

## *At the Start: Learning the Ropes*

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### **Body**

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I was elected to the Civil Court in November 1981 and took office in January 1982 and quickly became acquainted with my colleagues elected that same year from Manhattan-Harold Tompkins and Karla Moskowitz. Harold had been elected from the 6th Municipal Court District, adjacent to the 9th Municipal Court District from which I was elected. Even though the Civil Court was consolidated from the various Municipal Courts in the 1960's by statute, judges were still elected from the old Municipal Court districts that actually housed separate district courthouses in days past.

Harold was a well-dressed, handsome man, formerly an Assistant Attorney General under the fabled Louie Lefkowitz and married to a wealthy, Jewish socialite, (Frances) originally from West Virginia who actually hired a decorator to fix up Harold's chambers at the Civil Court building at 111 Centre Street. When it was completed, it was a thing of beauty with leather inlays in abundance, a beautiful rug and a soft, comfortable couch with matching chairs that stood in stark comparison to the court-issued furniture that adorned my chambers. Harold and I became friends or at least as friendly as those placed in competition could be.

My other colleague, Karla Moskowitz came out of the Village Independent Democratic ("VID") Club, a reform club that had been at the forefront of deposing then Tammany Hall Boss Carmine DeSapio. Karla had been elected to a countywide Civil Court seat without opposition. Both Harold and I were involved in brutal Democratic primaries in order to obtain the Democratic banner which in New York County (Manhattan) was usually tantamount to victory.

Around this time, the Civil Court in New York County was home to a number of what I would term activist judges brimming with the ambition of incorporating their views of social justice into the prevailing and often constrained dogmas of the common law.

Many of these judges had matured during the frenetic period of anti-Vietnam war demonstrations, the Civil Rights movement of the 1960's and the growing feminist movement. Many of them had previous careers in legal service organizations and some of them had been affiliated with so-called reform Democratic political clubs on the West Side of Manhattan and Greenwich Village that began to dot the political landscape during the 1960's as an antidote to the old Tammany-style political organization that had ruled Manhattan politics.

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Some of my new colleagues, aside from Karla and Harold, in no particular order were Stanley Sklar, Kristen Booth Glen, Elliot Wilk, Carol Arber, Budd Goodman, Diane Lebedeff, Emily Jane Goodman, Lester Evans, Margaret Taylor, Ira Gammerman (he and Margaret were married), Shirley Fingerhood, Helen Freedman and a few others that I can't remember at this moment. Many of them carried a view of society that by today's terms would render them progressive; a few might even be considered woke!

There was also a sizeable group of judges on the Civil Court who were not comfortable with the progressive wing of jurists. They came mostly from the Lower East Side and Harlem. But the progressive group got the most attention and made the most noise.

Although many had distinctive personalities and were intellectual achievers, two from this group stand out in my memory. Kristin ("Kris") Glenn was a brilliant, dazzling blond superstar who often wore a violet-colored robe on the bench where she showcased flowers in a vase. She was instrumental in developing Article 81 of the Mental Hygiene Law which modernized the law of personal and property guardianships. Had the Republicans not taken over the statehouse in Albany under Governor George Pataki, I have no doubt that Kris would have wound up at least on the Appellate Division, First Department or perhaps the Court of Appeals but she must have been persona non grata to Governor Pataki. Instead, she took a detour from the court system to become Dean of CUNY Law School and later returned to the court system as a Surrogate in New York County.

Judge Ira Gammerman, also a brilliant jurist was the other. He was a masterful trial judge who often helped the parties present their case with his incisive questioning and participation. He had been a successful trial lawyer himself and had the ability to isolate the crucial points of a case.

Of course, some lawyers resented his "participation" saying he abused his role as a neutral judge. On balance, I think the criticism was largely undeserved because Ira didn't allow lawyers to muddy the record with time-consuming irrelevances. Ira always called me "kid." When I was later on designated to the Appellate Division, First Department, he was one of the first to call to congratulate me and said, "Don't forget, whatever you do up there, don't stay me."

Ira and Kris were already doing Supreme Court work so weren't really around to hear the hectoring of the two Landlord-Tenant stalwarts, Margaret Taylor and Lester Evans. Civil Court was all about landlord-tenant practice and the judicial ringleaders who promoted a decidedly pro-tenant, anti-landlord advocacy were Taylor and Evans. Many other judges quietly but obediently followed, some out of similar convictions, some out of trepidation about being confronted at lunch or at a public meeting by the sharp tongues of those two.

Margaret was very aggressive in initially finding out where a judge stood on the important landlord-tenant issues of the day and she could make life difficult for the "offending" judge. For example, she declared war on Charlie Ramos, a decidedly conservative but down-the-middle Civil Court colleague, whose family had escaped Castro's Cuba. Regarding Margaret's increasing war against Charlie was her attempt to pigeon-hole Charles as being Jewish since that would make his possible Supreme Court ascension more difficult as he would be thrown into competition with a bunch of Jewish colleagues including myself, Justice Louis Friedman and Harold Tompkins. As a Latino candidate, Charlie was all alone with no competitors. He was forced to pen a public response to Margaret's "calumny" denying her allegations but publicly exclaiming his great respect for the Jewish Community.

Lester Evans, admittedly a scholar of the intricacies of Landlord-Tenant law was despised by landlords and their attorneys generally. I had appeared before him as an attorney on a number of occasions and although he was possessed of an encyclopedic knowledge of Housing Law, he had no equal in being demeaning and sarcastic to lawyers representing what he apparently thought was the wrong side in L&T litigation.

I particularly remember one of my very first cases sent to me for trial involved as the respondent-tenant Judge Evans himself who was being sued for back rent by his landlord. If I remember correctly his defense had something to do with what he claimed was the landlord's interference with his possession of a bicycle in his apartment. Normally, a rent case such as this one would be easy to settle but because the owner hated Evans with such a passion, it took Herculean efforts on my part to convince the owner's attorneys, who would have had to appear

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before me frequently in the future, that I was not going to preside in my first L&T trial over the eviction of one of my colleagues.

Margaret Taylor's question put to new judges-a policy question, was whether you would hold inquest hearings on non-payment proceeding defaults or simply issue a final judgment of possession based upon the default, from which a warrant of eviction would issue. Many of my colleagues would hold inquest hearings following the tenant's default on the original date when the tenants' appearance was required in the cavernous Landlord-Tenant Courtroom.

At those inquest hearings, the landlord was required to produce its process server to demonstrate that the process was actually served on the tenant rather than simply tossed away, an illegal event termed "sewer service." The landlord was also put to the test of proving that all predicate notices were compiled with.

It was hard to fault the good intentions of these colleagues-in fact, it was a laudable goal. However, the judges who were involved with this inquest procedure found that it was taking up the great bulk of their court time to the detriment of other assignments. I demurred from invoking this inquest procedure along with a sizable group of other Civil Court Judges. I felt that a great many of the problems that my colleagues were trying to address would be solved when the tenant received the mandatory three (3) day notice of eviction prior to the Marshall taking any action and would quickly return to court to obtain a pro se order to show cause with a restraint on eviction until the underlying issues involving non-payment of rent were solved as they usually were, by a stipulation of settlement permitting the payment of rent arrears over an extended period of time. If you were a member of this faction, Margaret Taylor, Lester Evans and a few others considered you an enemy of the state.

I was not one of those judges caught up in this warfare. It was no secret that these pro-tenant, colleagues of mine, had emerged from the left-leaning New York County Democratic Party-Screening Panels, created and largely influenced by political activists like, for example, lawyers Victor Kovner, Stanley Geller and other West Side judicial reform-activists like Jerry Koenig and Mary Geisman.

Around the courthouse, Kovner (always referred to as just Victor) was seen as a bit of a demi-god due to his perceived ability at judge-making. He was on his way toward becoming a noted First Amendment litigator and I remember his sonorous voice and ten-gallon cowboy hat that set him apart. A politically centrist candidate like me and other like candidates had little chance of being recommended as a prospective judicial candidate for Civil Court from these ideological screening committees.

Most of the Manhattan Democratic Clubs signed on to only supporting candidates who had been successfully screened from these reform screening panels. Areas excepted were Harlem and the Lower East Side especially, where the stronger political clubs were unwilling to give up judge-making to these left-leaning reformers. My story of how I avoided the sting of panel rejection and became a Civil Court judge will be told in another essay.

But, I was clearly not part of this entourage as I got started on my judicial career, while the bench on which I was a member became increasingly activist and left-leaning. Elliot Wilk, a very bright and committed judge was reported to have hung a picture of Che Guevarra, the Cuban revolutionary in his chambers, for example.

In my opinion, the thought that a judge's job was to apply the law as it then existed, especially the law relating to landlord-tenant matters, was often the furthest thing from the minds of some of these activist judges.

My colleagues soon learned where I stood and when my decisions-some of which actually favored the property owner, began to appear in the New York Law Journal, I became a bit of an outlier in the 12th floor lunchroom. Two incidents. Once Margaret Taylor called me out one day as the "David Stockman of the Civil Court," Stockman being a conservative Regan policy wonk, widely considered at the time as a brilliant member of Reagan's inner circle. This was, and I took it as such, a back-handed compliment.

The second was a bit more interesting. One day at lunch, the discussion turned to some issue connected to the National Lawyers Guild, a left-leaning lawyers organization. Anyway, as I was listening to the friendly back and forth chatter of the discussion led by Guild member Shirley Fingerhood, I chimed in (probably in what, of course, was an

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effort to restore or even gain some liberal cred), "Shirley, you might not know this but my twin-first cousins, Jonathan and David Lubell, were among the founders of the National Lawyer Guild." In fact, Jonathan and David had also been kicked off of the Harvard Law Review (later restored) for alleged Communist ties during the McCarthy era. Shirley, as well as other of her comrades in this discussion were aghast at my disclosure of the familial relationship. But then, Shirley, sufficiently recovered and looking at me, with no apparent love from across the lunchroom table, said in a loud, clear voice, "David, you couldn't possibly be related to Jonathan and David Lubell."

But mostly the lunchroom buzzed with gossip pertaining to such and such a judge. It was rare to hear a discussion about some case or some legal principle. The room that housed the lunchroom on the 12th floor of the Civil Court building had a long rectangular table. There were no assigned seats but most judges sat in the same seat anyway. Ira Gammerman collected money from everyone and did the buying of the produce at the Jefferson Market in Greenwich Village. Generally, everyone got along. John Bradley who was an Acting Supreme Court Justice in the Criminal Term would always sit at the head of the table. He was short, bright and articulate, had a British accent and had a short fuse. One other member of the lunchroom crowd, Jack Dubinsky, a Housing Court Judge whose wife Rose was an influential District Leader, was one of those judges who constantly irritated Bradley and some others by engaging in long digressions about some boring Housing Court irrelevancy. When that happened, Bradley would start muttering to himself and snapping pencils that he always seemed to have available.

There was another judge, Richard Lane, who would help himself to large portions of the available food, especially when it was running low and others would be left with nothing when they entered the lunchroom. He seemed to always be the first one in the lunchroom by design, I think, in order to get a first shot at the available food. All of this would earn a sharp rebuke from Ira Gammerman, the steward of the lunchroom, but to no effect.

Lunchrooms at courthouses serve a very useful purpose. Being a judge is actually quite a lonely, isolated job. Most of the time-when you are on trial, you are perched on the bench in a black robe, alone, with various members of your staff, your clerk, court officers and other court personnel flitting around you; its judge this and judge that. The attorneys are even more obsequious-Your Honor, may it please the court and other fawning efforts. (See, Saxe, "Flummery," *New York Law Journal*, Oct. 3, 1989.) It's no small wonder that many of the judges are drawn to a communal lunchroom where, despite ideological differences, there is what passes as a normal community if only for an hour or so. There is a distinct isolation in the job. Even when you are not on trial, you are back in chambers working on some decision, probably alone with only your law clerk. The lunchroom offers a sense of normalcy. (See, generally, Saxe, "Strained Relationships Fade When Judges Break Bread," *New York Law Journal*, Aug. 21, 2019.)

During our first week on the bench, Harold, Karla and I were assigned to sit with certain veteran judges and learn their trade in order to get the lay of the land before we were sent out to preside on our own. That's really a pretty good idea if there was any value attached to the assignment.

First, I sat with Civil Court Judge Guy Ribaldo, an old-time Tammany Hall Democratic war horse who had been on the bench for years. He was presiding over a Landlord-Tenant Part that was one of the busiest parts in the courthouse. Many tenants appeared there *pro se*, that is without a lawyer and often didn't have the money to pay the rent. Judge Ribaldo was only too happy to sign the final judgment of eviction in favor of the landlord without making much of an inquiry into the merits of the landlord's case or if the tenant had any defenses to assert. While he was plowing through a stack of final judgment papers, on which he had to place his initials-on which a clerk would place his official court stamp, he turned to me (as I was sitting right next to him on the bench) and proudly said "Look, all you really need to know is how to quickly initial these pages. That's it; make sure you practice doing your initials." And that's what I learned from Judge Ribaldo.

Then, I was given the opportunity to sit next to Judge Bruce Wright (sometimes referred to as "Turn 'em loose Bruce" by local newspapers for his bail decisions) who was presiding in a Tort Calendar Part with a huge inventory of personal injury and medical malpractice cases that had been bounced down from Supreme Court to Civil Court pursuant a transfer mechanism set out in [CPLR 325\(d\)](#). He had been pushed out of his Criminal Term assignment as a result of those bail decisions.

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The purposes of my assignment there was to observe and learn from Judge Wright about how to settle a case. But, as I sat there and while he politely greeted each set of attorneys as their case was called, he made no effort to try to twist any arms to bring the sides together toward a settlement. I was surprised. From my prior experience as a lawyer, I knew that settlements were the life-blood of the legal system. Without settlements, the court system would implode. On the criminal side they were called plea bargains. There were simply not enough judges to try all the existing cases and settlements also provided a safety-valve for litigants and counsel and the court system.

So, I asked Judge Wright, "I'm surprised that you are not even trying to settle any of these cases. Is there a reason?" "Oh, yes," he said matter-of-factly. "I think the entire process of settlement is coercive and I refuse to participate in it." Of course, it's coercive I thought to myself but the lawyers in court expected it as a normal incident of litigation. Judge Wright was completely off base I thought.

And so with these two sparkling talents having imparted to me their wisdom, I knew it was time for me to get in front of the firing line.

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