

My First Experience as a Judge in Special Term, Part I

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Body

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I wrote recently of becoming a full-fledged Acting Supreme Court Justice with my own Supreme Court Part. That was officially on or about January 3, 1986 with the introduction of the IAS system when I was assigned to a "City" Part devoted to hearing Supreme Court personal injury cases brought against the City of New York and also the Transit Authority.

But, before that time, there were other chances to obtain Supreme Court assignments while still sitting in the Civil Court. What I am referring to are what we liked to call "pop-up" parts under which a Civil Court Judge would be assigned to preside over a single trial as an Acting Supreme Court Justice with pay equalization for every day you served. Sometime the trial lasted only a day or two; other times it settled quickly under threat of a trial and sometimes but not frequently a pop-up part would contain a trial that could last for weeks. I got my share of them and tried a number of interesting cases including a products liability trial with top-tier nationally recognized trial lawyers.

There was, however, one missing assignment that I was often thinking about and that I coveted—that was the opportunity to preside at Special Term Part I of the Supreme Court, New York County in its cavernous courtroom at 60 Centre Street. "Special I," as lawyers referred to it was the home of pre-trial litigated motions of all types—such as motion to dismiss, motions for summary judgment, injunctions and application for declaratory judgments.

When I was a young lawyer, I often appeared in Special I to answer the calendar for one of my firm's cases, often sitting on the hard wooden benches as the clerk droned on through the hundreds of cases on the calendar that morning hoping that my mouth didn't dry up when our case was reached and trying to make sure that I didn't screw up on my instructions concerning the argot that I needed to bark out—"Application," Ready For," "Ready and Passed," "Submit," or "Second Call" and others now too deeply imbedded in my memory.

Judges were assigned to Special I for a week at a time with a large gap of time between assignments because of the huge number of submitted motions a judge might receive during a one-week assignment. And certain judges—considered the "better" judges on the court were likely to receive an enhanced number of submissions—judges such as Justices Martin Stecher and Martin Evans because savvy lawyers would try to steer motions to them.

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Given my history of having been a lawyer in Special I and now that I was a judge, albeit not yet a Supreme Court Justice or even a full-time Acting Supreme Court Justice, I still daydreamed about the chances of presiding in Special I. I did more than daydream. I regularly badgered the then Chief Clerk of the Supreme Court, New York County's Civil Term, Jonathan Lippman about being slotted into a vacancy if one ever happened to occur.

One morning in the autumn of 1982, I arrived at my Civil Court Chambers at 111 Centre Street at about 8:00 a.m. or so. It was quiet at that hour-the hum of court business had not yet begun. I sat at my desk leafing through that day's New York Law Journal with a container of coffee and the best egg sandwich in the world that I had purchased from a guy named Danny who operated the hole-in-the-wall outlet on Walker Street that catered to truckers, lawyers, judges and neighborhood characters.

Suddenly the phone rang and at the other end was Chief Clerk-not yet Chief Judge Lippman. "Hey Kid, (he liked to call people he felt close to, "Kid") looks like you're going to get your wish sooner than you expected. Judge Stecher, who is sitting in Special I this week called in this morning and he is under the weather. I'm designating you to take his place today. Get over here as soon as possible." About ten minutes later my law clerk, Kathy Kass arrived and I told her the news. Together we started out for 60 Centre Street-my robe in tow. I could feel the anxiety beginning to well-up in me. When we arrived at 60 Centre, a court officer directed us to the back entrance to the courtroom where the Clerk of the Part, his assistant and two court officers were attending to their business.

I introduced myself but they seemed none too friendly or interested. Kathy and I sat down at a table nearby to observe the preparation for that day's calendar. Five minutes later, Lippman came through the back door followed by the three law assistants who had been assigned to work with Justice Stecher that week on submitted motions. "Don't screw up," were Lippman's encouraging words to me as he departed the back room.

The clock was moving to the 9:30 a.m. hour and one of the court officers looked over to me and said in a rather sour tone, "Are you ready?" "As ready as I'm ever going to be," I replied. And with that I rose from my chair and allowed the court officer to help me on with my robe.

Now, I was directed by the Court Officer to a position just behind the door that separated the back room from the courtroom. "It's time Your Honor" and with that, he glided in front of me, opening the door with a loud banging sound and intoned "All rise, Special Term Part I of the Supreme Court, New York County is now in session, the Honorable David B. Saxe, Presiding." I quickly made my way to the large leather chain on the bench and sat. "Be seated," the officer intoned; "put all newspapers away."

I looked out at this huge courtroom packed with all the lawyers who had come to attend to their business. I could feel a rustle from the lawyers, especially from those who probably had not heard my name when I was banged in. "Who's he," I imagined some lawyer saying. He doesn't look like Stecher."

There really wasn't much for me to do as the calendar progressed from the first to the second calendar call. The application part was easy dealing, with adjournments for the most part and then I had a 10-minute break to quickly go over a few of the motions that had asked for argument. My nervousness had substantially subsided and during the argument of one motion, I was confident enough to ask a bunch of probing questions.

What really excited me however, was the number of juicy summary judgment motions submitted that day. That was going to keep us busy for a while, I thought. But that didn't concern me at all. I had always wanted to be a judge so I could write the law. Now, I was really going to have that opportunity.

David B. Saxe , a partner at Morrison Cohen, served on the New York State Judiciary for 36 years, the last 19 years as an Associate Justice of the Appellate Division, First Department. This essay will appear in a forthcoming book, "My Life as a Judge." Any views expressed herein are solely those of the author.

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