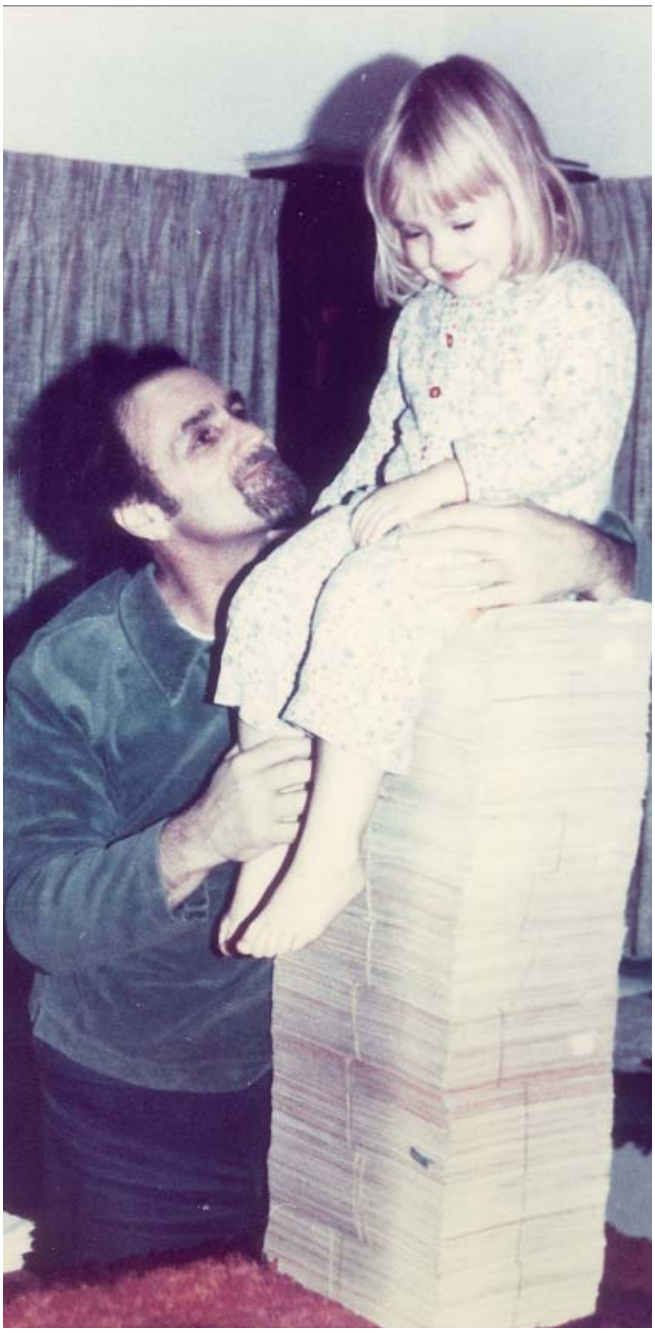
Professor David D. Siegel

Editor's note: We were sorry to learn that Professor David Siegel, whose intelligence, insight and – most important – wit, have long been hallmarks of The New York State Law Digest, is retiring from editing the Digest. For our tribute to Prof. Siegel, we focus on his wit, reprinting two of his funniest and most memorable case discussions. In August 2001, these lead notes were reprinted in the 500th issue of the Digest. If you have read them already, enjoy them again. If you are not familiar with these pieces, you are in for a treat. Thank you, Prof. Siegel!



TWO-AND-A-HALF-YEAR-OLD RACHEL SIEGEL SEATED ATOP HER FATHER'S FIRST MANUSCRIPT FOR WEST.

NEW YORK STATE LAW DIGEST 261, SEPTEMBER 1981:

Tax Exemption for 88% of Town's Landowners as "Ministers" of the Promised Land, With 12% Keeping the Promise

While the rest of the world awaited the second coming, some 88% of the landowners of Hardenburgh, New York, thought they experienced at least its beginnings. They all got from the tax assessor, who plays the messiah in this story, real estate tax exemptions as ministers of the Universal Life Church. According to one of the church's ads, brought to the *Digest*'s attention but not cited by the Court of Appeals in the fascinating cases that occasion this note, ordaining is "absolutely" free. "All you have to do is ask!" So 88% asked, and duly consecrated of heart, they now sought likewise of purse. They carried the message to the assessor, and he, probably while the town devout hummed "Amazing Grace" for background, duly exempted the 88%.

This left 12% not asking, and what they got for not asking was the privilege of paying the whole tax bill of the 88%, whom we may therefore cast, in the early pages of our story, as the chosen people.

This caused the cup of the unchosen to run over in a sense that the psalm did not contemplate, and so they sought to pass it back. The named passer was a Mr. Dudley, a resident of the town whom the assessor called with the new gospel: unless he joined the church, he and the other nonjoiners "would have to pay the full $500,000 annual governmental expense of the town." A weaker man would have shouted hallelujah and joined the pious. But no weakling was Mr. Dudley. He joined issue instead. The spirit had moved him, to court. Apparently Mr. Dudley and his fellow 12 percenters were feeling a bit begat.

Risking the wrath of heaven, or at least of the 88% who thought they had transported it to earth, Mr. Dudley stood at the threshold of the court system and awaited the word. Down it came. "Article 78," it said. And so it came to pass that Mr. Dudley brought an Article 78 proceeding against

the assessor and even prevailed on the State of New York, a secular unit, to do the same. The respondents argued that Article 78 is not available when the attack is on what the assessor has done unto others than the attacker, and so, they insisted, the proceeding doth not lie. "Oh yeth it doth," holds the Court of Appeals. *Dudley v. Kerwick*, 52 N.Y.2d 542, 439 N.Y.S.2d 305 (April 30, 1981, 5-1 decision).

The 1893 revelation of *VanDeventer v. Long Island City*, 139 N.Y. 133, was that a taxpayer has no standing to contest tax roll omissions. He now has, holds the Court, overruling *VanDeventer* and citing recent developments expanding the availability of taxpayer suits. The standing exists because the attacking taxpayer has to pay so much more when so many others pay so much less, or nothing at all.

It was argued that the exclusive remedy would be under Article 7 of the Real Property Tax Law, whose 30-day statute of limitations had passed. The four-month period applicable to an Article 78 proceeding was alive, however, and so the availability of Article 78 also preserved the suit from the bar of time. "Great is the power of Article 78," mumbled the respondents in wonder, but what then is the mission of Article 7? The Court of Appeals answered thus: Article 7 is the tool of an owner contesting his own assessment and does not apply where, as here, the petitioner accepts his own assessment but attacks "wholesale" exemptions made to others. "Great is the power to construe," chanted the respondents.

The Court stresses that the merits are not reached in this case; there is only a procedural sustaining of the suit. And since the Appellate Division had not reached issues about class form, which the petitioners had asked for, remand is to that court to treat those issues.

This case was only one of three involving the Hardenburgh assessments. It can be called the "pre-amendment" suit because it involves the legitimacy of these goings-on prior to a 1978 amendment of § 436 of the Real Property Tax Law, which controls exemptions for "officers of religious denominations". A second action, *Town of Hardenburgh v. State of New York*, 52 N.Y.2d 536, 439 N.Y.S.2d 303 (also April 30, 1981, 6-0 decision), considers the effect of the amendment. And while the pre-amendment decision treated above does not reach the merits, the post-amendment decision just cited does. It is the product of a declaratory action by the town along with a number of town officials in both an "official" and "individual" capacity, to contest the amendment, which imposes a set of requirements that apparently de-exempt a good many of the Hardenburgh hopeful.

Some points about appealability arose in these proceedings, but, sustaining the right of the exempted ones to sue and to appeal at least in their individual capacities, the Court meets the amendment on the merits and finds it valid. ("What profit a soul to be allowed into court if he then lose his case?" whisper the respondents to one another in continued wonder.) The amendment's purpose, says the Court, is "to distinguish church property diverted from the benefit of the congregation into private or non-religious use," so as "to protect the municipal tax base". It is a "reasonable regulation" by the state and offends nothing in the constitution. It applies "evenhandedly with regard to various religious groups" and interferes with no "particular religious practice or belief".

On this last point the Court may be in error. The amendment does seem to interfere with the worship of tax exemption. Perhaps the Court deems this a form of idolatry not included in the "religious" category to which the amendment is addressed.

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In yet another case, *State Board of Equalization and Assessment [SBEA] v. Kerwick*, 52 N.Y.2d 557, 439 N.Y.S.2d 311 (also April 30, 1981, 6-0 decision), the SBEA attacked the exemptions. This attack fails for the SBEA's lack of standing. The Court finds that the history behind its enabling act, Real Property Tax Law § 202, indicates only an advisory function for the SBEA and does not authorize so active a role as this lawsuit. Because the other two cases offered all the context needed to reach the merits in all respects, however, the barring of this suit by the SBEA is of no consequence. The law works in unmysterious ways.

One cannot predict what the merits result will be in the first (the pre-amendment) proceeding, but in the second (the post-amendment) action the merits are reached and the exemptions lifted. Should the exemptions be removed in the first as well, it will go hard, but never underestimate the faith of the formerly favored folk of Hardenburgh. Deprived of their hosannas and without reason to clap or to stomp, yet will they not be seen bereft of spirit. They will gather on their benches in the halls of the great assessor and they will turn to Stanza 21 in the first chapter of the Book of Job and they will all read together: "the Lord giveth and the Lord taketh away. . . ."

NEW YORK STATE LAW DIGEST 339, MARCH 1988:

Court of Appeals Goes To Letter-Size Paper; First Department, Too. Second Department a Holdout – Read All About It!!

"Legal size" has always imported something special. What other profession has had a paper size named after it? No one speaks of "architectural" size paper, or "medical" size paper, for example. The 8½ by 14 page has given us a great professional edge over the rest of the world, which is only 8½ by 11 inches long, "letter size" folk who never stopped to question their deprived status. Lawyers know the difference. Bursting with words and phrases, briefs and memos, opinions and orders, judgments and decrees, digests and reporters, the bench and bar have used their extra three inches for eons and never stopped to reflect on their good fortune. It was just taken for granted.

It had an esthetic side, too. Lawyers' file cabinets were often wider than other professionals' file cabinets. And as a consequence lawyers were often wider than other professionals. It therefore came as a breach of tradition, and as a shock, when, in 1974, the Judicial Conference, the predecessor of what is today the Office of Court Administration, decreed that letter size would henceforth be mandated for all papers used in litigation. The instruction was embodied in CPLR 2101(a), which right to the present day remains the repository of this scandal. The conference was acting under a power it then had to alter CPLR provisions. That power was afterwards withdrawn by the legislature, and now we know why. No organization that would deprive lawyers of three inches of paper can be trusted to make rules.

Irregardless, as lawyers who willingly accept short paper would say, all parties to litigation, with whatever emotion, began to use letter-size paper in 1974.

Why did the Judicial Conference, acting through its administrator on the authority of the judiciary's hierarchy – the Administrative Board (consisting of the Chief Judge and the four Presiding Justices, which is as hie as hierarchy can get) – make this change? One of the reasons we recall, not put into writing but released into the air and available to all who breathe, is that this would ultimately enable law offices to reduce the width of their file cabinets by three inches.

Speaking for ourselves – all of our cabinets were legal width at the time – we could not see much economy in the move. We felt that the words that would have gone onto the three inches of paper now being eliminated would just go somewhere else. The lawyer could of course just eliminate the extra verbiage, but knowing our brethren and sistren as we do we realized that that was not a viable alternative. We realized then – and we don't hesitate to claim that we were the first – that the three inches of verbiage lost on page one would just go onto page two, and that the three inches of verbiage eliminated from page two would just go onto page three along with the extra three inches now the responsibility of page two because of its inheritance from page one, and so on, and so on, just adding pages at the end for the inches lost at the bottom.

We calculated that by the time we got to page 12, for example, it would probably be page 15 or so. We reviewed relativity at some length, drew out and applied a few equations, and concluded that the total number of pages was going to be greater under the new system. This was going to have what we suspected would be the equalizing effect of making documents thicker even as it made them shorter. We were just going to have to pay in depth for what the court administrators were saving us in length.

Visions overtook us. We saw an office with skinny file cabinets, but with all of them sticking out much further from the wall. Anthropomorphically, the fantasy was of slender folks with big rear ends.

Like so many other discoverers of great things, we guarded this revelation with jealousy lest some academically based plagiarist – they're everywhere, you know – should come along and appropriate it. Why reveal it now? Give us three more paragraphs for background and we'll give you our reason.

It also occurred to us that since file cabinets in law offices include vast numbers of court papers – orders, judgments, decisions, opinions, and the like – the emergence of the thin file cabinet could not succeed unless the judiciary, too, were to dump its 8½ by 14 stock and buy small. But that did not happen. The judiciary, having directed the change to 8½ by 11 paper, exempted the judiciary. It surely exempted the appellate courts, those immovable repositories of prerogative.

Each always had its own way, and each always exercised its own way in its own way. Two used short paper. Others upheld tradition with long paper. One of the tradition preservers was the Court of Appeals itself, which somewhere along the way did take the modest step of using both sides of the page, but the page, and tradition along with it, remained 8½ by 14 inches long. The bar took note with gratitude and relief, even though the continued use of long paper by the Court of Appeals and two of the appellate divisions created a technological dilemma in law offices across the state.

What dilemma? How could the widths of file cabinets be reduced by three inches when several of the highest tribunals in the state were continuing to use 8½ by 14-inch paper? Many law offices came up with an ingenious solution. Onto the sides of letter-width cabinets went several elastic panels that would stretch to legal width if the file occupying that particular point in the drawer should happen to contain an opinion from the Court of Appeals or from the other appellate court that continued to use long paper. It was costly, but a fair price to pay for the preservation of a legal-size tradition. And it was principally the Court of Appeals that was upholding the faith.

Alas, perfidy has struck at the top, and we at last reach the occasion for this note. In a memorandum dated January 7, 1988, the Court of Appeals announced that henceforth all decision lists and opinions will be published on 8½ by 11-inch paper.

Until that moment it had always been our understanding that it's the judiciary that guards due process; that it's the judiciary that protects us from the divestiture of rights without notice and an opportunity to be heard. Will that still be true? Please note that the announcement itself was on a letter-size page!

The reason cited on the 8½ by 11-inch announcement had nothing to do with file cabinets, by the way. It was designed, said the memo, to "make handling and storage of the Court's decisions more convenient, as they will now fit inside a standard three-ring binder". Then the memo added, "Please let us have your comments on this change". This discourse is not just another lead note, as you now see; it is nothing less than a command performance.

Okay, the Court of Appeals had succumbed. But what about the appellate divisions? Without their cooperation, the problem of the elastic side panel would remain. Would they go along? Two of them, the Third and Fourth departments, had long been using the short page, albeit with different touches to assert their independence. The Third Department used (and still does) only one side of a page, but in single space. The Fourth used both sides of the page (which it apparently doesn't any more) but in double space (which it apparently still does).

The First and Second departments were the problem. They were long paper users with a reputation for both obstinacy, which preserved the size, and rivalry, which preserved distinctions inter se: the First Department printed on one side, the Second on two.

Now the next surprise. The last batches of opinions we received from the First Department have also been on 8½ by 11 paper. And, at least in what we received, there was not even a covering note to explain, or to warn, or to reassure.

All this was just after the beginning of January. We surmised that there must have been some kind of conference, or frantic telephoning anyway, among the various appellate courts to agree on paper size as a kind of 1988 New Year's resolution. So we tensely awaited the first envelope of 1988 from the Second Department, the only holdout. The envelope came in mid January. It was pretty wide – the usual size used for legal-size paper – but we drew no rash conclusions.

We opened the envelope. Out came an opinion on 8½ by 14! All was not yet lost. Perfidy there might be upstate, and in Manhattan, but in the formidable Second Department tradition had prevailed. Would this continue, or would the court yet succumb to the pressure? Should we call up and get the facts? No, we concluded, this was no time for facts.

Except one. In their continuing struggle for individuality, the First and Second departments have allowed their war of the paper to extend onto the field of the envelope. The First Department sends out its letter-size paper in a legal-size envelope. The Second Department sends out its legal-size paper in a letter-size envelope. (Do you know how the Second Department does that? They fold their opinions in half, the devils!)

In every appellate courthouse in the state the imaginative observer can see the magic words etched into the lobby ceiling: We have sworn upon the altar of God eternal hostility against every form of tyranny over the judicial prerogative.

It is of course a matter of opinion, but for us one of the appellate courts has a format that stands out by far as the easiest to read, the quickest to absorb, and the kindest to the eyes. One appellate court's page-size, type-size, and spacing is the out-and-out champ, and has always been so for us. And which one is that? Ahhh, we're not telling. We once recommended that format to another of the appellate courts, sending samples and everything. We got its response fast. A death threat from the clerk.

And so we learned our lesson. One does not tell a clerk what to do with paper, even though we once heard a frustrated lawyer make a wonderful suggestion on the subject. ■