CHAPTER ONE

The Revolutionary and the Radical Lawyer

When I was twenty-nine and she was twenty-five, I defended Susan Saxe, an anti–Vietnam War activist accused of robbery and murder. The judge persisted in calling me "Susan Gertner." Even Susan's own mother, Rose Saxe, confused me with her daughter. The prosecutor assumed that since Susan was gay, I was gay. And that rumor persisted for twenty years; a husband and three children later, when I was nominated to be a federal judge, there it was. I identified with my clients deeply, and Susan even more than most, but I was the lawyer, not the client. Empathy was a given. Detachment was what I had to learn.

On September 23, 1970, five people robbed the State Street Bank in Brighton, Massachusetts. Stanley Bond, age twenty-six, William Gilday, known as "Lefty," age forty-two, and Robert Valeri, age twenty-five. Bond was a Vietnam veteran. All three were enrolled in a special program at Brandeis University for ex-cons. Two were young women and Brandeis seniors: Susan Saxe, twenty, and Katherine Power, twenty-one.

This was no ordinary robbery. Their goal was to raise money for the anti–Vietnam war effort. But the robbery turned tragic when Officer Walter Schroeder, age forty-two, responded to a silent alarm. Lefty Gilday, the lookout, unaware that the robbery was

over and the participants long gone, shot Officer Schroeder in the back. The men were caught immediately. The two women became fugitives.

On March 17, 1975, I was at home, alone, in a one-bedroom apartment on Harvard Street in Cambridge, Massachusetts, halfheartedly watching the news, when I heard of Susan Saxe's capture in Philadelphia. I too had been an antiwar activist of sorts—demonstrations, teach-ins, and, as undergraduate president of Barnard College, a signatory of the 1967 "student leaders" letter to President Lyndon Johnson protesting the Vietnam War. I had been at meetings when frustration at the pace of change in America bubbled over into talk of violence. But that's where I stopped—marches and talk.

It never dawned on me that I might be asked to represent Susan. I had been a member of the bar for only a little over two years, since December 1972. Although a partner in a small civil rights/criminal law firm, I was a novice. What's more, I believed I was not long for trial practice. I wanted to be a law professor.

Sonia Dettman, a client and a friend, called to talk about Susan's capture. She was Stanley Bond's widow; they had married while he was in prison on another charge, after the State Street Bank robbery. Although she had never met Susan, she wanted to help in whatever way she could. Susan would need representation; would I do it? "Of course," I said, without hesitation. Writing this now, I try to understand how I had the nerve to say yes.

Susan Edith Saxe, along with the other four, was indicted for the 1970 robbery and the murder of a police officer.

Almost immediately after it occurred, the bank robbery had become a cause célèbre when Valeri told the police that it had been committed to fund the anti–Vietnam War effort. The five, he said, planned everything at two apartments that they had

rented in Boston's Back Bay. As he described it, on the day of the robbery, Susan, Bond, and he drove to the State Street Bank and Trust Company, at the intersection of Everett Street and Western Avenue in Brighton. Susan went in first, to "case" the scene. She returned with Bond and Valeri. Bond had a 9-mm handgun; Valeri, a shotgun and a handgun; and Susan, a .30-caliber carbine. Bond demanded money from the teller, who complied without resistance. They took $26,000.

Gilday was in another car, parked opposite the bank on Everett Street. His job was to guard the escape. He had an automatic rifle and a clip of thirty .45-caliber bullets. Some blocks away, on Colerain Street, Kathy Power was waiting, with the "switch car."

The robbery over, Susan, Bond, and Valeri fled in a car that they had parked nearby; they heard no shots and saw no police. According to Valeri, they assumed that Gilday had left when they had. They met up with Power and got into her car. Later, on the "switch car" radio, they heard, to their utter horror, that a police officer, Walter Schroeder, had been shot in the back and was fighting for his life.

The men were caught immediately, tried separately, and within a year were behind bars. Valeri cooperated with the government in exchange for a lesser sentence of imprisonment. Gilday was sentenced to life. Bond was convicted of an earlier armed robbery in Evanston, Illinois, and died in prison trying to build a bomb while awaiting trial on the Brighton robbery and murder. The two women, however, eluded capture. Within a month, two letters from Susan were turned over to the Federal Bureau of Investigation. Written days after the robbery, one was to Susan's rabbi, another to her father, Eliot Saxe. They were heartrending, filled with a sense of impending doom and death. One began, "I'm writing this letter because I'll never see you again and probably won't write anymore. In a few days, you will have a rather garbled, but basically accurate version of what 'your little girl' has done with her life." In so many words, Susan admitted her involvement in the crime.

The FBI could not find the women anywhere. The press reported that they had become lovers and escaped into a "women's

underground" that the FBI could hardly understand, much less infiltrate. Five years later, Susan was captured. Kathy surrendered almost twenty years after that.

Ironically, my path had crossed with Susan's once before, although I didn't know it. On Saturday, May 2, 1970, a demonstration was held on the New Haven Common and both of us were there, the future lawyer and the client-to-be.

The Saturday demonstration in New Haven had been planned to protest the trial of Bobby Seale, Erica Huggins, and other members of the Black Panther party, charged in the murder of one of the group. Representing Huggins was Katherine ("Katie") Roraback, an extraordinary lawyer, one of two women to graduate from the Yale Law School over twenty years earlier. Part of a raft of eager law students, I volunteered to work for her.

The day before, May 1, 1970, the headlines announced a new U.S. "incursion" of Cambodia, a major escalation of the Vietnam War. In response, students at Kent State burned down an ROTC building. A nationwide student strike was announced. In the Yale Chapel, a meeting was held to form the National Strike Information Center (NSIC). It would be based at Brandeis University, in Waltham, Massachusetts.

On May 2, New Haven Common was filled with demonstrators from all over; tear gas wafted throughout the city, into the law school halls and classrooms, clinging to our clothes. Someone tried to burn down the Yale Law School Library. New Haven felt as if it were about to explode, and from my sheltered vantage point, so did the country. By Monday, our worst fears were confirmed; while New Haven had escaped major violence, the Ohio National Guard had fired on a group of Kent State students, killing four, wounding nine.

Finishing my second year at Yale Law School, I was a legal observer—my way of participating, but without risk. I wore an identifying armband. If there were arrests, I was to provide an "independent" perspective of what had happened. In fact, I had actu-