ANNALS OF JUSTICE:

"PRO HAC VICE" BACK IN THE DAY

By Steve LaCheen

There was a time when Philadelphia attorneys appearing in court in another county would be required to retain local co-counsel to not only move their admission *pro hac vice* but attend every court proceeding. The purpose of the rule was to protect the livelihood of attorneys practicing in the "collar" counties surrounding Philadelphia from losing cases, and income, to "big city" lawyers, who were regarded as carpetbaggers, and treated as such, when they forayed into the hinterlands to ply their professional skills.

The co-counsel rule was not the only way the counties tried to discourage visiting Philadelphia attorneys. One such stratagem was to schedule hearings for 9 a.m. Monday or 2 p.m. Friday. Another was to introduce the visiting lawyer to the jury pool with a geographical identifier. But the most effective way in which a judge would discount the visiting attorney was, when taking the bench, to greet everyone else with personal familiarity and address the Philadelphia lawyer by his full name in a way which clearly conveyed unfamiliarity.

As to that last ploy, I always tried to defuse it by going to the Judge's chambers prior to the time for Court, to introduce myself to the Judge and "present my credentials," that is, my bar card, the idea being that if I demonstrated that level of courtesy to the Judge, he would reciprocate in kind. Sometimes it even worked.

But, because of such distractions, I often passed on cases in the counties, and generally limited out-of-town appearances to those on behalf of clients I had previously represented, referring new clients to local counsel. So, my out-of-Philadelphia trials were few and far between. Perhaps for that very reason, some of those cases have remained in strong memory.

My most memorable case in Bucks County was a jury trial in 1961. I represented William "Billy Blue" McClurg, one of four defendants accused of burglarizing a men's clothing manufacturer's warehouse. The Judge was John Paul Fullam, who later became a federal judge. The District Attorney, Paul Beckert, later became a Bucks County Judge, as did Isaac "Zeke" Garb, one of the defense attorneys. The evidence was overwhelming—the defendants were arrested in possession of the stolen goods when their car broke down a half-mile from the crime scene—and all were convicted. I remained friendly with everyone involved in that case, and as long as 40 years later, whenever I saw him, Judge Fullam asked for updates on "Billy Blue" and the other defendants, each of whom I had represented in a later federal case of his own.

Years later, in Bucks County, I represented George "Dewey" Duval in a sentencing before Judge Garb. Duval had been convicted of manslaughter and given a 10-year sentence, which had been reversed on appeal because the judge had improperly required an eyewitness, Duval's girlfriend, to invoke her Fifth Amendment privilege in the presence of the jury. We negotiated a guilty plea for a four-year sentence, which the judge allowed Duval to serve in the Bucks County Prison rather than in the State Penitentiary at Graterford, granting him that privilege because, while at Bucks County Prison awaiting re-sentencing, Duval had formed a romantic relationship with the Warden's daughter.

The Chester County case I remember most vividly involved a man whose home was raided by the State Police based upon a tip that he was cooking meth in a garage on his property. I filed a motion to suppress because the garage actually had a separate address, and the Troopers, realizing that the warrant listed the main house address, had simply crossed it out and inserted the correct address.

The Motion was listed for hearing, but when I showed up at 9 a.m., as noticed, I found the entire Chester County criminal bar assembled for the Call of the list by President Judge Dominic Morrone, for the term of Court beginning that day. Most of the attorneys answered whether their case was ready or not ready for trial or plea, as to one or two cases on the list, except one attorney, John Duffy, who answered "ready for trial" to at least 20 cases on the list.

When my case was called, I answered "Ready for hearing on Motion to Suppress, Your Honor," and the judge, speaking to me, but looking at the audience, said, "I have read your papers, son, and we will entertain the motion today, following the call of the list, as there seems no dispute as to the facts, and we always enjoy the arguments of Philadelphia lawyers."

At the conclusion of the call of the list, the judge called our case for argument. Since the Troopers had made the search pursuant to a search warrant, the burden was upon the defendant to prove the warrant did not establish probable cause, or to establish some impropriety in the execution. My argument was that there was in fact no warrant to search the property, as the warrant approved by the Magistrate authorized the search of a different property, the main house; and the Troopers had no authority to substitute the address of the separately numbered garage.

The judge was incredulous. "Do you expect me to suppress this search because the warrant originally identified the property to be searched with the address of the house, and the garage actually searched on the same property had a different address? Is that your argument?"

"That, and the fact that the Trooper actually created a new warrant when he changed the address."

"But he could have searched both structures under the original warrant," the Judge responded.

"Not if the structures had separate addresses and there was no probable cause to search both," I responded.

"Do you have any authority to support that argument," the Judge asked.

"Yes, Your Honor, I do," and I cited a case which held suppression was granted when officers armed with a warrant for a particular building found that it was a multi-unit property and penciled in the number of the particular apartment to be searched.

"What Superior Court Solomon wrote that opinion," smirked the Judge, "and how long ago?"

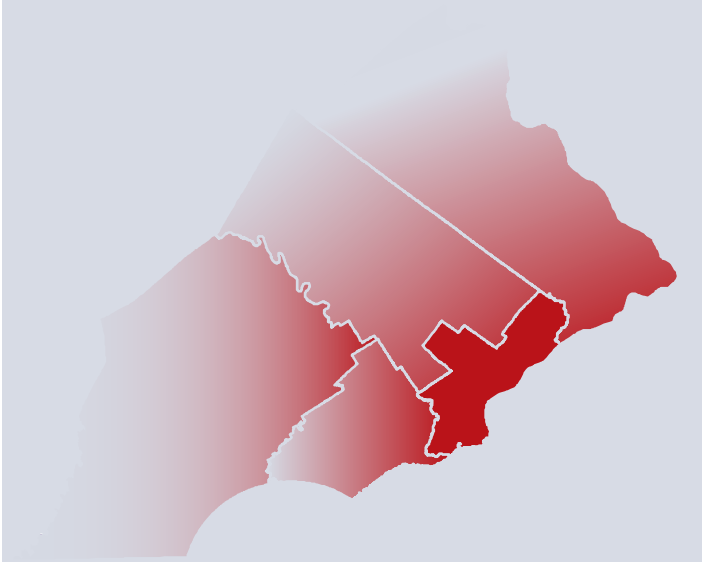
"It was some years ago," I admitted. "May I approach with a copy for the Court?" I asked.

"Of course, counsel, approach the bench." I handed the prosecutor a copy of the opinion as we went to side-bar.

"It is not a Superior Court opinion, Your Honor, it is an opinion of the trial court; the decision was never appealed."

"Some Philadelphia judge no doubt; let me see that," said the Judge, and I handed him the opinion, which, he was non-plussed to be reminded, was one he had himself written a dozen years earlier. He looked at me, and said, "I suppose I could technically overrule myself, but under the circumstances that might seem vindictive, so I will grant the Motion and let the Commonwealth appeal if they think it worthwhile." The Commonwealth did not appeal, and the case was dismissed. I never had occasion to appear before that Judge again, but I did hear from colleagues from Chester County that the Judge used the story on several occasions as a humorous anecdote.

A dozen or so years later, I was back in Chester County, representing the owner of a pharmacy who had run afoul of the Commonwealth's rules for the care and feeding of their lottery machine. The case was assigned to the Honorable Robert S. Gawthrop, III, who started out with a negative attitude toward me. I had learned, however, that he was an opera buff, an actual performer in Gilbert & Sullivan operettas, and an avowed student of classic literature.



"My out-of-Philadelphia trials were few and far between. Perhaps for that very reason, some of those cases have remained in strong memory."

I took advantage of the earliest opportunity to inject into an argument several applicable literary references, which generated a lively back-and-forth banter with the judge, leaving the prosecutor a virtual spectator until he got the message that the Judge did not regard the alleged violations deserving of a Misdemeanor conviction, and agreed to resolve the matter with a moderate civil fine, and joined in the fun.

After the case concluded, Judge Gawthrop engaged me in a six-month exchange of correspondence over whether Shakespeare was in fact the author of the plays attributed to him. And years later, when I had a case assigned to him, after he had been appointed to the federal bench, I had barely gotten through the door when he picked up the discussion as though we were in the midst of a dialogue continuing from the day before. "Pray tell," he asked, "how fares the Merchant of Venice these days?" in a clear reference to my former client's cupidity.

The most difficult out-of-county experience I ever encountered was in Delaware County. I had represented Edward Rigby—"Doodles" to his friends and the police—and his girlfriend Maryanne, who had been charged with burglary and receiving stolen property in Philadelphia following a search of his car which disclosed property stolen in various burglaries in Philadelphia, Bucks, Chester, Delaware, and Montgomery Counties.

With some fancy footwork, and a lucky scheduling break or two, I managed to get the case into Motions Court in Philadel-

"And then, there was a case I had in Montgomery County, which exemplifies the kind of reception a Philadelphia lawyer could expect back then when he ventured outside his own professional bailiwick, although in this particular instance, there were other factors at play."

phia first, which at the time was overseen by two of Philadelphia's most experienced Judges: Edmund "Ned" Spaeth, far and away the smartest judge I ever met ("like Plato on the bench"), and John Meade, a judge possessed of more common sense in his little finger than most of his colleagues *en masse*. I cannot, at this remove, remember which judge it was who entertained the Motion, but the search and seizure had clearly been violative of the Defendants' Fourth Amendment rights; the evidence was duly ordered suppressed, and the Commonwealth dismissed the charges in Philadelphia.

In the interim, however, "Doodles" and Maryanne had also been charged in the four "collar" counties. I had filed a suppression motion in each, which I then supplemented with the Order of Suppression in the Philadelphia case. The District Attorneys in Bucks, Chester, and Montgomery Counties accepted the Philadelphia Order as dispositive of the legal issues, and each agreed to an administrative withdrawal and dismissal of the charges in their respective counties. We were batting four-for-four, and I was elated.

Delaware County, however, was a different story. The President Judge there, Francis Catania, whose family had apparently been local political heavyweights for decades, was reputed to run the Court as well as the courthouse with an iron hand, who did not suffer fools gladly, if at all. And he took an instant dislike to me, initially because I was from Philadelphia and, although accompanied by local counsel, had clearly indicated in my filings my intention to lead the charge.

Even more infuriating to the Judge, however, was our argument that the Philadelphia order had some relevance let alone probative effect upon the issue before the Court in Delaware County. The Judge did not hesitate to expound on what he saw as presumption on the part of any Philadelphia judge who thought his ruling there would have any precedential value in Delaware County. The Court there would decide what evidence was admissible, not some judge sitting in Philadelphia.

And so, Judge Catania put me through my paces, to a fare-thee-well. We had at least four hearings the judge scheduling a separate hearing for each of the four Philadelphia police officers who had participated in the stop and search, clearly hoping for some testimony that might contradict or at least supplement the prior testimony in Philadelphia so as to create an opportunity to support a contrary finding in Delaware County.

But it didn't happen. None of the other three officers would contradict the testimony of the lead officer who had testified in Philadelphia. Besides, during the course of the year that the Doodles and Maryanne Show had been on the road, the officers, who had received endless hours of overtime pay for their numerous court appearances, had come to look upon me as something of an unintentional benefactor, so there was no incentive for this case to become "personal."

Eventually, even Judge Catania saw there was no reason to prolong the matter. He had squeezed every ounce of sour entitlement out of that particular lemon, and finally decided to let go. On the occasion of the fifth or sixth listing, he took the bench and read an opinion, outlining his reasons for granting the Motion; and the District Attorney immediately moved to dismiss the case. Granted. Case over.

Then, one last shot across my bow. "Counsel," said the judge, "Your clients are fortunate that we still follow the law here in Delaware County. As far as this Court is concerned, they belong in prison, so you should leave now, and take them with you before we have second thoughts and I find them guilty of trespassing on our time and our patience. I had no trouble following the Judge's advice, and it was about 20 years later before I ever set foot in Delaware County Courthouse again but that as they say, is another story.

And then, there was a case I had in Montgomery County, which exemplifies the kind of reception a Philadelphia lawyer could expect back then when he ventured outside his own professional bailiwick, although in this particular instance, there were other factors at play. In fact, I was, and had been living in Montgomery County for a dozen years, and always found a way to work that fact into the conversation when I appeared in Court there.

On this particular occasion, however, even that fact would not, and did not, make any difference. I was representing my next-door neighbor in her attempt to collect child support arrearages

from her former husband, who was a national celebrity, and a great favorite of the local press. I did not generally handle domestic relations matters, but my neighbor had said she could not get anyone to represent her, so I said I would try to help by attending her hearing on her petition for enforcement of the support order.

On the day of the hearing, we arrived at the courthouse at 8:30 a.m. for the 9 a.m. scheduled hearing. The defendant and his attorney arrived soon after, their entrance greeted by a host of welcoming voices from other litigants as well as court personnel. Cries of "Hi, Champ!" rang out. One would have thought the man was a conquering hero returning home from the wars rather than the defaulting parent that he was.

And so, it continued, even after we entered the courtroom. The court personnel were all agog, and "Hi Champ!" was accompanied by the "thumbs up" motion of approval. When the judge ascended the bench, he said "good morning" to every one of the court staff, addressing them by their first names, and then noted for the record the presence of the defendant, whom he identified with his full name, and his attorney, whom he addressed by his first name. And then, he turned to me. "Counsel," he said, somehow making it sound like an insult, "please identify yourself for the record." The judge's courtroom clerk looked up at the judge, as if to bring something to his attention which it did in fact do, because the judge then asked opposing counsel if he would ask his client to sign an autograph for the judge's clerk, which request was of course met with no objection and immediate compliance. With that, the judge turned to address me.

"Well, counselor," he said, "what brings your client to our Court today?"

Now, the judge very well knew why we were there; it was because of the Petition for Enforcement of the Support Order on which the arrearages were at that time about $12,000. I felt I was being baited; and I knew full well that any display of outrage or over-the-top legal pyrotechnics would backfire, so I paused to be sure I could control my tone, and adopting the same level of non-seriousness that seemed to be the order of the day, said "Your Honor, my client just wants to be treated the same as everybody else; she just wants the same thing."

"And that is...?" asked the Judge.

"That is," I shot back as quickly as I could, so as not to lose momentum or courage, "my client wants the Champ's autograph, too, but she and their son would like to have it on a check."

The judge looked at me, saying nothing for a moment, and then broke into a smile.

"Well put," he said. And turning to opposing counsel said, "A reasonable request I believe, and one which, if responded to as reasonably, will avoid anyone having to put on the gloves today."

As I recall, the Champ's attorney promised to send me $2500 within the week; and he did send me the Champ's check in that amount as promised. And, of course, it bounced before it cleared.

As I have written this, it has triggered the memory of cases I remember trying in other Pennsylvania counties: Berks, Dauphin, Lancaster, Lebanon, Northampton, Pike, Snyder, and Wyoming, in particular, each one involving some particular unusual component or unexpected event which remains fixed in memory, where they will, at least for the time being, remain. ■

Post-Script:

As a side note, it occurs to me, that I have within the last few years wound up criminal cases in Montgomery County and Delaware County, in each of which I was invited to participate as co-counsel by a local solo practitioner with a general practice. Each case took more than three years to resolve, and each was a perfect example of a phenomenon that I have not only witnessed, and personally experienced on almost as many instances as not, which I can summarize, as follows:

Although preparation is the *sine qua non* of any litigator's law practice, something inevitably occurs in almost every case—which no one expects and no one can prepare for—which changes the course of the matter and often determines the ultimate outcome. Even the most experienced attorney cannot anticipate the completely unexpected development, but experience can prepare one to know how to effectively respond and turn the opportunity into an advantage. More on that later, maybe. ■

Steve LaCheen (slacheen@slacheen.digitalspacemail8.net), a partner with LaCheen, Wittels & Greenberg, is a member of the editorial board of The Philadelphia Lawyer.