

CITY

**Political Notes****From Judge to Pawn in a Grudge Match**

By DAN BARRY

No matter how many times good-government groups demand that the judiciary remain as free of politics as possible, the whiff of back-room cigars occasionally permeates the process of electing judges. Consider the case of Judge Walter B. Tolub of Manhattan Civil Court.

Judge Tolub is up for re-election to a 10-year term in the fall. In addition to serving as an Acting State Supreme Court Justice, he is a longstanding member of the Liberal Party — and therefore in the sights of Herman D. Farrell Jr., the Assemblyman and Democratic leader for Manhattan.

In recent months, Mr. Farrell has openly encouraged others to challenge Judge Tolub in a Democratic primary; it is an appeal rarely issued in cases of judicial incumbents who have served without blemish. That open call, which has attracted at least one taker, comes despite the recent finding by a municipal screening panel — controlled by some of Manhattan's Democratic clubs — that Judge Tolub is qualified to hold his position.

The reason has less to do with the jurist's abilities and more to do with

political payback. In 1996, the Liberal Party's own screening committee chose former Judge Karen S. Burstein of Family Court in Brooklyn over the Democratic incumbent, Renee R. Roth, for Manhattan Surrogate. Ms. Roth wound up winning, but the challenge, orchestrated by the Liberal Party's leader, Raymond B. Harding, was not forgotten in the post-election celebration.

"If the Liberal Party doesn't respect incumbency, then why should the Democratic Party respect incumbency?" an assistant to Mr. Farrell explained.

Mr. Farrell echoed that sentiment last month in his response to a court official who, in a letter to The New York Law Journal, had complained about the Democratic leader's machinations. Thanking the official for his musings, Mr. Farrell wrote, "I would be most interested in seeing the similar letter that you must have written" when the Liberal Party "backed Karen Burstein against incumbent Surrogate Judge Renee Roth."

Mr. Harding, of course, did not share Mr. Farrell's view. "It is an assault on the independence of the judiciary, and it's a crude and cynical scheme," he said. As for his party's actions in 1996, he said they were based on merit, not politics.

Mr. Farrell's assistant said that in the end the Democratic leader might wind up supporting Judge Tolub. "The message is," the aide added, "the rules have to be the same."

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