



CROWN HEIGHTS RIOT

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DEATH THREATS

PETER GOTTI

DEATH PENALTY

TERRORISM

# DISROBED

*An Inside Look at the Life and Work  
of a Federal Trial Judge*

FREDERIC BLOCK

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## *An Inside Look at the Life and Work of a Federal Trial Judge*

by Frederic Block



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*To Betsy*

## PREFACE

This collection of reminiscences is enthralling. It will be diverting for lawyers and judges. It will be useful to youngsters trying to decide whether to go to law school. And it will be particularly educational and entertaining to laypersons for whom law is somewhat of a mystery. The author tells it all with an easy humor, flowing style, and a sophistication that makes this volume one of the most enjoyable memoirs of a sitting judge. All—whether professional or not—will share gratitude to Judge Block for revealing himself in this book.

On one wall of our judges' conference room in the federal courthouse in Brooklyn, there is a large copy of the last photograph taken of President Abraham Lincoln. On the facing wall are reproductions of the English Magna Carta of 1215, the Bill of Rights of our own Constitution, enacted as 10 amendments on December 15, 1791, and the Universal Declaration of Human Rights adopted by the United Nations on December 10, 1948. Together they symbolize our continuing struggle for liberty, justice, and equal opportunity for all. Many of the cases Judge Block describes in this book from his private practice and judicial career are protective of those rights.

Lincoln has particular salience to the three dozen judges and magistrate judges of the court on which Judge Block sits, for our Civil War president epitomized the ability of Americans without connections to the mighty or governing elites to rise through entry into the legal profession. They can use their keen intelligence, professional skills, and self-discipline to achieve recognition and to help the nation. Fred Block followed this route to become a federal district judge. Although, like all of us lesser mortals, he scaled heights less daunting than did Lincoln, his accomplishments are significant and admirable.

As a federal judge, the author of this volume was appointed pursuant to Article III of the United States Constitution by the President of the United States and was confirmed by the United States Senate. The term is for life, with removal only by impeachment and conviction, requiring concurrence of the United States House of Representatives and the Senate. Federal judges have independence, power, and responsibility not exceeded by any judiciary in the world.

In his charming and instructive recollections, Judge Block starts with his origins. He attended a first-rate law school—Cornell—graduating in 1959 with honors, having made friends of faculty and fellow students.

Like many future judges, he was employed first as a law clerk to judges. He served in their chambers for a few years and acquired a sense of the mechanics of judging and of the high morale, industry, and ethics of our trial and appellate bench.

Eschewing big firm practice in New York, Fred started his professional life in a small law firm in the then-sparsely populated rural regions of Suffolk County on the east end of Long Island. There he swiftly built his own successful practice. It is amazing that as a neophyte he almost immediately challenged Suffolk County's system of local government as violative of the newly recognized constitutional requirement of "one person, one vote." As a result of the constitutional litigations he prosecuted—all the way to the Supreme Court of the United States—Suffolk County's local governments had to be reorganized to make them more representative and democratic.

He sued on behalf of the badly underpaid New York State Family Court judges, obtaining significant salary increases and back pay for them. That made him a hero to the state judiciary. It also provided him with substantial fees that began to make him financially secure. Other famous cases followed, as the author informs us in his spirited retelling.

He was head of the powerful Suffolk County Bar Association. His voice as a leading representative of the legal profession was heard throughout the state.

Having already developed this distinguished record, Fred became a federal judge on his merits, but with a little nudging on his part of those who had the power to influence his selection. He was nominated by President Clinton on the recommendation of Senator Moynihan and quickly confirmed by the Senate.

Almost immediately, he was recognized as a learned, fair, and adept judge who sped the cases before him to resolution. As the *Wall Street Journal* noted in 2008, in commenting on his handling of a complex securities fraud case, he "views the people who come before him . . . like human beings first." Moreover, the Almanac of the Federal Judiciary reports:

Lawyers interviewed said Block is a good, experienced judge. "He has excellent legal ability. He is very, very, very good. No question about that."

“He is a good judge.” “He is very smart.” “He is very shrewd. He gets to the heart of things quickly. He writes beautiful and careful opinions. He was a real trial lawyer. He actually tried cases. He has a wonderful feel for juries.” “The thing that he brings to the bench is that he was a practitioner with a diverse practice.” “He has a practical approach. He is good at honing in on the central issue.” “He is very scholarly. He is very knowledgeable.” . . . “He is a wonderful person to try cases before. He understands the dynamics of trial.” . . . “He is fair.” “He is evenhanded.”

The job of being a trial judge in the federal court is to serve as the human face of the law—to see and deal with the real people, in all of their enormous diversity. Presented to the judge is a unique window on the world, particularly in the Eastern District of New York, covering Brooklyn, Queens, Staten Island, and all of Long Island, with its heterogeneous population.

Sentencing in such a court presents particular problems in criminal cases since judges must protect the public without being unnecessarily cruel. Judge Block explains the theory of sentencing, the issues of mandatory minimums, capital punishment, and guideline sentencing in direct and clear prose. He is a strong, but compassionate, judge.

Some of the exotica of federal judgeships are described, such as the role of senior judges, who theoretically retire, but can carry full caseloads (as Judge Block does), and of trial judges sitting on appellate courts throughout the nation (as Judge Block also does).

Particularly interesting is Judge Block’s account of how the federal courts train their new judges. One of the great advantages of the federal system is that judges come to the bench after they have made their mark in practice, government, or academia. By then, they are not likely to be intimidated by anyone. Unlike many civil law countries, where law graduates are immediately assigned to the judiciary track without practice outside of the courts, our system sometimes produces judges with little judicial experience except, as in Judge Block’s case, through service as a law clerk. Federal judges’ schools, seminars, and constant training sessions and discussions with colleagues quickly led to Judge Block’s learning of the trade.

There is no need to describe here Judge Block’s many ‘Big Cases.’ The author’s description of them is fascinating. Each one presents enough drama for a novel. The tales are related with style and insight.

I would be remiss were I not to point out how engaging Fred is as a companion and colleague. His conversation is captivating; he has the knack for preventing acrimony at conferences; and in tête-à-têtes, he is

entrancing. The careful reader of this classic will, I think, come to those conclusions even if he or she has not met the judge face-to-face.

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January 2, 2012

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# Introduction

Ed Korman, my judicial colleague on the federal district court in Brooklyn for the past 17 years, raised his right eyebrow as I told him about the book I was planning to write. “Alright, if you must really do this,” he said, “at least don’t put me in it.”

Obviously, I did not listen to him. My occasional contrarian nature made me do it—and as long as I was going to, I thought that I might as well go all out and start the book with his name. Knowing me as well as he does, he probably knew that I would do this. We are the best of friends, and he is a wonderful judge.

Judge Korman and I cherish the independence of the judiciary and its judges, and we pride ourselves on not always agreeing with each other. One of the things that we disagree about is to what extent judges should talk publicly about what they do. Judge Korman is of the “judicial lockjaw” school—advocating a form of self-censorship that curtails judges from speaking about the judicial process and from pursuing extrajudicial activities. As one commentator, Leslie Dubeck, has explained in a provocative article that she wrote for the New York University Law Review, *Understanding ‘Judicial Lockjaw’: The Debate Over Extrajudicial Activity*:

[a]lthough constitutional and statutory law do not mandate such censorship, factors such as peer pressure and judicial culture, fear of negative public reaction, and the judge’s conception of his or her responsibility in a constitutional democracy, contribute to judicial lockjaw.

Most judges, like Judge Korman, believe that judges should only communicate in academic fora, through the formal media of written opinions and official rulings from the bench. I do not subscribe to this. I share the thoughts of those, such as Robert F. Copple, who

wrote in his excellent article in the Denver University Law Review, *From the Cloister to the Street: Judicial Ethics and Public Expression*, that:

[b]ecause of the importance of law in modern society, the public needs reliable and understandable sources of information concerning our legal system. Without such information, the public cannot accurately scrutinize the legal process and correct its abuses. Unfortunately, many citizens possess simplistic insights into the workings of our legal system.

Nowhere is this more apparent than in the lack of understanding by the public of what the federal trial courts actually do—let alone how someone becomes a judge of such a court.

Lesley Lorant is a case in point. Lesley is the brother of my cousin Ray Polen's girlfriend. Over coffee last September when Lesley was visiting his sister, I told him that I was writing a nonacademic book about my life and work as a federal trial judge. He asked me a few questions which reaffirmed my belief that this was a worthwhile project. Lesley had recently retired from a long and distinguished career as an IBM executive and was now the general manager of a real estate investment firm. However, he did not have a clue as to how one becomes a federal district court judge, and he had no sense of the differences between the state and federal courts. He asked me a bunch of questions which made me realize that even well-educated people are basically in the dark about what we federal trial judges actually do. For example, he wondered whether I handle matrimonial cases, whether I try both civil and criminal cases, when I have to retire, and how I got the job.

After I said good-bye to Lesley, I realized how important it would be for me to try my best to write a book that would be read by the general public. While there have been many books written by judges, they have hardly been bestsellers; their readership has invariably been those involved in the legal profession. Yet judges have unique insights to share with the general public about the law and the practical workings of the courts: in my case, our country's federal laws and trial courts. How, though, can a book do this in a

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way that will not bore the general reader and gather dust on library shelves?

I think that I have done it, but it has not been an easy task. I had to be mindful of the Code of Conduct for United States Judges enacted by the Judicial Conference, a policy-making organ of the federal judiciary headed by the Chief Justice of the United States. There are many provisions in the Code that put limitations on a judge's law-related, financial, fiduciary, fund-raising, civic, and charitable activities.

When it comes to what a judge may write about, the Code recognizes that “[a]s a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice.” However, a judge's writing is subject to a number of limitations. Foremost is that the judge “should not make public comment on the merits of a matter pending or impending in any court.” This prohibition does not extend, however, to “public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.” The Judicial Conference's Committee on Codes of Conduct—charged with interpreting the Code—has set forth the overarching benchmark: “In every case, the judge should avoid sensationalism and comments that may result in confusion or misunderstanding of the judicial function or detract from the dignity of the office.”

I do not think that I've crossed the ethical line, but I wonder why the same constraints do not apply to the Justices of the United States Supreme Court. The Code exempts them. Why the judges of our high court—charged with being the final arbiters of the law—should not be required to comply with the same ethical standards that all of the other federal judges are obliged to honor puzzles me.

\* \* \*

So here's how I've tried to educate and entertain the public at the same time: First, I've told my story—from childhood to the day that I was tapped by the President for the judgeship. The reader will get

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to know me and how it was that from hanging up a shingle in a semirural community 60 miles from New York City, a small-town practitioner got to be a federal district judge in the Big Apple.

Next, I write about how I broke in as a new judge, tell anecdotes about some of my judicial colleagues, explain how I deal with the juries and lawyers, go about sentencing criminals, deal with death threats, and, in general, run my court.

Finally, I talk about the cases. In chapters titled “Death,” “Racketeering,” “Guns,” “Drugs,” “Discrimination,” “Race Riots,” “Terrorism,” and “Foreign Affairs,” I meld the law with the major cases that I have handled. The reader will get to know, for example, about the death penalty in the context of the murder trial of Kenneth “Supreme” McGriff, and the Racketeering Act will come to life as I recount the trial of Peter Gotti and his Gambino family buddies—and so on.

I do not know of any book written by a federal trial judge for the general public that is at once informative, provocative, and engaging. Hopefully, this is that book.

# PART I GETTING THERE

## Chapter 1

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### Pathways

The Federal Bar Council is an elite lawyers' association headquartered in New York City. Many partners from the City's mega white-shoe law firms belong to it, and its leaders are the movers and shakers of the City's legal establishment. The first day that I showed up for work at the federal courthouse in Brooklyn as a new federal district judge, on October 31, 1994, there was, to my surprise, a piece of mail waiting for me. It was the first time that I saw the word "Honorable" in front of my name. Inside the envelope was a letter inviting me to be a guest of the Council at its annual Thanksgiving Day luncheon at the Waldorf-Astoria. I was flattered and immediately faxed my acceptance.

I soon learned, however, that I was not the only judge invited. The Federal Bar Council invites the entire New York City federal bench to this affair and places each judge at one of its big-firm tables to give the lawyers the firms select to attend an opportunity to break bread with a judge. I do not remember the law firm I sat with, but I do remember the young associate sitting next to me,

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who confessed that he never had heard of me and politely asked, "Judge Block, I assume you were a partner with one of the firms, or perhaps an Assistant United States Attorney, but how exactly did you become a federal judge?"

In between sips of red wine, I told him that I did not come from a big firm, nor was I ever a prosecutor, nor did I ever practice law in New York City. Rather, in 1961, I came to Suffolk County, which then had about as many lawyers as those who were then lunching at the Waldorf. After working for a two-member law firm for nine months, I rented a small house for \$120 a month in Port Jefferson Station and also subleased, for \$100 a month, a room in a lawyer's office next to the railroad tracks, where I hung up my shingle. I also told that young man that I was so unknown that I did not even have an enemy, let alone a friend. There was a mirror on the wall in front of my metal desk so that, as I was warned, I could sit behind the desk and watch myself slowly starve to death.

When the puzzled young lawyer asked how I got my first client, I explained that I had befriended Charlie McDermott, the owner of the luncheonette I ate at in a small shopping center near the office, and that after I had been looking at the mirror for a few days, he stopped by my office to ask whether there was anything he could do to prevent his landlord from evicting him because he was behind on his rent. At this point in my conversation with the young associate, I paused to mention that in addition to the metal desk and the mirror, there was one other special feature of my one-room office. On the wall to the right of the door as you entered the room was an old attic fan, which I covered with my law school diploma. To my chagrin, when Charlie walked through the door he turned on the attic fan switch, apparently thinking it was a light switch, and blew the diploma off the wall.

By this time the young lawyer was squirming in his chair and probably wishing that he had never spoken to me, so I quickly finished the answer to his initial question by telling him that I had practiced law in Suffolk County for 33 years, during which time I had built up my practice so that I could afford to take on a junior

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partner and a young associate, as well as hire two secretaries and a file clerk, and that all this obviously impressed Senator Daniel Patrick Moynihan enough to recommend me to the President for the judgeship.

I suspect that when my luncheon companion went home that night he must have told his wife, girlfriend, or significant other that the new judge was a little strange.

\* \* \*

So how did the outsider far removed from the Big Apple break through the big-city establishment barrier and become a federal judge? Obviously, there was more to the story than I told the young, mega-firm lawyer that day at the Waldorf.

I have no profound recollections of the first several years of my life. I was told that I was born in Brooklyn, and I do generally remember living there, going to movies on Saturday afternoons at the Avalon on Kings Highway near Ocean Parkway, listening with my father on the porch of my house on East 4th Street to Red Barber reporting on the radio that Mickey Owen dropped the infamous third strike to Tommy Heinrich, which led to the Dodgers losing the 1941 world series to the hated Yankees, and having a friend named Sherry Shapiro, a dog named Spotty, and a cat named Peggy. I also recall going to elementary school at P.S. 215 on East 3rd Street, where I was an average student.

When I was nine, my parents moved the family—me and my two older brothers, Sheldon and Leonard—to a spacious apartment in Manhattan on 77th Street near the corner of Central Park West, across the street from the Museum of Natural History. My father's mother had died giving birth to him, and he was raised by her sister, who had three sons and a daughter. They lived, like so many other Jewish people at the time, in the Lower East Side. And, true to the principal Jewish means of livelihood in that human cauldron at the turn of the 20th century, the children's father (my father's uncle by marriage) went into the garment business. Eventually, "the boys" manufactured inexpensive men's suits as Sterling Clothing

Company. My dad, as a hardworking partner with his male cousins, made a good living.

My new public school was P.S. 87, two blocks down the street, on Amsterdam Avenue, and—for inexplicable reasons—I started to get better grades. Maybe it was because I really liked “the City.” I played basketball in Central Park, Chinese handball against the side walls of the New York Historical Society, just next to my apartment, and stoopball against the imposing steps leading to the 77th Street entrance to the museum.

My parents enrolled me in Hebrew school at the Society for the Advancement of Judaism, known as the SAJ. It was the first Reconstructionist Synagogue, a kind of modern reform movement that embraced the world order. It was founded by Rabbi Mordecai Kaplan, one of the renowned theologians of the 20th century, and he had his worldwide office there. I was terrified of him the few times that I saw him. He was then in his 80s but looked to me like 100. He would deliver a sermon to the congregation once a year, on the holy day of Yom Kippur, and when he rose to speak, with his huge white beard resting on his flowing white robe, I thought he was Moses.

I was bar mitzvahed at the SAJ at the appropriate age of 13. Being immature, I would often torment my parents when I did not feel like going to Hebrew school by irreverently referring to this great place of learning as the Society Against Jews or the Society for the Advancement of Jesus.

The same year that I was bar mitzvahed, I took an entrance exam for high school. If your parents did not want to send you to private school or if you did not want to go to the local high school, Commerce High, where the tough guys would surely devour a little Jewish kid, you had better pass that exam. Depending how high you scored—if you passed—you would be sent to one of the three premier boys’ public high schools in the City: Bronx Science, Brooklyn Tech, or Stuyvesant. They have since appropriately become coed. I got into Stuyvesant, which to this day is one of the best public high schools in the country. However, I was surprised