

Judge Pollack's Boys

THOMAS KAVALER, PETER WANG AND OTHER LAWYERS
PAY HOMAGE TO THEIR MENTOR

BY MICHAEL Y. PARK PHOTOGRAPHY BY 85 PHOTO

"Did you tell him the 2nd Circuit story?" Thomas Kavaler asks Peter Wang.

"Yeah, I told him the 2nd Circuit story," Wang answers.

"Then I have two other stories to tell you," Kavaler says ... before launching into the 2nd Circuit story anyway.

Five minutes later, Wang admits, "I told you a different 2nd Circuit story."

The two attorneys, sitting in the conference room at Foley & Lardner overlooking Central Park, couldn't be more different. Kavaler is an archconservative. When Wang calls him a Tea Partier, Kavaler scoffs, "The Tea Party is soft." Wang, meanwhile, is an unapologetic, self-described "'60s liberal."

Kavaler is a city guy. Wang lives in the suburbs. Kavaler works near Wall Street at Cahill Gordon & Reindel. Wang works in Midtown at Foley & Lardner.

Kavaler wears a bespoke shirt with monogrammed cuffs, stars-and-stripes cufflinks, and suspenders adorned with chortling cartoon figures holding aloft fat bags with dollar signs on them. On his lapel is a red-white-and-blue button that reads, "Is It 2012 Yet?" Wang wears a shapeless gray suit and an unassuming tie and shirt. Back in 1973, he sported what Kavaler calls "a massive Jewfro."

Yet they, and many other lawyers named to the *Super Lawyers* list, are bound by the same mentor.

JUDGE MILTON POLLACK WAS BORN IN NEW YORK CITY IN 1906 AND

attended Columbia University for both his undergraduate and law degrees. He entered the bar in 1929 and was practicing before Glass-Steagall finance laws came into existence. He began in an era when doing corporate law meant working at one of the traditional white-shoe law firms, where partners looked down their noses at dirtying their hands with actual litigation.

Pollack wasn't one of those kinds of lawyers.

Both intellectually aggressive and physically imposing—he was an athlete at Columbia—he became legendary in the field for his sharp intellect, his nonsense attitude and his fearsome mien.

"He was one of those people who thought and acted and spoke in his own way," says Lee S. Richards, of Richards Kibbe & Orbe, who clerked with Pollack from September 1975 to September 1976. "He was a tall man, and he spoke in a commanding voice. It wasn't high or deep, but it was commanding. His posture was very erect—he stood straight up, ramrod tall. And even at the age of 97, when he shook your hand, you had to shake out your hand afterward because his grip was so tight."

In 1967, President Lyndon B. Johnson appointed Pollack to the federal bench

in the Southern District of New York, and he was forever after "The Judge."

Kavaler learned this when, on one occasion, as a clerk, he questioned whether Pollack had the authority to decide a particular case.

"He literally took me by the collar to the commission he had framed appointing him to the bench and said, 'President Lyndon Johnson, with the advice and consent of the Senate, made me a judge. *There's my authority,*'" Kavaler recalls.

Pollack almost turned Johnson down. His wife of nearly 30 years, Lillian, died around the time of the appointment, and he was devastated. (He married his second wife, Moselle, in 1971.) When he did take the robes, he threw himself into work to help assuage his grief.

Once he took the part, he made sure he looked the part. He drove only new Cadillacs, always black, and was once incensed when a parking ticket listed his car as an older model. He was impeccably dressed no matter the time or day—spit-shined shoes, starched collars, French cuffs.

"When I was being considered to be a judge, we went to Milton and Moselle because [at that moment] we were literally around the corner from their apartment," says Judge Loretta A. Preska, Kavaler's wife, and now chief judge of the Southern District. She never clerked with Pollack but became close friends with him and his wife. "We went up, and Milton had on a blue tie and blazer and dress flannel slacks. She had on a full dress, make-up and hose. That's how they dressed around on Saturday morning."

Despite his reputation for seriousness, Pollack wasn't above letting a little wit leak into his decisions. When the singer Roberta Flack was a plaintiff in a suit over the use of one her songs in a movie, the case went to Pollack's court, and Kavaler and Wang got to write his decision.

"Milton Pollack was not a modern guy," Wang says. "He was Elizabethan, out of Shakespeare. And we drafted an opinion in which we described the claim as, 'Plaintiff asserts that respondent is killing her softly with her song.'"

Pollack, who didn't get the reference, scratched the line out with his red pen, but relented when Kavaler and Wang begged him to leave it in. The clerks' joke was picked up across the country, from newspapers to *Billboard* magazine.

"Milton Pollack was a very imperious guy—in the best sense of the word," Wang says. "He was somewhat forbidding to lawyers. Even to many of his clerks, he wasn't somebody you could jazz around with. Nonetheless, we jazzed around with him."

Kavaler arrived first. He was unique in being the only clerk to have served with Pollack for two years, 1972 to 1974, having been hired by Pollack without



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- MANAGING PARTNER OF THE NEW YORK OFFICE OF FOLEY & LARDNER
- BUSINESS LITIGATION
- *NEW YORK SUPER LAWYERS — METRO*: 2006–2011; *TOP 100*: 2010

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- CAHILL GORDON & REINDEL
- BUSINESS LITIGATION
- *NEW YORK SUPER LAWYERS — METRO*: 2006–2011; *TOP 100*: 2007–2010



Kavaler (left) and Wang (right) flanking Judge Pollack in the 1990s. “Milton Pollack was a very imperious guy—in the best sense of the word,” Wang says. “He was somewhat forbidding to lawyers. Nonetheless, we jazzed around with him.”

an interview on the word of one of Kavaler’s law professors. Wang clerked alongside Kavaler from 1973 to 1974.

Kavaler’s first day was, as with all his others, demanding. The judge was known for teaching his clerks how to swim by throwing them in the deep end of the pool.

“He worked pretty late: 7:30, 8 o’clock in chambers. As he’s getting ready to leave, he sees I’m working and says, ‘Go home. Tomorrow’s another day. We don’t have to finish everything tonight,’” Kavaler says.

Before leaving the office, the judge added: “But we do have to finish it this week.”

Many more of Judge Pollack’s sayings—Pollackisms, as his clerks came to call them—followed:

- “‘Never do the same thing twice,’” remembers Eric Seiler, of Friedman Kaplan Seiler & Adelman, who clerked with Pollack from 1982 to 1983.
- “‘Do it now: There is no other time,’” quotes Michael J. Chepiga, of Simpson Thacher & Bartlett, and Pollack’s clerk from 1979 to 1980.
- “‘Make no assumptions,’” says Lee S. Richards, of Richards Kibbe & Orbe, Pollack class of ’75 to ’76.
- “‘In opinions, you write the law; I write the facts,’” Wang says.
- “‘If you’ve got the facts, the law will follow,’” Kavaler adds.

Wang and Kavaler got an extra dose of the Pollack effect because of their dedication to sticking to their mentor every minute of the working day.

“I think it was really because we demanded more,” Wang says. “He’d walk out, and we’d say, ‘Where are you going?’ And he’d say, ‘Well, I’m going to sentencing.’ And we’d say, ‘We’re going, too.’ And he’d look at us and say, ‘OK.’ I think we did that from the first day. It wasn’t something he was used to, but he came to enjoy it.”

Being Pollack’s shadows paid off when they accompanied him to Connecticut for a trip that’s still legendary among lawyers in the 2nd Circuit.

Pollack, whose industriousness and efficiency at cutting through his docket was well-known, was asked to travel to New Haven, where they faced an enormous backlog of cases. He agreed to serve there for as long as it took to get through the backlog—a task his Connecticut colleagues predicted would take two weeks.

“He says, ‘Boys, we’re going to New Haven,’” Wang recalls. “He asked us to call every one of these cases and set them for 20-minute-duration conferences for the entire day, starting from 8 in the morning to when we finished. End of the story: All 20 cases were gone in one day, and we were home for dinner.”

“Peter and I each brought an overnight bag, and the judge did not,” Kavaler says.

The next day, back in Manhattan, Pollack ran into Judge Irving Kaufman of the 2nd Circuit in the courthouse elevator.

“Kaufman said, ‘I thought you were in Connecticut,’” Kavaler recalls. “Judge Pollack said, ‘I finished my cases.’ Kaufman said, ‘How did you do that?’ The judge said, ‘I called each case and asked each what they wanted.’”

His day in Connecticut, and his conversation with Kaufman, had long-term ramifications. In October 1974, Kaufman published a reform to the procedures for the 2nd Circuit that cut down on the appellate caseload by requiring each side to meet for a preargument conference—an idea he took directly from Pollack. Kaufman’s procedural reform, based on Pollack’s everyday, common-sense custom, is used to this day.

POLLACK’S OTHER CLERKS HAD THEIR POLLACK MOMENTS, TOO.

“That was one of the most exciting parts of the law-clerk experience: hearing his assessments about what the lawyers did wrong and what they did successfully,” Richards says. “It was an informal five minutes here, 10 minutes there, but those were precious moments. It was an experience that couldn’t be matched by someone who wanted to be a trial lawyer and a litigator.”

Also invaluable? Seeing a judge work both sides of a case to achieve a compromise.

“[There was] an Italian immigrant whose apartment had been busted into by the FBI on a drug raid, and they had the wrong address. They burst in on the guy, beat the [crap] out of him,” Wang says.

Among the claims the plaintiff made was that the beating had left him unable to work because of permanent injuries to his arm. The judge called in the plaintiff and told him that, though his injuries were horrible, and the injustice obvious, he needed to ask for a more reasonable amount in monetary compensation.

“He says, ‘I was a baseball player in Columbia, and my last year of eligibility, I was sliding into home, and I spiked my arm, as a result of which my whole baseball career was ended,’” Wang says. “He held out his arm and showed that one was longer than the other, then said, ‘But look, I went to law school and became a successful lawyer, and all because of my arm.’”

Pressing the argument that the plaintiff shouldn’t look upon his injury as career-ending, the judge said he’d try to get him the money he’d been asking for. The plaintiff agreed.

Then the judge went to the government.

“He says, ‘This poor old man, minding his own business—the man’s whole life has been ruined!’” Wang says. “‘You’ll be lucky if I could get you off for a million and a half!’ Then he proceeds to tell them same the account of his baseball accident at Columbia.”

The government agreed to pay the plaintiff and both parties walked away convinced they’d gotten the better part of the deal. Afterward, Wang approached the judge.

“I said, ‘Judge, I’ve never heard this story about the arm before.’ And he says, ‘Which arm? This one or this one?’” Wang mimics Judge Pollack making his right arm or his left arm shorter by pulling back his shoulders. There had never been such a baseball injury.

When lawyers before the judge tried to pull one over on him, on the other hand, he put them in their place. In most cases, he’d been using the same tricks for several decades before the lawyer had even passed the bar. Kavaler and Wang remember one lawyer in the 1970s who’d been counting on leeway from an elderly judge when she needed a little extra prep time for her witness.

“She was good-looking and she knew it, and she wanted to take a five-minute recess, so she says, ‘Judge, I need a break,’” Kavaler says.

“Judge Pollack says, ‘Keep going.’

“You could see her ratcheting it up. She says, ‘I need to go to the ladies’ room.’

“He says, ‘Keep going.’

“So she says to him, ‘Judge, it’s that time of the month.’ She figures that’s it.

"Without missing a beat, he says, 'Take two Midol and keep going,'" Kavalier says.

"And we didn't know which was more shocking," Wang says, laughing, "that he'd said that to her or that he knew what a Midol was."

Yet Pollack could also be more tenderhearted than his legal reputation might suggest. He once offered to take over a personal injury case before a woman judge because it would require her to view photographs of male genitalia. (She respectfully declined.)

In late September 2001, as Judge Preska recalls, when the judges of the Southern District gathered at her home for Pollack's 95th birthday party—the first time they'd been together since the terrorist attacks of Sept. 11—it was the old judge who proved to be the heart and soul of the party.

"All the judges were huddled together in one room, just holding onto each other, and Milton came in and talked about the five wars he had survived, and we would survive this, too, and he dissolved into tears, as did everyone," Preska says.

Every year, at an ever-growing luncheon he held for all of his clerks, past and present, Pollack insisted on what he called "the tidings," in which each attorney stood, in order of seniority, and gave an account of his or her accomplishments from the previous year. The judge's eyes shone with every major case won or judgeship earned, but it was really his clerks' personal journeys and children and grandchildren that made his eyes glisten.

Pollack is remembered for many things: his \$3 million award in the *Chris-Craft Industries, Inc. v. Piper Aircraft Corp.* case; his deft navigation of the intricacies of modern commerce when Merrill Lynch was embroiled in a suit involving the sales of Internet stocks. But it was his adroit management of the Drexel Burnham Lambert dissolution that often comes first to people's minds.

The biggest bankruptcy case in 1990, it was such a tangled morass of suits and countersuits involving such a large number of parties that it seemed impossible to untangle.

"People thought the matter would take five to 10 years," says Michael Oberman of Kramer Levin Naftalis & Frankel, who clerked alongside Kavalier from 1972 to 1973. "He had it all wrapped up in 18 months."

"He carried a yellow piece of paper folded in eighths, with the phone numbers of every lawyer in the case," Wang says. "And he would call them at night, on the weekends, make them come into the courthouse. And when he was done, they had hammered the entire structure of the global commercial settlement on a sheet of yellow paper, and gave it to his clerks, saying, 'Here's the settlement, convert this into an agreement by tomorrow noon.'"

"One sheet of paper," Wang adds.

IN AUGUST 2004, AT AGE 97, MILTON POLLACK DIED. HE'D ASSUMED

senior judge status but had never retired, and had been working on complex securities cases from his hospital bed up to his final days.

A reminder of the judge's death brings a rare serious note to Kavalier and Wang's banter, and before they leave to go to dinner together with their wives, they point out that they are now mentors to young lawyers, thanks to the experiences they had with Pollack and others after him.

"We followed in their footsteps and cast ourselves in their shadow," Wang says.

Indeed, after clerking with Pollack, Wang followed in Pollack's footsteps, joining a boutique firm (then Tanner & Friedman, later Friedman, Wang & Bleiberg). "As a direct result of the influence of Judge Pollack, I concluded that I wanted to 'replicate' the intimacy (and fun) of the clerkship experience, and work with another outstanding mentor," Wang says via email. "My enduring, close friendship with Tom—undiminished after 28 years—is the lasting legacy of that clerkship experience."

When Friedman, Wang & Bleiberg merged with Foley & Lardner in 2004, Wang became managing partner at the firm's New York office, and is recognized as one of the nation's top litigators in a variety of fields. "[Pollack]

was so proud of Peter because Peter had gone to a small firm, which is where Milton had gone in his own days as a lawyer," Preska says. "He'd say, 'That's the way to do it!'"

Kavalier went to his larger firm, where he was further mentored by Thomas F. Curdin. He's now a member of the firm's executive committee and is regarded as one of the nation's top securities attorneys.

"I went to Cahill because it seemed like the place where I would have the most fun, learn the most and hang with the coolest kids. Turned out exactly that way," Kavalier says via email. "My one regret was that Peter did not join me here. That would have been perfect."

In 1991, however, Kavalier and Wang were reunited in court—on opposing sides of a case. It was *Citibank, N.A. v. K-H Corp. and Kelsey-Hayes Co.*, and they were arguing in front of the 2nd Circuit. Instead of the usual 15 minutes to make their argument, Kavalier and Wang were granted a remarkable 45 minutes. (Kavalier won.) Afterward, the presiding judge returned to his chamber and called Pollack.

"Milton, I just heard the best argument I've heard in my years on the bench," the judge said. "And it was your boys." 

POLLACK'S CLERKS

Eric Seiler is now a partner at the firm that bears his name, and has made a name for himself with clients from Wells Fargo to BGC Partners Inc.—the latter of which he successfully represented in the 3rd Circuit in a claim arising out of a hiring dispute in the interdealer broker industry. He recently succeeded in knocking down a \$280 million suit by the biggest leaseholder at 7 World Trade Center.

Lee Richards, who went on to become a federal prosecutor, was named one of New York City's top white-collar defense lawyers by *Portfolio* journal: "If you're facing criminal charges, you will want [him] on speed dial," it said in the intro to his profile. He's now a founding partner of his firm, and includes hedge funds, investment banks and corporate officers in his client list. He has served as a receiver, independent examiner and special compliance counsel on SEC matters, and was the receiver in the liquidation of Bernard L. Madoff's investment company.

Michael Chopiga is a litigation partner at Simpson Thacher & Bartlett, where he focuses on securities law, and has worked on high-profile cases involving Lehman Brothers, Fannie Mae, Freddie Mac, Merrill Lynch and countless others. He's also a playwright.

Michael Oberman has been a partner at Kramer Levin for more than 30 years and heads its alternative dispute resolution practice group. Among his many successes, he counts expanding copyright protections for video games, spearheading court and ADR reforms, and a wide variety of victories on the district and appellate level.