should be provided to authors and inventors for a limited period of time.⁸ This is, of course, the concept that is at the very heart of our patent laws.
10. Jefferson was also the first Secretary of State. As such, he was responsible for administering the first patent laws. He took that responsibility seriously, seeking to assure himself that patents went only to inventions that were truly novel and useful.⁹ Although he was the Secretary of State, Jefferson did not delegate his responsibility to examine patents. Rather, he would study proposed patents personally. If he thought they had potential merit, he sent them on to the Attorney General and to the Secretary of War. If they reached a consensus, Jefferson took the proposed patent to the President, who personally signed it.¹⁰ So, at the inception of this country, it essentially took a cabinet meeting to get a patent granted.
11. It is, therefore, not surprising that only three patents were granted that first year, 1790.¹¹ Eventually, there were more patents issued during Jefferson's tenure as

Secretary of State. These included Eli Whitney's cotton gin, which had such profound and dark consequences for our national history.

12. Still seated at my desk, if I look over my right shoulder, I see a statue of Abraham Lincoln and a print that was published as a memorial after his death. Lincoln had only one reported case outside of Illinois. His fame as a lawyer was very much local, but he was known as a very effective Illinois lawyer. The one case that took him outside of Illinois was a patent case.
13. When the patent for Cyrus McCormick's reaper was challenged in Illinois, Lincoln was hired to argue the case as local counsel.¹² Lincoln was associated in that litigation with two other lawyers, Edwin Stanton, who was nationally renowned as a general litigator, and a gentlemen named Harding, who was a leading patent lawyer of his era.¹³ The case, however, was transferred to Cincinnati where it was assigned to Supreme Court Justice John McLean, who was then riding the circuit, trying cases.¹⁴
14. Lincoln took this assignment very seriously. He prepared thoroughly. He arrived in Cincinnati, expecting to be a partner in the trial team. His distinguished colleagues, however, would have nothing to do with him. Stanton said, in Lincoln's presence, that he would not be professionally associated with "that Gorilla."¹⁵ When it came time to go to the courthouse, Lincoln suggested that the three lawyers walk over together. Stanton and Harding, however, refused to be seen with him.¹⁶ It was also the custom during that era for the lawyers who were presenting the case to dine with the judge. Nevertheless, Stanton and Harding would not let Lincoln join them and Justice McLean.¹⁷
15. That experience did not turn Abraham Lincoln off on patent law. Rather, in 1859, shortly before he was elected President, Lincoln gave a talk on "Discoveries and Inventions."¹⁸ He said, in part, that

[i]n the world's history, certain inventions and discoveries occurred, of peculiar value, on account of their great efficiency in facilitating all other inventions and discoveries.... [T]hese were the arts of writing and printing — the discovery of America, and the introduction of the Patent-laws [in England in about 1624.]¹⁹
16. Lincoln went on to explain that America represented youthful energy, imagination and optimism. However, Lincoln did not think these qualities were sufficient.

Rather, Lincoln expressed his view that American patent laws, giving inventors the exclusive use of their inventions for a limited period of time, were vital to the realization of America's potential to contribute to the world because, "they added the fuel of interest to the fire of genius, in the discovery of new and useful things."²⁰

17. History proved that Lincoln's experience in the McCormick reaper matter did not turn him off on Stanton and Harding either. Foreshadowing the magnanimity that was so eloquently expressed in Lincoln's plea that our nation proceed after the Civil War with "malice toward none, with charity for all,"²¹ the new President made Stanton his Secretary of War.²² Lincoln then offered the arrogant patent attorney, Harding, the Commissionership of Patents.²³ Harding declined.
18. Returning to my desk, if I look over my left shoulder, staring down at me is a picture of Louis Brandeis. Brandeis originally earned his reputation as a brilliant corporate lawyer. Later, he became the adversary of many of his former clients and widely known as the "People's Lawyer." That evolution made Brandeis an exceptionally controversial figure.
19. Brandeis hated monopolies. He believed deeply in competition as the foundation of freedom. He supported, however, the right of a patent holder to set the retail price of his product when it was sold by others. For example, he advocated that Gillette should have the right to set the price at which retailers could sell its safety razors.²⁴ Brandeis believed that ability permitted the small "Mom and Pop" stores to compete with much larger stores for the sale of that product.²⁵ A uniform retail price would maintain the number of competitors, Brandeis thought, and therefore enhance competition.²⁶ Brandeis was also deeply involved with the question of whether it ought to be permissible to tie patented products to other products or whether such tying arrangements should constitute a violation of the then relatively new Sherman antitrust laws.
20. Initially, Brandeis was a director of, and for some purposes, legal counsel to, the United Shoe Company.²⁷ The United Shoe Company held certain patents that were vital to the manufacture of shoes. It would, however, only lease its patented machines, not sell them. It tied its willingness to do so to a manufacturer's agreement to lease, not just one, but the whole line of United Shoe products.²⁸ If you wanted to get the patented machines, which were vital to the manufacture of shoes, you had to lease everything. It was, therefore, in today's sense a classic tying arrangement.

21. At first, Brandeis defended this arrangement as a benevolent monopoly.²⁹ Eventually, however, Brandeis, saw the United Shoe Company use its tremendous size and its influence with the Eastern bankers to destroy a gentleman named Plant, who had invented a wonderful, competing device that he wanted to sell to shoe manufacturers.³⁰ By closing off all access to credit just as Plant's loans were to become due, United Shoe compelled him, under utter duress, to sell it his patents.³¹ Brandeis also saw the United Shoe Company refuse to make changes in its leases favorable to the manufacturers, which he had been led to believe it would do when he testified that United Shoe was a benevolent monopoly.³²
22. For a while, Brandeis was quiet about this matter. Eventually, he went into the legal arena on behalf of the shoe manufacturers. When the law became clarified through a series of Supreme Court decisions, Brandeis effectively attacked the legality of the United Shoe Company's tying arrangements³³ — the very same arrangements that he had previously defended.
23. That evolution, which reflects the evolution of Louis Brandeis as a lawyer and as a person, was enormously controversial. The United Shoe matter became a major issue in the effort, led by leading lawyers and other prominent citizens of Boston, to keep Brandeis' nomination to the Supreme Court from being confirmed. That effort, of course, was not successful, and we are indebted to those who confirmed Mr. Brandeis' appointment and permitted him to serve so exceptionally on the Supreme Court.
24. The issues with which Brandeis was dealing in the United Shoe matter have, of course, endured. If you read the recent decision of the Court of Appeals in the *Data General v. Grumman* case,³⁴ you will find that the First Circuit was recently wrestling, in the context of service provided for computers, with applying the Supreme Court's *Eastman Kodak* decision to alleged tying arrangements. Patent lawyers deal with similar issues frequently. They were tangentially presented in a case that I tried several months ago.
25. Brandeis came to view patent laws as delusive protection for innovators because he found that, in the early Twentieth Century, it was prohibitively expensive for innovators to battle corporate giants in patent disputes. His testimony in 1913, before a congressional committee, has a real ring of relevance today. He said:

In my own practice I have been confronted with just that situation [of innovators being challenged by formidable established interests]. A

man comes with what appears to be a most valuable invention; comes to a body of men who are perfectly ready to invest in that invention a reasonable sum of money — \$50,000 or \$100,000, or perhaps \$25,000 if the invention is small. I have had again and again to say to them: "This is an invention which will interfere with the field that is controlled by one or other of the great concerns. Your \$25,000, your \$50,000, your \$100,000 will all vanish. You may have the best thing in the world, but as long as our patent law procedure, as long as our equity procedure in the federal courts is what it is, your money will vanish in lawyers' and stenographers' fees, and then when you get all through and perhaps get a decision in your favor in our circuit, there are eight other circuits where you will be fought."³⁵

26. Today, we have the Federal Circuit. Thus, one of the problems of which Brandeis warned his clients has been ameliorated. However, the crushing expense of litigation for innovators and entrepreneurs endures.
27. As I reflected further, I realized that the contributions of the Patent Bar to the administration of justice generally is not ancient history. I brought with me tonight my former law clerk, Mike Reinemann. Mike was an engineer with Bell Helicopter Company. He then went to the Boston University Law School, where he was on the Law Review, and became an associate at the Boston law firm of Choate, Hall & Stewart. Several years ago, I was assigned a series of massive Mafia cases, involving the top dozen alleged members of the Patriarca Family of La Cosa Nostra. As a result, I was authorized to hire another law clerk. I selected Mike, who worked with me for 15 months as my longest serving law clerk.
28. In the Mafia cases, I was quickly confronted with an issue of historic proportions that had great significance to the defendants. The Federal Bureau of Investigation had, for the first time in history, intercepted and recorded a Mafia induction ceremony. They recorded the new members having their trigger fingers pricked, their blood flowing, holding pictures of patron saints as they were burned, and pledging their undying loyalty to Omerta — the Code of Silence — and to La Cosa Nostra — the Mafia. This was the most powerful, direct evidence of the existence of the Mafia that the United States government had ever obtained. The government had, however, intercepted the induction ceremony pursuant to a warrant issued under a new law, the constitutionality of which had not been tested.

29. Since the founding of the Republic, the Fourth Amendment to the United States Constitution has required that all judicial warrants describe both the place to be searched and the thing to be seized with particularity.³⁶ This requirement is, historically, very significant. The American Revolution was, in meaningful measure, rooted in the hated writs of assistance, which permitted English officials to enter any home, search it, and seize virtually anything.³⁷ The Fourth Amendment was enacted to prevent such abuses.
30. For hundreds of years, the particularity clause of the Fourth Amendment was regarded as requiring that a warrant specify the address of the place to be searched, or, more recently, the telephone line to be tapped. Criminals, however, became aware of the advances in evolving technology and law enforcement techniques, so they began to move around in an effort to thwart the government's electronic surveillance.
31. The statutory law was subsequently amended by Congress to address that phenomenon. It now permits a court to authorize, in appropriate circumstances, what is called a "roving tap" or a "roving bug."³⁸ These "roving" warrants describe the place to be searched, not by an address, but as a place where certain suspect individuals are present.³⁹ The warrant describes the thing to be seized as conversation involving at least one of those individuals.⁴⁰ It was under this new provision that a roving bug was authorized by one of my colleagues and the induction ceremony intercepted.
32. The constitutionality of that law was disputed and tested in my case. It was a very challenging issue. Over the past 200 years, the law interpreting the Fourth Amendment has evolved considerably and wiretapping has been the subject of enduring controversy. Indeed, in 1928, Justices Brandeis and Oliver Wendell Holmes, Jr. wrote a very powerful dissent asserting that wiretapping was not constitutionally permissible.⁴¹
33. As I mentioned, the issue of the legality of the roving bug had major consequences for my case. My law clerks and I spent innumerable hours working on that question. In the end, I decided that the roving bug was constitutional, a decision that was not easy to reach and explain.⁴²
34. That decision occurred during more than a year spent in pre-trial proceedings. After nine days of jury selection, the defendants pled guilty. With the case completed, Mike returned to his law firm. In addition to general civil litigation, he

has also handled patent cases, and recently became a member of the Patent Bar. I am sure that in the coming years, he will emerge as a very distinguished member of the Patent Bar, enriched by the experience that he had with me, just as he enriched my work by bringing to bear his experience as an engineer and a future patent lawyer.

35. I could also regale you with tales of my RICO trials. However, while I have experience in patent cases, including deciding motions for summary judgment and preliminary injunction, I have never tried a patent case. As I went around the table at dinner, I asked your colleagues whether any of them had ever tried a patent case in Boston. One had, eight years ago.
36. It is not lack of interest that keeps district judges in Boston from trying patent cases. The reason you do not have much opportunity to try patent cases here is that the United States District Court in Boston has come to be characterized by a complex and time-consuming criminal caseload. That is something about which you, as well as other members of the civil bar, should be actively concerned, because it is a trend that is accelerating.
37. In August 1994, a federal crime bill was enacted.⁴³ That bill increases the federalization of what historically have been regarded as state crimes. Federal courts now will have jurisdiction over cases involving juveniles.⁴⁴ Also, for the first time, the federal courts will have jurisdiction in certain cases concerning violence against women.⁴⁵ If someone travels from one state to another state to abuse his wife or a significant other, that very important crime can now be prosecuted in federal court.
38. The 1994 Crime Bill also provides over a billion dollars in aid for various federal law enforcement agencies, including the U.S. Attorneys' Offices, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the Treasury Department.⁴⁶ It has only \$200 million for the United States courts, and almost all of that is earmarked for more probation officers and drug-testing of people who are arrested or convicted.⁴⁷ This means that more federal investigators and prosecutors will be bringing cases in federal court before a finite number of judges.
39. Something else very significant has happened in the past decade. In 1987, the United States Sentencing Guidelines became effective.⁴⁸ At about the same time, Congress and the President began enacting mandatory minimum sentencing laws,

which require that certain offenders be sentenced to terms of prison from five years to life, each without parole. As a consequence of these new sentencing laws, from 1987 to roughly 1993, our Probation Office advises us that the rate of guilty pleas in federal criminal cases in Massachusetts fell from about 88 percent to about 82 percent.⁴⁹

40. Superficially, that may not seem like much. It means, however, that 50 percent more criminal cases have been going to trial. Although that disparity is now diminishing because more and more people are trying to escape the Guidelines and the mandatory minimum sentences by cooperating against others,⁵⁰ such cooperation often means more criminal cases.
41. In any event, the simple increase in trials does not begin to measure the increase in time devoted by the federal courts to criminal cases. As mentioned earlier, I spent part of almost every day for a year in pre-trial proceedings in one Mafia case. That case was estimated to take a year to a year-and-a-half to try. It did, however, result in guilty pleas after nine days spent selecting a jury.
42. Also, and more often, there are very long sentencing proceedings. This afternoon I sentenced William Walsh, a Cambridge City Councilor, and three of his codefendants for bank fraud. That sentencing started yesterday and went all day today. It also took me at least three full days to prepare for that sentencing. So, at a minimum, I spent five full days in connection with that sentencing. The issues I decided in the last day included the following: (1) what is the date at which the loss to the bank in a fraud case should be calculated, the date of sentencing or when the loss was discovered; (2) what is the amount of the loss to the bank that is countable for sentencing purposes; (3) does the loss include points and fees paid in obtaining the loans; and (4) does the loss include attorneys' fees and closing costs incurred in connection with foreclosures. I had to make legal and factual findings on all of these matters before I could determine the applicable Guideline range.
43. Then, I had to consider, to the limited extent the law permits, the human dimensions of the sentencing. One of the defendants was a child of Holocaust survivors. Another was a distinguished Vietnam War veteran. Mr. Walsh had an extraordinary career of doing good works, and had, for twenty-five years, lived with his mother, who now has Alzheimer's disease and, according to her psychiatrist, is very dependent on him. These factors often make sentencing hearings lengthy and, at times, exhausting.

44. Soon I will return to the resentencing of Raymond J. Patriarca. I spent at least a month on his sentencing two years ago and found that the Sentencing Guidelines did not require that he be punished for Mafia murders that he never authorized or knew anything about.⁵¹ The Court of Appeals, however, held that I was incorrect and that, if the murders were committed in furtherance of his racketeering conspiracy and were reasonably foreseeable, Mr. Patriarca would have to be punished for them.⁵² As a result, the Guideline range for his sentence could be raised from eight years to sixty-five years. There is, therefore, a prospect that, in the context of a sentencing for convictions for traveling between Massachusetts and Rhode Island to promote racketeering activity, I will try Mr. Patriarca for two murders for which he was not indicted, let alone convicted by a jury.
45. One of those murders will be familiar to me because it involves the homicide of Jimmy Limoli. Early in the Mafia cases, I severed the trial of Pasquale Barone from his co-defendants, because there was certain evidence that was improperly obtained and inadmissible against him.⁵³ He was the only defendant who went to trial, in part on the charge that he killed his best friend, Jimmy Limoli, to gain entrance into the Mafia. It took eleven weeks to try that case. Now Patriarca is entitled, in some fashion, to relitigate that murder and other issues in his sentencing hearings.
46. All of this has consequences for lawyers like you. About a month ago, I tried my first civil case in more than a year. It was a case very much like the *Data General v. Grumman* case, alleging the misappropriation of trade secrets and copyrighted materials concerning a company that manufactures CT scanners and then provides service for them. That company is in a dispute with an independent service organization that allegedly misappropriated the manufacturer's trade secrets, copyrighted materials, and diagnostic software. I presided at that bench trial for almost four weeks. I put some time aside to try to write the decision. More than thirty pages of findings of fact are written, but I do not know when I am going to get back to finishing it. That weighs on my mind and undoubtedly disappoints the litigants.
47. The United States District Court for the District of Massachusetts is trying to do something about this dilemma. We will be greatly assisted by the fact that while we only had eight judges, rather than the thirteen that we were authorized, for several years, we are now at full strength.

48. Of more enduring significance, we have adopted an Expense and Delay Reduction Plan⁵⁴ that we think is a model for the country. It involves the early involvement of judges, rather than magistrate judges, to seek means that will minimize expense and delay in civil litigation. The Plan limits discovery. It aims to give you a reliable, early trial date. In essence, it is an effort to avoid the expensive, oppressive litigation that Louis Brandeis was describing and decrying in 1913.
49. The Plan also requires that attorneys do what Brandeis apparently routinely did — consult clients up front, and realistically, about what the litigation is likely to cost. It requires that counsel seek to avoid time-consuming litigation that their client ultimately cannot afford to pursue to a conclusion.
50. We think that early assessment of cases, and discussions about costs up front, should facilitate settlement before costs get so great that a case must either be abandoned or tried in the hope of hitting a jackpot. The key to our Plan working is the automatic and immediate disclosure of relevant documents. If each side turns over the documents that are at the heart of the dispute immediately, there can be an early, informed assessment of the cost of litigation, the desirability of some form of alternative dispute resolution, and the possibility of achieving settlement.
51. For most of the civil bar in Massachusetts, this free exchange of information requires a change in the legal culture. That culture has historically been highly adversarial. The usual practice often has been to withhold what can arguably be withheld, make adversaries fight to get relevant documents, and hope that they will either get exhausted in the effort to find the smoking gun or miss it altogether. That should change.
52. Our approach, which has now been embodied in the new Federal Rules of Civil Procedure,⁵⁵ requires lawyers to act honestly and honorably, identify what is significant, and turn it over to their adversaries. This is an area where the Patent Bar can make a particular contribution. Many members of the Patent Bar are accustomed to prosecuting matters *ex parte* in the Patent Office. The Patent Bar enjoys an excellent reputation for being ethical in that endeavor and fully disclosing what should be divulged. That is what we are trying to promote with regard to civil litigation generally.
53. So the civil bar in this community and throughout the country has something important that it can learn from the Patent Bar. I hope you will interact with other

members of the bar; that you will teach each other; and that members of the Patent Bar will advocate the interests of all civil litigants and litigators with regard to the criminal law and other issues that are so vital to the future of the federal courts as we have known them.

54. In conclusion, as I reflected even further on spending this evening with members of the Patent Bar, I knew I would be especially happy to be among you for this is a group that is uncommonly qualified to educate the rest of the bar to the enduring wisdom of what Justice Holmes wrote to my friend and former colleague, Charles E. Wyzanski, Jr., when the future district judge was graduating from Harvard College. The young man wrote to Justice Holmes seeking advice as to whether he ought to go on to law school. Justice Holmes responded, in part, by expressing a view that many of you understand and, indeed, personify. The Justice wrote:

However a man feels about his work nature is likely to see to it that his business becomes his master and an end in itself, so that he may find that he has been a martyr under the illusion of self-seeking. But we rank men partly at least by the nature of their dominant interests, and we think more highly of those who are conscious of ulterior ends — be those ends intellectual ideals, to see the universal in the particular, or the sympathetic wish to help their kind. For your sake, I hope that when your work seems to present only mean details you may realize that every detail has the mystery of the universe behind it and may keep up your heart with an undying faith.⁵⁶

ENDNOTES

- ¹ L. Fouts, Jefferson The Inventor And His Relation To The Patent System, 4 J. PAT. OFF. SOC'Y 316 (1922).
² *Id.*
³ *Id.* at 317-18.
⁴ *Id.* at 317.
⁵ *Id.* at 328.
⁶ *Id.* at 317.
⁷ *Id.* at 322.
⁸ *Id.* at 323.

⁹ *Id.* at 324.

¹⁰ *Id.*

¹¹ *Id.* at 325.

¹² J. FRANK, *LINCOLN AS A LAWYER* 177 (1991).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ ABRAHAM LINCOLN: *SPEECHES AND WRITINGS 1859-1865*, at 3 (D. Fehrenbacher ed. 1989).

¹⁹ *Id.* at 8-9.

²⁰ *Id.* at 11.

²¹ *Id.* at 687 (Second Inaugural Address).

²² FRANK, *supra* note 12, at 177.

²³ *Id.*

²⁴ A. LIEF, *BRANDEIS THE PERSONAL HISTORY OF AN AMERICAN IDEAL* 243 (1936).

²⁵ *Id.* at 243-44.

²⁶ *Id.*

²⁷ A. MASON, *BRANDEIS A FREE MAN'S LIFE* 215 (1946).

²⁸ *Id.*

²⁹ *Id.* at 216.

³⁰ *Id.* at 221-22.

³¹ *Id.* at 221.

³² *Id.* at 224.

³³ *Id.*

³⁴ *Data General Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147 (1st Cir. 1994).

³⁵ LIEF, *supra* note 24, at 245-46.

- ³⁶ U.S. CONST. AMEND. IV.
- ³⁷ *Berger v. New York*, 388 U.S. 41, 58 (1967).
- ³⁸ 18 U.S.C. § 2518(11).
- ³⁹ 18 U.S.C. § 2518(11)(a).
- ⁴⁰ 18 U.S.C. § 2518(11)(b).
- ⁴¹ *Olmstead v. United States*, 277 U.S. 438 (1928).
- ⁴² *United States v. Ferrara*, 771 F. Supp. 1266 (D. Mass. 1991).
- ⁴³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).
- ⁴⁴ *Id.* at §§ 140001-140008.
- ⁴⁵ *Id.* at §§ 40001-40703.
- ⁴⁶ *Id.* at § 190001.
- ⁴⁷ *Id.* at § 190001(a).
- ⁴⁸ 18 U.S.C. § 3553.
- ⁴⁹ Unpublished Memorandum from Probation Officer Francesca Bowman to Judge Mark L. Wolf (Nov. 14, 1994).
- ⁵⁰ *United States Sentencing Commission Annual Report*, 69 (1993).
- ⁵¹ *United States v. Patriarca*, 807 F. Supp. 165 (D. Mass. 1992).
- ⁵² *United States v. Carrozza*, 4 F.3d 70 (1st Cir. 1993).
- ⁵³ *United States v. Barone*, 1991 WL 353883 (D. Mass. Aug. 21, 1991), *aff'd*, 968 F.2d 1378 (1st Cir. 1992).
- ⁵⁴ Civil Justice Expense and Delay Reduction Plan (adopted Nov. 18, 1991).
- ⁵⁵ Fed. R. Civ. P. 26(a)(1)(B).
- ⁵⁶ C. WYZANSKI, JR., *WHEREAS — A JUDGE’S PREMISES* 289-90 (1965).