

INSTITUTE OF CURRENT WORLD AFFAIRS

RJB-#34
Justice, Et Al

98 Charles River Road
Watertown, Mass. 02172
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Mr. Richard H. Nolte
Institute of Current World Affairs
535 Fifth Avenue
New York, New York 10017

Dear Mr. Nolte:

Justice of sorts was served this past September in a small courtroom with peeling green brick walls. Salem's Superior Court, which is watched over by a larger than life portrait of a little-known, deceased lawyer and judge, was the scene of a compromise between residents of the Saugus Mobile Park and the park landlords. The settlement ended a dispute that had stretched over fourteen agonizing months. It was a period marked by fear, rumor, and threats. Neighbors had turned against each other, and a once strong tenants' association had deteriorated so badly that in the last days only twenty-five of the Park's residents were at Superior Court to vote on the final settlement.

As some readers may remember from RJB #18, "Hard Times Fall on The Saugus Mobile Park," on July 13, 1973, the landlords tried to increase the ground rent from \$72.00 to \$85.00. The tenants organized, and with the aid of a local town selectman avoided the increase for five months. In January the landlords sent out a new notice, this time demanding an increase from \$72.00 to \$96.00.

This demand was ignored by almost all of the Park's residents. On March 14th our January checks for \$72.20 were returned with a letter threatening eviction if we did not comply with the landlords' demand for the new rent.

An emergency meeting was held at which many people expressed fear over the turn of events. After a long tension-filled meeting it was decided to hire a lawyer.

With the advice of our lawyer, Steve Kehoe, we sent \$72.20 in again in March. March's rent checks were returned in early April with a new threatening letter in the form of an "eviction notice". The letter stated that eviction proceedings would be commenced if we did not pay the entire amount owed immediately.

As I reported in RJB #18, this last communication upset even more people and a new fear that we might possibly lose our homes began to spread. Although there was some brave talk about blockading Route One with our mobile homes if we were evicted, people were very scared. Some families capitulated to the landlords' demands. One feisty sixty-seven year old man told me he had paid the increase. He said he hated like hell to do it, but his seventy year old sister, with whom he lived, was taking doctor-prescribed sedatives and couldn't stand any more of the tension.

I concluded RJB #18 by stating that although the Association's strength had eroded, we had decided to fight the increase even if it meant going to court.

Our attorney met with us during the first week of April to try to explain our legal position should we need to go to court. Although he presented our position in as non-lawyer-like language as he could, at the end of a three hour meeting people were still uncertain as to our legal position. So within the week Steve sent all the families in the park a single spaced typed statement outlining our legal position. The statement began with these reassuring words; "We will only get to the eviction process if our attempts at negotiations fail. There is no indication at the present time that this will happen."

Steve then went on to explain our legal position which boiled down to the contention that the notice the landlords had sent demanding the increases were not legally sufficient. This claim was based on the theory that with a tenancy at will (a month to month lease) the landlord has to terminate the existing tenancy, and then offer a new tenancy.

The statement concluded with the following statement: "For your further information and peace of mind it is clear that the owners do not intend to try to evict anyone for the time being. Mr. DeCotis has stated this to your officers and both his attorney, Mr. McNiff, and the town manager, Mr. Hagopian, have stated this to me. So you should not worry about even a possible eviction attempt at this time. We will have plenty of forewarning and time to prepare."

On May First, less than a month later, without warning, ten of the park's fifty-eight families who were still paying \$72.20 were served by the sheriff with writs and declarations of summary process--notices that court proceedings had been commenced to have them evicted.

Near panic set in. An emergency meeting was called. Before the meeting could be held, two more families paid the additional rent. At the meeting people kept asking Steve for reassurance that we had a strong legal case.

Steve warned us that we might lose at the local level. He said that if the case were heard by a judge who was sympathetic to the landlords,

we'd probably lose. If we did, he said, we would appeal, and he felt that at Superior Court in front of a jury we had a much better chance of winning.

To some people this made sense, but it confused others. Many people wondered how we could lose if our position was right. Others seemed to understand that although Steve didn't come right out and say it, he had implied that decisions at District Court are affected by forces other than legal arguments. Joe Fecula seemed to hold this position. He said, "Look, these guys have millions. They know how to grease palms. We don't have a chance. You think with a nickel you can beat guys with a wad of bills, never."

On the sixteenth of May approximately fifty residents of the park went to Lynn District Court. It was our first opportunity to witness John McNiff, the landlords' attorney, in action. While presenting his clients' case, McNiff went into a tirade about the landlord's right to an increase, about America being a democracy, and about no group of tenants having the right to dictate how a landlord runs his business. He finished his argument by saying, "Your Honor, these tenants, like any other tenants, have a choice. They can either pay the increase or get out."

Steve then presented our case, claiming the notice for the increase was not legally sufficient and thus ineffective. The judge ruled in favor of the landlords. Many of the park's residents took the defeat very hard, even though Steve had warned us that there was a good chance we might lose.

It didn't seem that Steve had been able to present our case fully. Why hadn't the judge allowed Steve to talk about the harrassment and intimidation? Several people began to question Steve's competence as a lawyer, and make unfavorable comparisons between his performance in court and that of the landlords' lawyer.

John McNiff impressed me more as a showman than a lawyer. His knowledge of the law was less than overwhelming, yet he was assertive, almost bellicose in his personal deportment in the courtroom.

I was surprised to learn how many of the parks' residents had been impressed with McNiff. They commented on the expensive suit he had worn and his forcefulness. Steve, for many of these same people, suffered in a comparison. Steve, who is a "radical" lawyer specializing in group representation, was charging us a remarkably low fee of \$10 an hour. I learned that many people didn't see this as a political decision on his part, but viewed his fee as reflecting his being a young, inexperienced lawyer. Steve is not a good dresser: his shoes are old and worn, his ties thin, and his suits baggy and plain. Many people believed that the way he dressed did not reflect the fact that he didn't care about clothes, but that he couldn't afford more expensive clothing.

Steve's courtroom style was very different from McNiff's. He relied more on past court decisions and his brief than on assertive style. Many people saw this quiet demeanor as reflecting the insecurity of a new lawyer.

Joe Thomas summed up some of the doubts people were having when he told me, "Don't get me wrong. I like Steve, he's a good kid, but he don't have what it takes in that courtroom. He tries hard, but he just don't have it."

Confidence in our case, in the Association, and in our lawyer had declined. Nevertheless there was a solid core of park tenants who were determined to see the case through, even if it meant, as Mary Stack was fond of saying, taking it all the way to the State Supreme Court.

In the next few weeks the Association decided not only to appeal the District Court decision but to institute our own civil suit claiming harrassment and damages of \$35,000 as well.

The area's Superior Court, located in Salem, was closed for the summer, so finally in August we filed in Boston's Superior Court for a speedy trial. This decision was prompted by the realization that the longer the case dragged on, the more people were abandoning the Association. Each month a few more families paid the increase. The landlords must have sensed this because they argued against our motion for a speedy trial. The judge granted the motion and promised an early September court date.

At the same time Mary Stack was faced with a new challenge. A growing dissident faction, upset with Mary's leadership, cast around for someone to lead their election struggle against Mary.

I was approached about running for the presidency. I told people I wouldn't do it. I had some misgivings about Mary's style, I felt that she took too much responsibility on herself and didn't share information with the other officers. On the other hand I felt she had committed more time and energy to this struggle than anyone else had been willing to give. I was content with my role as vice-president, writing statements and supporting Mary at meetings. I told people that I might run for vice-president again but not for president.

Eileen had other ideas. She was disturbed at the amount of time I had to spend stepping between factions, smoothing ruffled feathers, and holding hands. She said she was tired of interrupted dinners and tightrope walking between personality squabbles. She exercised her veto power, and I stepped out of the running for any office.

Fred Hatch, the Association's other vice-president, finally decided to challenge Mary for the presidency. He was soundly defeated, losing by a three-to-one margin. Mary's support had eroded but she still enjoyed more support than anyone else. The struggle for leadership did, however, further weaken the Association.

Another meeting was called when Steve learned that unfortunately our own suit was to be heard before the appeal. Steve explained that if we went forward with our own suit and lost it might seriously damage our appeal. The explanation flew over everyone's head. Steve then laid out our options--a procedure he followed throughout the court proceedings. We could, he said, press our civil suit or drop it. Although he hinted that he preferred dropping our suit and concentrating on our appeal of the landlords' suit, he never came out and said it.

Steve said he preferred for us to make the decision. This is a procedure that I can intellectually appreciate; however, it was clear that our group did not want to weigh the options and make a decision. People wanted Steve to tell us what to do.

Steve wouldn't do that until someone finally said, "Look, Steve, you're our lawyer, what should we do?" Reluctantly, he said he thought we should drop our suit, and work on the appeal. There were some grunts, some complaints, but people quickly voted to do what Steve suggested.

There was great excitement among the more than forty residents of the park who went to Superior Court on Monday, September 8th. We were finally going to have our case heard by a jury. They would, people thought, listen to our case, and justice would be served--we would win.

The first day proved to be a big disappointment. The judge called the opposing attorneys into his chambers, and urged that they try to work out a settlement rather than procede with the case. The entire morning was taken up by these negotiations. We knew nothing of the negotiations until Steve emerged from the judge's chambers late in the morning to ask us about a compromise the landlords had offered.

The landlords' offer was as follows: we, the tenants, pay \$92 a month for the disputed past months and \$96 starting the next month. "Compromise," one woman immediately scoffed, "what compromise?"

The loudest vocal reaction to the compromise was strident opposition by people who claimed we had waited all this time to have our day in court, and they didn't want anything to stop us now. "We can win," one woman said, "Why should we compromise?"

This position was not held by everyone. Other people were willing to make a compromise if a favorable one could be made. "Look," Ed Turner said, "these guys (the owners) aren't good losers. If we beat them in court they aren't going to come and shake our hands, they're going to try and hurt us."

Back and forth people argued-compromise, or no compromise? Several times people asked Steve what he felt we should do. He kept laying out options and avoiding answering the question. I thought this was a miscalculation on his part. Our group wanted direction, not options. Finally he was pressed to the point where he said that he thought the first compromise offered nothing but if we could get a good compromise we should take it.

People seemed to agree with Steve. No one wanted to accept the landlords' offer. We talked about all kinds of positions and finally, after much heated debate, we empowered Steve to return to the negotiations with the three following positions: We would be willing to forget the past debt and pay \$85 starting next month. If that wasn't accepted, we would be willing to pay \$80 a month for the back months and \$85 for the future, and last, if nothing better could be arranged, we would pay \$85 for the back rent and \$85 for the future rent.

That's how things were left when we went for lunch. People felt pretty optimistic, believing that the landlords wouldn't try to negotiate unless they were afraid of losing.

Steve disappeared into the judge's chambers again after lunch, and re-emerged about 2:45 to say that the landlords had turned down all three of our offers and had submitted their own counter offer that we pay \$85 for the past months, and \$96 for the future. We turned down that offer, and finally went to trial.

The jury was selected in less than an hour, and the judge recessed the court at 4:00.

Steve had thought that the trial wouldn't take more than two days and several tenants had taken off from work in case they were needed to testify. The case dragged on for three more days. Each morning the lawyers were called into the judge's chambers, negotiations would continue, and a settlement wouldn't be reached. It seemed that the case was being tried between negotiations. On the afternoon of the second day the landlords' attorney was able to present his clients' case. He called only three witnesses, one of whom was Jimmy DeCotis, one of the owners of the park. Jimmy DeCotis is a portly bald-headed rich man. He was wearing an expensive mismatched shirt and sports coat. His lawyer guided him through testimony as to how he had requested the increase. During cross examination Steve tried to expand the scope of the direct, and get into the collateral issues of Jimmy's feelings about the Association and Mary Stack. Mr. McNiff objected to most of the questioning and most of his objections were, to the dismay of most of the park's residents, sustained.



It became immediately clear that much of the case that Steve had hoped to present would not be allowed in by the judge. During the lunch break several of the tenants, not quite understanding, but very unhappy about all the sustained objections, asked, "What kind of justice is this when you can't even present the facts to the jury?" Had we come all this way not to be allowed to speak our piece?

Shaking his head, Joe Facsola took me aside and said, "You saw DeCotis. He's worth more than a million bucks. You think when he looks down at Steve, whose shoes don't even have good heels, that he's scared, are you kidding? He looks at that kid and laughs." I didn't say anything back to Joe except that I thought Steve was doing his best. But I had been disappointed in the courtroom. He doesn't think quickly enough on his feet. I found myself sitting on the edge of my chair wishing I were Steve and handling the cross-examination. At one point I got so fidgety and upset at what I considered a missed opportunity that I left the courtroom.

The afternoon session was shortened with more negotiations. The landlords' new offer was to accept \$85 for past rent and \$94 for the future. Some tenants wanted to accept this compromise. However, during the early part of the afternoon Jimmy DeCotis had defamed Mary Stack, and Mary was fuming and wanted her chance to tell her side of the story. People felt for Mary and so turned down the offer, saying let's go back to court.

Thursday, the fourth day of the trial, the jury returned to the Jury Waiting Room. The lawyers were called into the judge's chambers once more, and when Steve emerged the landlords were willing to come down one last time: \$85 for past and \$92 for the future.

Some people still didn't want to settle, Especially after Jimmy DeCotis' testimony about Mary. However, most of the thirty people who were still at the court were in a mood to settle. People kept on asking Steve what we should do and he repeated what I had grown to think was a bad tactic of not saying anything.

We argued some more. Could they be pushed lower one more time? Steve thought not. Finally people pressed Steve as to what we should do. There was no way to avoid answering. He said he didn't like the compromise, thought we could win, but suggested we take the compromise. Involved in the compromise was the agreement that the landlords would promise that our rent would stay at \$92 for at least a year, something the landlords had previously said they never would do.

With mixed emotions we told Steve to settle for this offer. With that, fourteen months of arguing were over. One woman said, "Is that all there is? Is this what we have fought so long for?" Another pointed out to her that we had saved nearly \$200 through the fourteen months even with the settlement.

We left the courtroom a tired, confused, and not totally pleased group with a bit of "justice" in the form of a written settlement stuffed in our lawyer's briefcase.



