

Marshall Stern earned his spurs

By Tony De Paul
Of the NEWS Staff

The late Edward Stern of Bangor, a Superior Court judge, used to tell his son that if he studied the law and worked hard, someday his ship would come in.

Marshall Alan Stern, the defense lawyer, smiles now when he tells the story, because his father was right. His ship did come in — more than one, in fact — late at night, and on a remote stretch of coastline. They were the "Onalay," the "Tusker," the "Traveller III," and they were embarrassingly over-loaded with marijuana and hashish.

Surprise! The bushes by the dock seem to turn into federal agents, guns drawn, badges flashing, voices shouting over the surf, shouting at crewmen who are scheduled to appear on the evening news in what Garrison Keillor might call "the shy look" — jackets draped over their heads, handcuffed arms covering their faces. The body language of the very guilty.

In the 1970s, Stern took every court-appointed defense that came his way: assault, burglary, robbery, rape, drug trafficking — especially drug trafficking. Many of his clients were rough types who smelled bad and gave themselves tattoos with ballpoint pens. But all the while, somewhere out there in the Atlantic, there were shiploads of bored college kids from upper-middle-class families, "action junkies" who got their kicks out of matching radar systems and horsepower with the Coast Guard, and becoming millionaires at it, just for fun. Marshall Stern was about to represent a better class of criminal.

"I had earned my spurs and my reputation by that time, so when the lucrative work came in, I was the guy with the experience," he said.

His name had been splashed in the papers on every high-profile case going, and he had a reputation for enjoying the game, for going to court, for arguing a case. Today, the reputation persists, although Stern spends about two-thirds of his time working on civil cases, things like medical malpractice, personal injury, product liability. The other side knows how much Stern likes to go to court, so his clients get early settlements, and he gets slightly disappointed.

He cuts a hard figure in court with his bearded face, dark three-piece suit, and his trademark cowboy boots, of which he owns a pair, all handmade from the skins of various snakes, lizards, anteaters, ostriches, and certain large toads. The boots add an inch to his 5-foot, 4-inch frame, and they fit in with the "gunslinger" attitude that he adores in all good trial lawyers.

It's a tough enough image for a liberal who has a kind of Democratic Hall of Fame on his office walls, photos of Edmund Muskie, Hubert Humphrey and Robert Kennedy. He's pleased to call himself a "throwback," and he proves it by saying, that "even bad people have feelings, and spirits, and loved ones." When he defended Carol Manning, accused bank robber and reputed member of the radical United Freedom Front, he called her "a good Maine girl," and said, "There's a lot of the charm of the country still with her."

Stern sips from a coffee mug inspired by Clara Peller, the geriatric pop-culture hamburger-hawker. "Where's the beef?" the cup wants to know, which is exactly what Stern wants to know when he's defending a client. If the prosecutor's case sort of looks like beef and sort of smells like beef, but really isn't beef at all, Stern gets to lean on the railing of the jury box and "talk people-talk."

"Next time," he might say, "this could be your son up here..."

As Stern sees it, there's a catch in this maxim of the American creed, that a man is innocent until proven guilty, and the catch is that people just don't believe it. He's looked into the eyes of a hundred juries and seen the unspoken question: "The guy's been indicted; what's he doing here if he's not guilty?"

"Most of your clients are guilty," he concedes, "But there are some innocent men, too."

One of them was David McDaniel, convicted of clubbing a gas station attendant during a 1967 robbery in Ellsworth. He served 26 months in the Maine State Prison, and was exonerated by the governor in March of this year, largely through Stern's efforts. He had lived 19 years as a convicted felon.

The man who did the crime had stepped forward and confessed.

Edward Stern died in 1981, but his name still appears in the yellow pages ad for the firm of Stern, Goldsmith & Billings.

Marshall Stern tells the story about how the judge was reluctantly called to greatness in the Maine Senate, the only senator-elect in Maine history to celebrate the news of his victory by demanding a recount. The elder Stern never really wanted to be a senator, it seems; he just let the Democrats put his name on the ballot so the "unbeatable" Republican wouldn't get cocky.

In 1960, Marshall Stern enrolled at the University of Maine at Orono, where he tended to ignore his father's wisdom. He led an unserious undergraduate life, but with style; he ran for Campus Mayor as "The Pocket-Size Playboy," standing breast-high



NEWS Photo by Michael York

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— Marshall Stern

to a warren of sorority girls in bunny outfits.

He made some effort to get serious by the time he got to Suffolk University Law School and had the revelation that had stunned Mark Twain: in the time it took to get from one school to another, Stern was amazed at how smart his father had become.

With his father's death, Stern completed the circle. Appearing morning and night at Beth Israel Synagogue, he was reconnected to Judaism though the traditional year of grief.

Marshall Stern and his wife, Donna, have a son of their own now, Jason Todd Stern, who may be the only 13-year-old in Bangor with a business card. A friend of the family had their printed as a joke: "Jason Todd Stern, Potential U.S. Senator. Motto: A Chicken In Every Pot. A Judgeship For My Father."

Judge Marshall Stern would make for an entertaining courtroom, if his record as a trial lawyer is any indication. He once destroyed the credibility of a marijuana-sniffing dog by tricking the animal into attacking a briefcase full of herbal tea. ("The courtroom is stunned: Stern has marijuana in his briefcase!")

A veteran spectator in Bangor federal court says, "Marshall is adaptable. He can be reserved, but he can also get excited, and that works against him sometimes. He's the kind of a guy who, when the ship's going down (There's that ship, again) he lashes himself to the mast."

But Stern gets a lot of his ships to float, too, and he has no problem "absolutely none" — with a guilty man going free if the evidence is not there to convict him. This some people resent, that Stern, a man of intellect, talent, and audacity, uses his gifts

to defend people who probably ought to be put away.

"My wife hears it, my son hears it, but again, I don't judge my clients," he says. "I judge the government's conduct, because if the rules aren't applied equally for all, then they fail for all."

Stern calls himself and his fellow defense lawyers, "the last champions of liberty." Their job is to nitpick, to enforce technicalities, to do so ruthlessly, and to do so in the service of people who, more often than not, have made the world around them a dangerous, unhappy place. The system, Stern says, paraphrasing Churchill on democracy, is pretty lousy, except when compared to all the other systems.

Then, he likes the way H.L. Mencken put it: "The trouble about fighting for human freedom is that you have to spend much of your life defending sons of bitches."