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To Be Or Not To Be A Lawyer?

Michael Koskoff traded
the stage for the courtroom

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TO BE OR NOT TO BE a lawyer?

That was Michael Koskoff's question.
Even Shakespeare would say he made the right decision

By Dick Dahl
Photography by Larry Marcus

Growing up, Michael Koskoff was well aware of a certain family tradition. He knew that generation upon generation of Koskoffs had made their living in the performing arts. His grandmother was an actress, his grandfather a singer, his father a musician.

His uncle Reuven was a child prodigy who graduated from what is now the Juilliard School at age 14 and enjoyed a long career as a composer of Jewish liturgical music. His cousin Alfred Newman was another child prodigy who went on to become a legendary Hollywood composer.

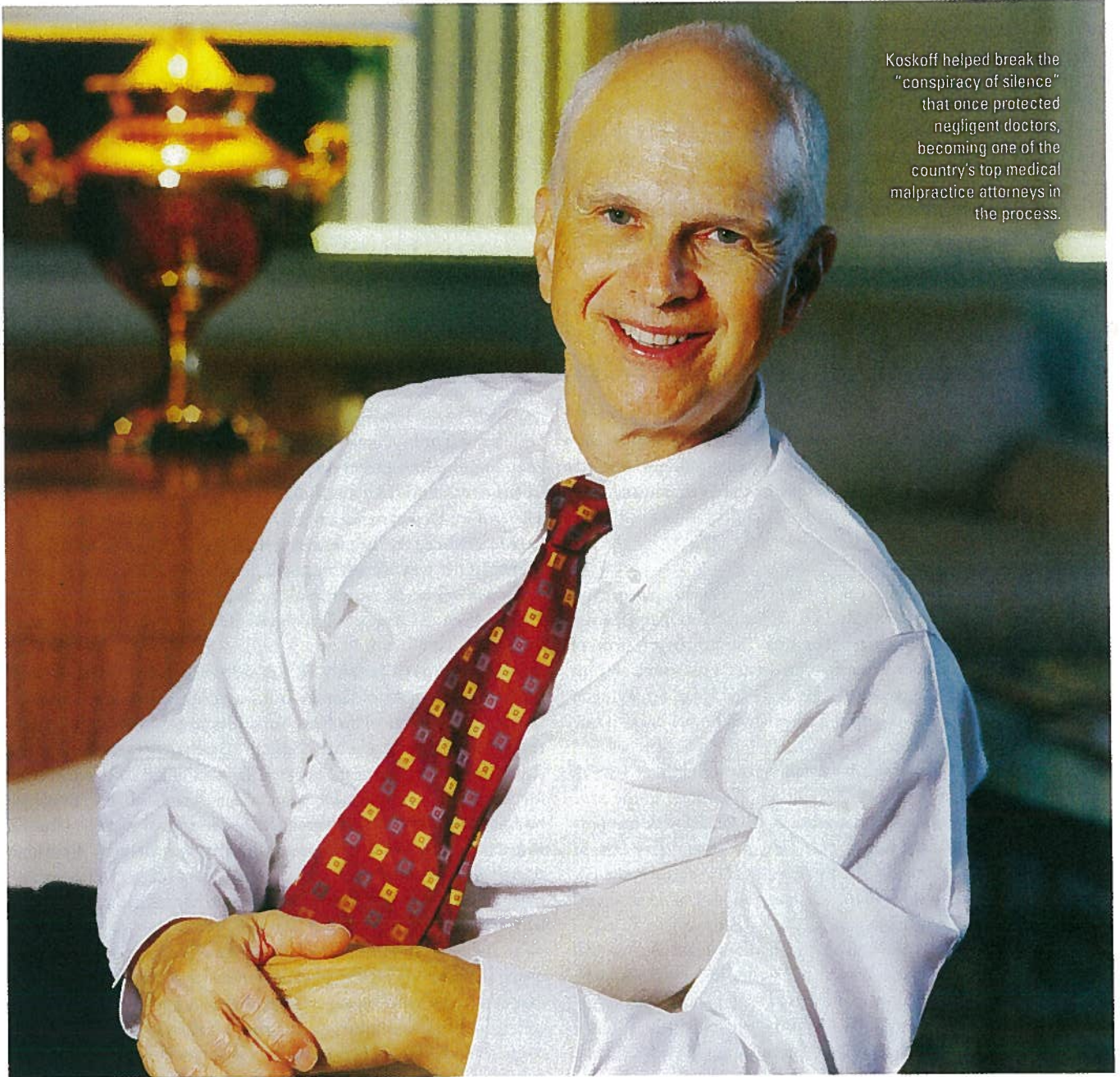
If you're a Koskoff, he realized, your workplace is the stage.

Which explains why his first career choice, before opting for a J.D. and becoming one of Connecticut's top plaintiff lawyers, was acting. He studied theater at the American Shakespeare Academy in Stratford "My family is more about performance than academics," he says. "We're show people."

But as Koskoff's father, Theodore, had already demonstrated, "show people" like the Koskoffs need not be restricted to traditional theatrical venues. They can perform elsewhere — like in courtrooms.

Theodore was a talented cellist, but in the heart of the Great Depression he sought a more reliable occupation. After receiving his law degree from Boston University School of Law in 1936, he returned home to Bridgeport and opened his own firm. He began trying cases for other lawyers, scored a few noteworthy wins and developed a reputation as a top civil litigator before passing away in 1989.

Michael enrolled in the University of Connecticut School of Law after deciding his future wasn't in acting. He liked the notion of applying his performance skills in a courtroom setting, and he enjoyed the notoriety that his father received as a man to whom the little guy could turn to right a wrong. He joined his father's firm after graduating in 1966.



Koskoff helped break the "conspiracy of silence" that once protected negligent doctors, becoming one of the country's top medical malpractice attorneys in the process.

At this time an explosive period of American history was dawning, and the Koskoffs landed in the middle of the action. Father and son had managed to keep their practices separate up to that point — Theodore focused on civil matters and Michael did criminal defense — but one case in May 1969 brought them together.

Alex Rackley, a member of the Black Panther Party from New York City, had been found dead in a Middlefield swamp near Cuginchaug River, his body riddled with bullets, his hands bound and a wire wrapped around his neck. The police investigation led to the revelation that local Black Panthers committed the murder, an internecine act in apparent response to rumors that Rackley was an FBI informant. Eight Panthers would be arrested and charged in connection with the slaying. Two pleaded guilty to second-degree murder and cooperated with prosecutors. Two were released, and three went to trial, with one of them, Lonnie

McLucas, enlisting the Koskoffs in his defense.

The reaction to the McLucas case was spectacular. As the Koskoffs prepared to defend McLucas in the spring of 1970, protesters shut down Yale University. An uproar ensued over whether the FBI's tactics in investigating the Panthers, which included wire-tapping and breaking and entering, contributed to the paranoia that led to Rackley's death. The political climate was charged and tensions were high; the trial was the first in Connecticut history in which people were required to pass through metal detectors before entering the courtroom.

In the end, McLucas, who maintained that he was coerced by one of the Panthers into participating in the crime, was found guilty of conspiracy to commit murder. He was sentenced to 15 years in prison, only a short portion of which he actually served. The two other defendants, Bobby Seale and Ericka Huggins, were acquitted the following year.

"It is thrilling to have participated in one of the important trials of

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the last 50 years,” Koskoff says today. “My father and I set out to prove that a black radical could receive a fair trial — and we succeeded. We did our part and fought for our client’s right to a fair trial. The system worked.”

These days, Bridgeport is a relatively peaceful place. And Koskoff does not exactly look like a revolutionary lawyer. His corner office in what is now the 18-lawyer firm of Koskoff, Koskoff & Bieder is massive, he wears a nice suit, and his gray hair is cropped conservatively. He is 64 but looks far younger. He is trim and relaxed and laughs frequently as he sits back to talk about his family and career.

He and his wife, Rosalind, have four grown children. Two of them are carrying on the Koskoff tradition of working in the arts. The elder of his two daughters, Sarah, is an actress who has performed in the movies *The Clearing*, *That Thing You Do* and *Love Liza*, in addition to TV work on *The X-Files*, *Chicago Hope* and *Murder, She Wrote*. Her husband, Todd Louiso, was featured in *Jerry Maguire* and *High Fidelity*. Koskoff’s younger son, Jacob, is a screenwriter in L.A.

The other two are carrying on the family’s legal legacy. His younger daughter, Juliet, is a lawyer and writer in New York. And his elder son, Joshua, practices at the firm. He has joined the discussion in his father’s office and talks about the excitement he felt as a 4-year-old at the pro-Black Panther demonstration in New Haven.

“I can remember riding around the New Haven Green and hearing people chanting ‘Free Bobby Seale! Free Lonnie McClucas!’” he says. “I absorbed in some atmospheric way the concept of open-mindedness and tolerance.”

The Panther trial would prove to be a pivotal case for Koskoff in unexpected ways. Shortly after the trial, a group of black Bridgeport police officers asked him to represent them in bringing a civil-rights case against the department for not hiring enough black officers. In a force of 450 police officers, only 10 were black and none were above the rank of patrolman. And that was in a city of 160,000, of whom more than half were minorities. The officers who came to him were well aware that he had not only worked with McClucas but had also defended another Black Panther who had been charged with trying to blow up a police station. “I said, ‘Are you sure you want me to represent you?’ They said, ‘If you can represent him, you can represent us — because we’re suffering the same kinds of things he’s suffering.’”

He took the case, *Bridgeport Guardians v. Civil Service Commission*,

which resulted in a court order requiring the city to hire and promote more minorities in the police department. Similar cases and outcomes followed for the Bridgeport Fire Department, the New Haven Fire Department and the Stratford Fire Department.

Meanwhile, the times were changing in other ways. “In the early ’70s, it was almost impossible to sue doctors,” he says. “It just wasn’t done because there was what was called the ‘conspiracy of silence.’ You couldn’t get one doctor to testify against another doctor.”

But old ways of doing things were crumbling, and Koskoff heard of favorable outcomes from a couple of cases known as “medical malpractice” in New York. One day someone came into the office accusing a local hospital of being responsible for his child’s mental retardation, because doctors failed to test the child for phenylketonuria (PKU), a metabolic disease that inhibits the body’s ability to break down enzymes. He took the case — and it was settled in favor of his client. “But that was the first thing that started me on the tack of going toward very large civil cases and recognizing that they are part of the same heritage that I’d already had — defending against the forces of society.”

In the PKU case he learned how defense lawyers think and act in medical malpractice suits. He knew there could be big payoffs, but that cases had to be strong. “Unfortunately, it’s difficult for people with minor injuries to be able to bring a claim, because it’s just too costly. The defense brings out too many guns, they have too many resources,” he says. “A second reason is that a lot of cases just aren’t meritorious. And a third is that even though there’s negligence and an injury, you have to be able to prove a causal link between the two.”

Yet the challenge to find and win these types of cases was irresistible to Koskoff and his firm, which became the go-to law firm in Connecticut for medical-malpractice plaintiffs. Michael Koskoff was the first lawyer in Connecticut to get a verdict of more than \$1 million in a wrongful-death case when a jury in Danbury awarded his client \$1.8 million in 1979. Before long, the firm was cracking eight figures in a number of verdicts and setting records for jury awards in Connecticut. In 1999, Koskoff won the then-biggest personal-injury verdict in the state’s history when jurors awarded his client, William Jacobs, \$27 million for a botched heart operation at Yale–New Haven Hospital.

One of the most important cases for Koskoff was one that he lost. He brought a case against the drug manufacturers Bristol-Myers Squibb and Eli Lilly and Co. on behalf of a woman who believed her child’s cancer had been caused by the drug diethyl-

stilbestrol (DES), which had been administered to her prior to delivery. The relationship between DES and child cancer had been established and the defendants' biggest argument was to challenge causation, claiming that the cancer suffered by the child of Koskoff's client didn't fit the correct profile. Even though he lost, Koskoff took "great evidence" out of the discovery process and the trial itself that led to the settlement of 50 other such cases.

Another settlement provided Koskoff high visibility. In the 1980s, author Barry Werth wanted to write a book that would examine the medical malpractice boom from multiple perspectives — plaintiff, defendant, lawyers and insurer. He focused his attention on a case that Koskoff was handling for a plaintiff couple who had been expecting twins. At birth one was stillborn and the other severely brain-injured. Werth secured the consent of all parties except the insurance companies, and his book, *Damages*, published in 1988, tells the story of the case all the way through to settlement talks, which resulted in a \$6 million payout. In the book, Werth describes Koskoff's earlier leanings toward the professional stage and his 1960s' leftist "redistribute the wealth" bent. He wrote that father and son were both formidable in the courtroom, but in different ways. "Unlike Ted, [Michael] didn't try cases by impression as much as by mastering complex technical information and assembling it skillfully for juries." The father relied more on personality, the son on method. Koskoff says one of his favorite parts of trials is cross-examination because he sees it as an opportunity to "break down barriers and let the truth come out," and in *Damages*, Werth provides a further reason: "Cross-examination, in his view, was raw theater, two actors improvising off each other's cues."

The opposing counsel in the case was William Doyle of the New Haven firm Wiggin & Dana. Werth describes him as Koskoff's "nemesis" because this was not the first time they'd gone head-to-head in an expensive lawsuit. Nor would it be the last. In 1997, Koskoff and Doyle were opposing counsel in a major case in which a Yale-New Haven Hospital intern was infected by the AIDS virus while working in the hospital. The intern claimed the administration was negligent in not providing adequate training to hospital staff working with AIDS patients. She was initially awarded \$12.2 million from a jury; in 2000 the Supreme Court overturned the judgment, and according to Koskoff the sides subsequently reached a settlement that has left his client financially secure.

Fierce adversaries in the courtroom, Doyle and Koskoff express respect and admiration for the other. Earlier in his career Doyle had scored one of his biggest victories over both Koskoffs when a jury rejected a \$62.5 million lawsuit stemming from arson against a company insured by Doyle's client, who refused to pay the proceeds. Doyle tells of the fax that he sent to Koskoff on the day the jury delivered its \$12.2 million for the Yale intern: "Dear Mike: We're even. Can we stop now?"

Doyle, who retired at the end of 2004, remembers his Koskoff battles with pleasure. "To say he's a worthy adversary is an understatement," he says. "He really knows what buttons to push."

Ask Koskoff for self-analysis, an explanation for his success, and he is quick to point out that his theatrical training is important. The skills of thespians are similar to those of good trial lawyers — knowing how best to deliver a line and sens-

ing how an audience or a jury is responding to your efforts.

But there are other times when he sees the theatrical aspects of courtrooms not as a participant, but from a point of remove. When he does, Koskoff imagines the proceedings in jury trials to be similar to those of Greek tragedy, where a chorus comes out on stage at the beginning and tells the audience precisely how the play will end. Like Greek tragedy, trials also deal with known outcomes. But unlike Greek tragedy, the outcomes are not the product of destiny, but of fault. Someone is to blame. There are moments in trials, he explains, when a jury feels an urge to shout out warnings against unchangeable destiny. The key is to know where these moments are.

Take the case of a plaintiff who was rendered quadriplegic after falling over a railing at a ski lodge while using a pay phone. The plaintiff, a man named Damon Sable, had been drinking, so the defense claimed he was at fault. Koskoff maintained that the phone was placed in a dangerous area, next to a stairwell. He argued that someone should have known that such an accident was likely to happen in that location. "Like in a play, once you know about the risk, you know what's coming. You know that when the phone company came and put the phone in that spot,

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someone's going to fall in that stairwell. And all you want to say is, 'Stop, Oedipus! Don't marry her.' Or in this case, 'Stop, Damon! Don't go over there.'" Koskoff convinced a jury to award his client in excess of \$10 million.

Koskoff does not hide the fact that he is well compensated for his efforts. But it's easy to believe him when he says being a successful trial lawyer means more to him than money. He left Shakespeare behind for a career that allows him to use his gifts for performance in a way that lets him obtain justice for those who have been wronged. And he's never regretted his decision.

"I love the idea that you can be of service by coming between the forces of society, generally the forces of government and big business, and the individual," he says. "When everything else conspires against the individual, there's nobody else there — except for the lawyer." ❧