

Allan Wolper

SURROGATE COURT HOT SEAT

Donald Klein is 32. He has a dark beard with white strands in it. He stares anxiously through wire-rimmed glasses. He's sitting in one of the hotter chairs in town and knows it.

"Everywhere I've worked, anywhere that I've worked, I've gotten there on merit," Klein told me, swiveling softly in the large third-floor cubicle of the chief clerk of Surrogate's Court in Manhattan. "You won't find me being political."

I hope not. Chief clerk is a very powerful position. The chief clerk bosses 73 other paper shufflers in the Surrogate's Court. He can be a powerful force simply by asking an underling to shuffle *this* paper instead of *that* one.

There are two Surrogate's Court judges in Manhattan — the other boroughs have just one — because the court processes an incredible \$1 million in legal fees to lawyers who practice in the court. It helps to be on good terms with the chief clerk.

Millard Midonick, the administrative judge of the Manhattan Surrogate's Court, appointed Klein acting chief clerk last September after the retirement of David L. Sheehan, a fixture in the surrogate's offices for decades. The appointment produced loud legal rumblings.

For one thing, Klein was appointed chief clerk over the chief deputy clerk, Philip Kunkis, another old-timer. For a second thing, Klein was catapulted over Donald Colonello, the law secretary to Midonick. For another thing, Klein had been in the Surrogate's Court for just two and a half years when he got the job.

So how come? Colonello and Kunkis were panting for the chief clerk's job. They submitted their resumes to the Office of Court Administration — the overall king office of the courts — with 28 other people. What did Klein have that the others didn't?

For one thing, Donald Klein is the son of Seymour Klein, a well-respected lawyer (in this case the cliché is deserved) who also happens to be well connected politically.

Klein the Lawyer

Seymour Klein is on First Department — Manhattan and The Bronx — Judicial Screening Committee. He was appointed to that job by the presiding justice of the First Department. Candidates for State Supreme Court judgeships, Court of Claims judgeships, Court of Appeals judgeships, all have to plead their case before the august leadership of the First Department Screening Committee.

The elder Klein also is a member of a special Appellate Division Committee investigating patronage in State Supreme and Surrogate Courts. (Patronage in this



Donald Klein, chief clerk of Surrogate's Court in Manhattan

case is a fancy word meaning that judge X appoints lawyer Y — a buddy — to a lucrative legal job for which said lawyer collects a big fee.)

Last week, Seymour Klein, of Klein and Linton, merged his firm with Shea, Gould (named after William Shea, a la Shea Stadium, and Milton Gould, two incredibly well connected political power brokers whose firm does a lot of Surrogate's Court work).

That's why I wanted to know whether Donald Klein had gotten his appointment as acting chief with outside help. I asked Donald whether his father had helped him get the job.

There was a pause from Donald Klein. "I was granting me an interview to ask him rotten questions and trying to figure out whether I was going to be fair. It was painful.

"My father has stayed out of my career in court," Donald Klein said. "I've always worked hard. I don't think that there is anyone who thinks that I am not qualified."

Again. Did Seymour Klein have anything to do with getting Donald Klein the acting chief clerk's job?

"No," Donald Klein replied, "maybe the first job I had I was helped by my father. When I worked in the Appellate Division [after graduating from St. John's Law School in 1972]. [The late] Judge Markewitz liked my work and asked me to work with him. Then Judge [Arnold] Fraiman asked me to be his law secretary."

Donald went to work in Surrogate's Court in February 1977 as a law assistant.

Midonick's appointment of Donald Klein has heated up a cold war in Surrogate's Court.

Midonick appointed Klein acting chief clerk while the other surrogate, Marie Lambert, was out of town. Or so she has told associates. Lambert responded by appointing a special panel to review the resumes of the 30 people beside Donald Klein who want to become the permanent chief clerk.

The Lambert panel — run by former Brooklyn Surrogate Nathan Sobel — seems to be competing with a panel of jurists, which includes Midonick, Lambert, Judge Hortense Gabel, Justice Ernst Rosenberger and Justice Jawn Sandifer. The Midonick-Lambert-Gabel-Rosenberger-Sandifer panel is supposed to recommend the appointment of a permanent chief clerk.

One thing is certain. Millard Midonick — the reformer who saw the error of his ways as soon as he was elected — has compromised the judicial panel that he sits on. It will be hard for Gabel-Rosenberger-Sandifer et al to recommend someone beside Donald Klein if he does at least a reasonable job as acting chief clerk.

Midonick already is lobbying for Donald. That, my friends, is judicial politics, at its juiciest.

The Lambert clique in Surrogate's Court already is arguing that Midonick appointed Donald Klein to win favor with Seymour Klein, the lawyer who has friends in the Governor's mansion.

The thinking is that Midonick has four years until he hits the mandatory retirement age of 70 and has to go to Hugh Carey or whoever sits in Albany to be certified for a two-year extension. The certification game, however, would only apply if the Surrogate's Court becomes part of the State Supreme Court, a situation that is inevitable.

No Time to Talk

Nepotism is a lousy word in judicial circles. Marie Lambert and Millard Midonick — two judges who barely talk to each other — didn't have time to talk to me either.

I called Seymour Klein at his old law office. His secretary there told me that he was moving to his new offices over at Shea, Gould. I called Shea, Gould and got a secretary for Seymour Klein. She asked what I wanted. I said I wanted to talk to Seymour Klein about his son, Donald. She said that Seymour Klein was in conference and would call me back. Instead, the secretary called me back and asked again why I wanted to talk to Seymour Klein. I explained that I was writing a story about Donald Klein and would like to talk to his father. She promised that her boss would call me back.

I spent a lot of time trying to get people to talk to me about the machinations surrounding the appointment of a chief clerk. People would smile and say, "Sorry, I don't want to get into trouble."

I even told Donald Klein that all of the Surrogate's Court was filled with rumors about the new Midonick-Lambert war. "I've heard the same rumors," Donald Klein replied, "but I think that both of them would like to get the best-qualified person in this job. I'm not close to one or the other. This is the best-run probate court in the country. The two judges are at the apex of their careers. They are two strong-willed, powerful people. As I said, they want to have the most qualified person get the job. I think I am the most qualified person for that job."

When Millard Midonick was elected surrogate in 1971, the *New York Times* saw the end of the political dirt that ravaged the court for years. Midonick promised.

"I will take the Surrogate's Court out of politics," Midonick said. "Anybody appointed by the surrogate will be chosen on the basis of merit, not political connection." ●

Judge Lambert probe widens again

AN APPELLATE court yesterday restored to its original scope the state Commission on Judicial Conduct investigation into the 1977 election campaign of Manhattan Surrogate Judge Marie Lambert.

The commission last August filed a complaint charging that Mrs. Lambert improperly engaged in

fund-raising activities during the campaign.

Among the allegations: that cash contributions of more than \$100 were accepted during and after the campaign; expenses and contributions were not properly reported, and that, after assuming office, Mrs. Lambert appointed attorneys to handle estates

on the basis of favoritism.

Mrs. Lambert asked state Supreme Court Justice Martin Evans to block the investigation.

Evans blocked only the question of cash contributions, saying the commission should restrict itself to alleged misconduct that arose specifically at the direction of Judge Lambert.

However, the appellate division of State Supreme Court in Manhattan disagreed 4-1 with Evans' ruling, saying, "No abstract demarcation exists between Surrogate Lambert's activities before and after taking the oath of office and donning the judicial robe."

The appellate court

added that Evans' ruling "is an arbitrary restriction upon the commission's area of action.

"For example, the investigatory process might disclose that the improprieties were not committed by or at the direction of the Surrogate, but were committed with her knowledge or acquiescence."

Post
3/19/80

Inquiry Into Surrogate's Campaign Upheld

By SELWYN RAAB

Special to The New York Times

ALBANY, July 1 — The State Court of Appeals ruled today that a special judicial commission had the authority to investigate alleged election campaign irregularities by Surrogate Marie M. Lambert of Manhattan.

The court, the state's highest, also said court records of challenges brought by judges to block investigations by the State Commission on Judicial Conduct could no longer be automatically sealed and must be made public in most cases.

In a separate judiciary case, the court removed Jerome L. Steinberg, a Civil Court judge in Brooklyn, after finding that he had improperly acted as a "loan broker."

Upholding a determination by the judiciary panel, the court said Judge Steinberg had arranged a loan for \$90,000 at 27 percent yearly interest, had kept 3 percent of the interest for himself, had tried to conceal his role in the loan and had been late in reporting the commission as income on his tax returns.

Source of Mrs. Lambert's Case

Mrs. Lambert's case stems from her successful 1977 campaign for election as one of Manhattan's two surrogates, or judges who preside over matters involving estates and who set fees for lawyers appointed to handle these matters. The commission had sought to investigate



The New York Times

Marie M. Lambert

complaints that Mrs. Lambert had improperly engaged in fund-raising activities and, after her election, had appointed lawyers on the basis of favoritism.

Mrs. Lambert had characterized the inquiry as a political "witch hunt" and accused the commission of a "selective investigation" of her activities while ignoring wrongdoing by other judges.

She had also asserted that the commission's investigation of her fund-raising efforts would be an unconstitutional "inter-

ference" with the rights of "political expression and association." She contended that a judicial candidate had the right to solicit funds directly.

The court dismissed her contention that an inquiry into Mrs. Lambert's campaign and fund-raising activities would have a "chilling effect" on First Amendment rights and on "political expression."

'Integrity of the Judiciary'

"Misconduct by a judge or judicial candidate cannot be shielded from scrutiny merely because it takes place in the political forum," the court declared. "The First Amendment implications, if any there be, are far outweighed by the state's interest in the integrity of the judiciary."

The ruling does not affect the confidentiality of proceedings into judicial conduct and decisions by the commission, which must by law remain secret until a review by the Court of Appeals. In her two-year legal contest to prevent the commission's inquiry, Mrs. Lambert had won the right in lower courts to have many of the court records sealed.

Gerald Stern, the administrator of the commission, said that records in other cases had also been sealed and that some judges under investigation had anonymous

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Inquiry on Surrogate Race Upheld

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ously filed motions against the commission.

Under today's ruling, a judge who goes into court in an attempt to stop an inquiry by the commission will face the risk of disclosing that he is being investigated. But, except for what may be revealed through court affidavits, the commission's own investigation will remain confidential.

The commission is empowered to investigate judicial conduct, with its findings subject to review by the Court of Appeals.

Six of the court's judges curried that the commission had the authority to investigate Mrs. Lambert. However, two of the six — Associate Judge Domenick L. Gabrielli and Associate Judge Bernard S. Meyer — said that the lower courts had the right to seal the records in Mrs. Lambert's challenge of the commission's jurisdiction.

Associate Judge Jacob D. Fuchsberg, dissented on the commission's right to investigate Mrs. Lambert. He said the charges were vague and that Mrs. Lambert "should not be kept in the dark"

about the content of the accusations before complying with commission requests for records.

In ruling that court challenges by

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judges against the commission should normally be made public, the majority said: "The public policy of this state is to ensure awareness of judicial proceedings. While in an appropriate case a court may draw on its power to seal its own records, a blanket rule requiring the sealing of all court records involving proceedings by the commission is unjustified in the absence of legislative mandate."

York Times

3/19/80

an Report

Surrogate Asked Ban on Inquiry Into Campaign

But Appeals Court Denies Mrs. Lambert's Request

By JOSH BARBANEL

Marie M. Lambert of Surrogate's Court in Manhattan, who is under investigation for campaign irregularities, sought to have the administrator of the investigating commission fined or jailed for criminal contempt and the investigation halted, it was disclosed yesterday.

The move came to light as the State Court of Appeals denied her motion without comment yesterday. The investigating body is the State Commission on Judicial Conduct.

According to court documents, the state's highest court also denied a request by Mrs. Lambert to have a subpoena of her personal banking records suppressed. Mrs. Lambert was elected surrogate in 1977 in Manhattan, despite being rated "not approved" by the City Bar Association.

Surrogates oversee the disposition of estates and appoint lawyers to often lucrative assignments as guardians.

Questions About Campaign

Mrs. Lambert has been under investigation by the commission since she took office on Jan. 1, 1978. Initially the inquiry looked into charges that she "improperly participated" in a \$250-a-person cocktail party in December 1977, arranged by the "Friends of Marie M. Lambert" to help her reduce a campaign deficit of \$175,000.

Later the complaint against her was expanded to include charges that she accepted cash contributions in excess of \$100 during and after the campaign, and that she "appointed campaign contributors and others based upon political considerations" once she took office.

In the court papers early this month, the commission revealed that a new complaint had been filed against Mrs. Lambert on Feb. 13 containing "certain allegations of possible misconduct not covered by the prior complaint."

The commission refused to disclose details of the new allegations. But in a court brief, the commission's administrator, Gerald Stern, stated that the bank records were subpoenaed.

Mr. Stern said that out of courtesy to the Court of Appeals the commission did not press the banks to produce the records after Mrs. Lambert went into court on Feb. 26 to pursue her case.

Related Issue Before Court

"I expect the subpoena to be complied with as soon as possible," Mr. Stern said yesterday.

Mrs. Lambert did not return a reporter's telephone call, and one of her attorneys, Susan C. Ervin of Kramer, Levin, Nessen, Kamin & Doll, declined to comment because a related court case is now before the Court of Appeals.

In that case Mrs. Lambert and her former campaign manager, Gary L. Nicholson, and five campaign workers, have resisted subpoenas to appear before the commission. They argued that the commission had gone beyond its jurisdiction.

On Dec. 18 the Appellate Division of the State Supreme Court upheld the commission's actions in the investigation and Mrs. Lambert appealed.

During the appeal, the commission was barred from issuing the subpoenas against Mrs. Lambert and the others.

The commission's inquiries can lead to censure, suspension or removal of a judge from office.

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Surrogate Terms Inquiry by Panel A 'Witch Hunt'

Mrs. Lambert, in Denial, Charges 'Harassment'

By JOSH BARBANEL

Surrogate Marie M. Lambert of Manhattan said yesterday that the state commission investigating charges of irregularities in her 1977 election campaign was conducting a politically motivated "witch hunt."

In an interview, Mrs. Lambert denied the allegations against her and charged that the State Commission on Judicial Conduct had engaged in a "selective investigation" of her activities while ignoring wrongdoing by other judges.

She said that the commission had "done a fairly good job of besmirching my reputation" and that it had refused to give details of the charges against her.

"It is really harassment," she said. "I hope we haven't come to the point where judges have lost their civil rights and people can go on witch hunts against them."

Contributions at Issue

Since she took office in January 1978, the commission has been investigating Mrs. Lambert in connection with that she "improperly participated" in a \$250-a-person cocktail party, failed to properly report campaign contributions, took individual cash contributions of more than \$100 and often gave judicial appointments to campaign contributors.

Gerald Stern, the commission's administrator, refused to comment on Mrs. Lambert's charges except to say that they were made in briefs submitted by Mrs. Lambert's lawyers as part of a suit now pending before the Court of Appeals. Documents in that case have been sealed.

"We will have to await the Court of Appeals decision to determine whether the charges are accurate," Mr. Stern said. According to court records, suits by Mrs. Lambert and her campaign workers have delayed much of the investigation since July 1978.

On Tuesday, the appeals court dismissed a motion by Mrs. Lambert to have Mr. Stern fined or jailed on criminal contempt charges for pursuing his investigation while the lawsuit was still pending.

'Not Approved' by Bar Group

Mrs. Lambert asserted that the complaints against her were lodged because she was "not part of the establishment" and had been elected in an aggressive campaign that called her the "people's choice." She was elected as a surrogate in 1977 despite a "not approved" rating by the City Bar Association. Surrogates oversee disposition of estates and appoint lawyers to assignments as guardians.

Mrs. Lambert contended the commission had ignored complaints made against a former surrogate, Justice Arthur E. Blyn of State Supreme Court.

She said that during the 1977 Democratic primary, Mr. Blyn, who had been appointed to fill a Surrogate's Court vacancy, was aided by fund-raising parties held by lawyers who regularly appeared before the court. She said that after his defeat in the surrogate race, Mr. Blyn gave his attorney, William Goodstein, a lucrative appointment, for which Mr. Goodstein allegedly sought an \$80,000 payment. Mr. Blyn and Mr. Goodstein could not be reached for comment.

Mrs. Lambert said she never saw any lists of political contributors, was "never aware" of any cash contributions in her campaign, and made all her appointments on the basis of merit.

Lambert Pushes Bar License

The official probe of Manhattan Surrogate Marie Lambert may soon enter a new area: Her use of judicial influence with the State Liquor Authority.

The state Commission on Judicial Conduct, which has investigated Lambert's 1977 campaign fund-raising and patronage assignments for more than two years, is now looking at a letter of recommendation she sent to the SLA on October 14.

Written on Lambert's judicial stationery and delivered by hand, the letter has the words "Personal & Unofficial" typed in below the state seal. It recommends in glowing prose one Lewis Katz, whom Lambert describes as a social acquaintance. "One could not have a more honest, reliable and worthwhile associate," notes Lambert, adding, "I know that for many years he has had a number of businesses which required state licensing and his conduct of those businesses has been exemplary."

Finally, she refers to several other unnamed federal and state judges who all "share my opinion" of Katz.

At the time Lambert wrote the letter, Katz was experiencing some trouble with his liquor-license application for a Greenwich Avenue gay bar called Uncle Charlie's Downtown. (He is also the proprietor of a similar place on the East Side called Uncle Charlie's South, which became controversial in 1978 when Katz tried to turn it into a disco. Representing him before the Board of Standards and Appeals in that case was the firm of Saxe, Bacon & Bolan—whose leading partner, Roy Cohn, was a sponsor of Lambert's surrogate-court campaign. One day after Andrew Stein switched sides to support the disco, his fund-raising committee received a \$5000 check from U.S. Banknote Corporation, a Cohn client whose subsidiary has as its president Paul Dano, who maintains an office at Saxe, Bacon's townhouse. Katz also holds the deed to a Greenwich estate used by Cohn.)

Lambert's letter backing Katz arrived at the SLA the same day as a similar endorsement from retired Brooklyn Surrogate Nathan Sobel. Sobel, who still uses his official stationery with the word "Retired" typed in, referred specifically to Katz's pending application. "You may be assured," wrote Sobel after paragraphs of suitable blather, "that if licensed, the Corporation and premises will be maintained in accordance with the highest standards in the restaurant industry."

But Sobel was less voluble when asked whether Katz had asked him to send the letter. "That's none of your business," he snapped, and hung up.

On November 21, Uncle Charlie's Downtown got its license from the SLA and has been operating ever since, though its official opening was set for December 10. One SLA deputy commissioner insisted that the judicial salutes to Katz

hadn't influenced the decision, but another commissioner said he had never seen a similar letter from a judge before.

When she wrote the letter, Lambert was probably aware of two recent Court of Appeals decisions which frown on such judicial intervention with public agencies. In July, the court upheld the admonishment of Queens Supreme Court Judge Arthur Lonschein by the Commission on Judicial Conduct, because Lonschein had tried to help a friend win a license from the Taxi and Limousine Commission. Though Lonschein actually made a phone call to



the commission's deputy counsel in that case, his effort was similar to Lambert's letter.

Last month, the court was even tougher when it removed Brooklyn Civil Court Judge Norman Shilling from the bench. The Commission on Judicial Conduct had asked only that Shilling be censured for making phone calls to the city health department on behalf of the Associated Humane Societies of New Jersey, of which Shilling is a trustee, and for appearing in another judge's courtroom in a proceeding involving that organization. Though that decision was dated November 25, the commission's determination was published in the *New York Law Journal* well before Lambert wrote the October 14 letter.

In the Lonschein decision, the court noted that "... any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office ... judges must assiduously avoid those contacts which might create even the appearance of impropriety." The commission's director, Gerald Stern, would offer no comment on the continuing Lambert case.

Lambert herself confirmed that Katz asked her to write the letter, but added "I had no idea where it was going." In an interview with Channel Five's Stanley Pinsley she explained that she sent it on court stationery because "I don't have any personal stationery at hand." Was Roy Cohn, so helpful during her campaign, involved with the letter? "Absolutely not." And, she offered a warning. "If you people in the media keep this harassment of judges up, there will come a point when they'll all resign. I mean it." —J.C.