

On Becoming an Acting Supreme Court Justice

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Body

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In the beginning, and actually for the first four years as a Civil Court Judge, sitting in New York County, I found the work absorbing and interesting - especially landlord-tenant litigation, both residential and commercial, believe it or not. There were many interesting legal issues presented that gave me an opportunity to write the law, which I loved to do. I also loved presiding in Small Claims Court and hearing some of the whackiest cases imaginable. I enjoyed the camaraderie especially with the Chief Clerk, Joe Gebbia and a couple of lawyers who regularly appeared at night to represent certain institutional defendants. After our court business was finished, we would frequently head to Chinatown and discuss whatever came across the transom that evening over a sumptuous meal.

But, after a while like some of my colleagues, I wanted to play in the "big leagues" - the Supreme Court, New York's trial court. The path available was to be elected to the State Supreme Court, a process both complex and time-consuming, having to attend many dinners and events at political clubs around Manhattan and getting to know the important political leaders who held sway at the annual judicial convention at which Supreme Court nominations were made. It usually was a long, drawn-out effort but at the end if you were successful, you were rewarded with the coveted position of becoming a Justice of the New York State Supreme Court and the JSC license plates that went with it.

Along the way, there was a sort of intermediate position or status that was available to Civil Court and Criminal Court Judges. It was to become an Acting Supreme Court Justice along with a pay equalization to that of an elected Supreme Court Justice. The work load of the courts had been increasing exponentially but the number of elected Supreme Court Justices available to hear the enlarged calendars of cases remained the same by statute. The administrators at the Office of Court Administration came up with a plan to elevate lower court judges to an Acting Supreme Court status and assign them to Parts that contained only Supreme Court cases. All of us-that is lower court judges, jumped at the opportunity. Committees were set up to screen us-to see if we were ready for prime time. One such committee was chaired by Dean Jerome Prince of Brooklyn Law School. I applied and was cleared; local bar associations screened us as well. But to get the nod, you often needed to have a little juice with someone in the upper levels of the court administration. I was told it might be helpful to get the assistance of the Presiding Justice of the Appellate Division, First Department, the Department, from which I was elected.

I called Presiding Justice "Tim" Murphy's Chambers at the Appellate Division, First Department but was told by his secretary that Justice Murphy didn't get involved in such matters. Justice Murphy came to the bench at an early age

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since he was the scion of a powerful Bronx Democratic political family. He served along side many of the pre-eminent, razor-sharp appellate judges of that time, Leonard Sandler, Arnold Fein and Joe Sullivan.

Permit me a diversion at this point from the principal thrust of this story. Mentioning Judge Leonard Sandler evokes a host of memories for me. He was a model judge, brilliant, a great writer and a very thoughtful, kind man. When he was a Civil Court Judge and developing the warranty of habitability as a legal doctrine, I was a law clerk to one of his colleagues on the Civil Court bench. I remember occasions being in his chambers visiting his law clerk and Judge Sandler would engage the two of us in serious discussions about the scope and applicability of the warranty of habitability for I suppose a case he was writing.

It was a heady experience for a young law clerk to be recognized in that way. It is likely that if Mayor Ed Koch had beaten Mario Cuomo for the Democratic nomination for Governor in 1982, Leonard Sandler, then an Associate Justice of the Appellate Division, First Department would have been the odds-on favorite to become Chief Judge of the Court of Appeals and Justice Stanley Sklar of the New York State Supreme Court in Manhattan would likely have been designated as an Associate Justice of the Appellate Division, First Department. Both Sander and Sklar had been long-time members of the powerful Village Independent Democratic Club (the "VID") where Koch had gotten his political start. But Cuomo won and the politics became otherwise.

Anyway, being a bit despondent, I remember a week or so later having lunch with a friend who had political tentacles. He suggested that I try to reach out to Presiding Justice Milton Mollen of the Appellate Division, Second Department "Why would he be interested in me," I asked my friend, "I'm not from the Second Department." "I know," he said, "but Judge Mollen has a strong interest in elevating the Judiciary and I think you're the kind of judge he would like. And anyway, what do you have to lose?"

I called Judge Mollen's Chambers, introduced myself and my problem to his secretary. She was very friendly and said the Judge would get back to me and a day or so later, she called and invited me to meet Judge Mollen, at his chambers on Monroe Place in Brooklyn. I took the train to Brooklyn and had a delightful meeting with him. He even had pulled 2 or 3 of my decisions and questioned me about them. He was central casting for a judge-silver hair against a tanned complexion; he had a warm smile, a commanding presence and seemed to know everything about the law. Whatever nervousness I felt at the outset of our meeting was quickly dissipated. At the end of the meeting Judge Mollen said he would put a word in for me but couldn't promise more than that. I thanked him and left.

Not more than two months later, I received a letter from, I think, either Chief Judge Sol Wachtler or Judge Joseph Bellacosa, then one of the top administrative judges congratulating me on my designation as an Acting Supreme Court Justice.

I was now ready to handle a dedicated Supreme Court Part and with the introduction of Chief Judge Wachtler's important innovation - the Individual Assignment System ("IAS"), I was appointed, beginning January 3, 1986, to preside over what was called a "City" Part dedicated to personal injury claims brought against the City of New York and the Transit Authority.

Now that I had moved into the world of being an Acting Supreme Court Justice and had left the somewhat constricted jurisdiction connected to the Civil Court behind, it was time to get rid of the "Acting."

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