June 19, 2025

# *Law & Justice in Lycoming County, Round Two*

Round one of Law & Justice in Lycoming County – The Lawyers & Judges Who Make It Work, was held Wednesday, June 11th. Presenting were President Judge Nancy Butts on Drug Court; Judge William Carlucci on the history of the Law Association and the Pennsylvania Bar Association; and Judge Kenneth Brown, Life & Journey into Judgeship.

It was my turn on Wednesday, June 18th. I was struggling as to whether I should speak about the vignettes and stories concerning "The Career of a Jewish Trial Lawyer," Or rather, people would be more interested in the Intersection of Speech and Expressive Conduct in the First Amendment. I have given both talks in different places around the country, and much to my surprise, it was the former that people preferred.

I decided to combine both topics, since the First Amendment obviously covers religion. That may have been a mistake. Most people who turned out, and there was a marvelous turnout once again, wanted to hear the stories of a Jewish Trial Lawyer. That surprised me.

Part of my talk concerned a series of incidents that I was exposed to. The first one was when I moved out of the house that I was living in and offered to find another suitable tenant for the landlord. He said to me, "Just don't rent to any colored folks; you are lucky that I rented to you." Some years later after the gentleman passed away, his wife called me and asked for my forgiveness. I granted it with no regrets. That was not the first time that I encountered bigotry and a subsequent apology. On another occasion, a client of the office did not want me to try a case because he thought that the jurors might be "prejudiced against Jews." I did not try the case, but the lawyer who tried it lost. Not too long thereafter, a senior partner came to me and apologized. He said that one of the other senior partners had come to him and told him that he was a "stupid man" for carrying the client's water and asking me not to try the case. Once again, forgiveness, for whatever reason, came easily to me.

There was an incident, twice, when county judges refused to give me a day off that was a Jewish holiday. In the first instance, I asked the judge if it was true that he was Catholic. He answered in the affirmative. I said to him, "Well, Judge, I am Catholic." He understood and canceled the day of court.

In the second instance, a judge from a rural county refused to give me the day off for a Jewish holiday and would not relent. I called Supreme Court Justice Sandra Schultz Newman. She advised me not to do anything whatsoever. An hour later, I received an Order putting off the hearing.

The interesting component of both stories is that I went on to have a great relationship with both judges. I tried a number of cases before those judges, and they always treated me with the greatest of respect.

On another occasion, I was examining one of my own witnesses in a case. The man was a well-known local appraiser. In order to show the judge that he was well respected in the community, I asked whether anyone had ever questioned any of his appraisals. His response was: "Just some Jew from New York questioned whether a painting was really a Rosen. It was." In that scenario, I said nothing to the witness or the judge. The verdict was very favorable to my client.

One of the most interesting recent experiences I have had concerned a case which started out in the Eastern District of Pennsylvania concerning a Jewish man who had applied for a job with the Department of Defense. He was told that all the testing would be on Saturday. He indicated that he would need a reasonable accommodation since he was a Saturday Sabbath observing Jew. The Department of Defense ignored the request, did not even get back to the man, and blew off his subsequent outreach. The case was ultimately transferred to the Northern District of Virginia and was assigned to a President Ronald Reagan nominee. That judge, who professed to be Catholic, was extremely upset by the government's position in the case. This was especially true since President Biden had only recently signed an Executive Order recognizing the rights of Jewish people and speaking out against antisemitism. The position of the government was further undermined by a recent United States Supreme Court decision recognizing the rights of a Christian man not to work at a post office on a Sunday. Nevertheless, the government steadfastly refused to recognize the rights of a Jewish man not to perform testing on Saturday. The transcript of what occurred before Judge Ellis has made the rounds of lawyers throughout the country. Said the judge, "Well, you don't want to show up in this court again in abject ignorance about Orthodox Jewry, would you?"

Judge Ellis made the folowing observations:

> "The point is that this case should be a moment for education among the Department of Defense, and, indeed, I would even think at the EEOC."

The court also said:

> "Well, I'm reminded of reasons in this country why discrimination arose, because people didn't know each other. They didn't know different groups. I can't tell you how many people have never lived next to or close to or had African-American friends and look what grew out of that. And the same is true with this.
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> Again, I'm stunned. I'm stunned that you and the EEOC and nobody else would know that there is such a thing as Orthodox Judaism, and what that is. It's astonishing, absolutely astonishing."

Reading the entire transcript is an education in what it means to be a principled Judge, regardless of politics or political appointment.

Another case which I spoke of was *Arnold vs. BLAST Intermediate Unit 17*. This case went to the Third Circuit on two occasions. I represented a group of 10 teacher's aides paid half the salary of men for doing the same job. The excuse of the school district, the Intermediate Unit, was that the women worked in home economics setting and the men worked in a shop setting. The case was tried on a "substantial" equality basis. The judge was very hostile to the case, accusing me, as plaintiffs' counsel, of trying to prove a "affirmative action" prosecution, which he steadfastly opposed. However, the jury of 10 men and 2 women disagreed with the judge and found for the women on all counts. That was not the end of the story. The judge refused to honor my fee petition so that I could get paid for the years of work we had done. He said the Eleventh Amendment prevented payment. When that case went to the Third Circuit, the Court promptly reversed, permitting the attorneys' fee and stated that the lower court had permitted defense counsel to play "cat and mouse" with plaintiffs' counsel, and excoriating the court for standing in the way of the judgment.

That unique panel of the Third Circuit was made up of the well-known African American jurist Leon Higginbotham who had been involved as trial counsel in *Brown vs. Board of Education* (the famous school discrimination case), Judges Weis, and Max Rosenn.

*Arnold* still stands as one of most important Equal Pay Act cases tried to verdict.

There are many other stories that I could have told but, instead, I began talking about the intersection Speech and Expressive Conduct in the First Amendment. The caselaw at first considered cross burning to be Expressive Conduct, but the Supreme Court later came to the conclusion that cross burning was always abhorrent. The law is over all the place as to when conduct is speech and even when speech itself is or is not protected.

After the lecture, many people approached me and said that while they found the law interesting, it was very complex, and they would have preferred that I tell further stories about what it was like to be a minority lawyer in a rural area, and in other places in the country.

It was a wonderful experience for me, the audience seemed to enjoy what I had to say, and we are looking forward to the future lectures set forth below all at the Taber Museum on West Fourth Street:

**Monday, July 7th Beginning at 5:00:**
Chief Justice Todd: Journey to Being the First Woman Chief Justice of Pennsylvania Supreme Court, and lessons learned
President Judge Lazarus: Journey to Being the First Woman President Judge of the Superior Court of Pennsylvania, and lessons learned

President Judge Emerita Bonnie Brigance Leadbetter: Role of the Commonwealth Court

**Wednesday, July 9th Beginning at 5:00:**
Senator Gene Yaw: The Role of the Senate Judiciary Committee in Connection with Legal Issues

**Wednesday, July 16th Beginning at 5:00:**
Jack Humprey: The Life and Legacy of Juge Malcolm Muir
Judge Skip Arbuckle: The Role of the U.S. Magistrate Juge and My Life Journey to Get There

**Wednesday, August 20th Beginning at 5:00:**
Sue Alberti: (Students from Penn College) Opportunities for Undergraduate Legal Studies & The Future
Susan Achury Plaza: (Students from Lycoming College) Opportunities for Undergraduate Legal Studies & The Future

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