

MR. SCHUCKERS: Today is December 4, 2002, and this is Dan Schuckers, Prothonotary of the Commonwealth Court. We are in the chambers of Judge Emil E. Narick, here in Harrisburg, Pennsylvania, on the Fifth Floor of the South Office Building, to continue a series of reminiscences by Judge Narick concerning his career.

Today we hope to discuss Judge Narick's time on the bench in Allegheny County for about eight years, and then he has been with the Commonwealth Court the last sixteen years and will be retiring at the end of this year as a Senior Judge of the Commonwealth Court.

What I hope to do today is discuss with Judge Narick his tenure on the Common Pleas Court in Allegheny County and his tenure here with the Commonwealth Court.

Judge, as I recall, you were elected in Allegheny County to the Common Pleas Court bench in 1977?

JUDGE NARICK: 1977, and I took office in January 1, 1978.

MR. SCHUCKERS: Judge, do you remember the type of cases you were initially assigned to in common pleas court?

JUDGE NARICK: Initially I was assigned to the family division. I did that for approximately one year. At that particular point in my life, at my age, I was very much distressed and felt so strongly about the kinds of cases coming before us in the family division. At that time I had been married for a long period of time, and I was sad to see how in the family division children were being involved and how they were being used by their parents. Some cases stand out to me that reflect what I am talking about.

One case, for example, was involving two Jewish people who were divorced. One lived in Squirrel Hill in Pittsburgh and the other lived in Mount Lebanon, another part of the Pittsburgh area. They had one child, and he was going to become of age at the age of 12. The boy was living primarily with the mother, and the mother was making all the arrangements to have a big dinner Saturday night after the bar mitzvah. Her friends were going to be invited from Florida, New York and so forth, and she was also sending out invitations. She also arranged to use an ice skating rink at the high school and pay the rent for it.

The father learned of this, and he

was not even invited to be a part of it, so he filed a complaint in our court, and the issue was whether or not he should have the privilege of participating in this very important event of his boy becoming a man.

It came before me, and at that time in our court you could talk to the children, for example, in chambers. There was nothing improper about that under the rules. So I talked to the young boy and I said, "What's the problem?" He said, "Judge, I love both of my parents, but they always seem to be fighting about something, always." I said, "I don't like what they are doing, but I can't have anything to say about it, but I think I have the solution for that situation." The solution was in the form of an order, to provide in the order that in connection with the bar mitzvah, the mother and the father will be allowed to participate equally and they will both be able to send invitations to their friends, whether they are in New York, Philadelphia or so forth. But they will have to submit them to me, already pre-stamped, and I'm going to commingle them and I'm going to send out the invitations. That's one part of it.

The other part was insofar as the

location of the dinner Saturday night, it is a big event, I said I'm going to vacate the suggestion to be where the mother picked the place for the dinner, I'm going to pick one. So I picked a place where I thought it would be totally neutral, and I said both sides of the family could come to that place, and whether they speak with each other, I don't care, but the important thing is it's all going to be one place, not chosen by one person or the other.

Insofar as the ice rink was concerned, the cost of that would have to be shared by both father and the mother, they are going to pay the cost of that. That's the way it went and I think it turned out it worked out very well.

Another case I had was involving two young boys, 16 and 14, children of a divorced family. The father was a dentist in one of the suburbs of Pittsburgh, Mount Lebanon, and the mother was working at Mellon Bank. She lived on the north side and the father lived in Mount Lebanon, sort of the southside area. The divorce decree provided in connection with visitation, the boys would have to be with the father from five o'clock on Friday until five o'clock on Sunday, then the rest of the week would be with the mother. This was the routine that

had been going on, and that was issued when the boys were about eight and seven years old. That order had been complied with all along, and the boys were doing what they had to do, every Friday they'd go to their father's house and every Sunday back to their mother's house.

It got to the point where the boys, they were 15 years of age and so forth, were involved with sports and wanting to compete with soccer and so forth, and they had to practice on Friday nights and also on Saturdays, and the father was furious because they were not complying with the order. Of course the question was: What could be done to make it possible for the boys to be able to participate in these activities?

So I talked to the boys in chambers, and I said I understand what you boys are going through, you are athletes, you want to be athletes, I'm a former athlete, I know you have to practice and you have to be part of the squad and so forth, but you can't do it unless you get practice and go to scrimmages and so forth. The boys said, unfortunately, it seems like my father thinks the mother is responsible for not complying with the order, and that is what he felt very strongly.

So he filed an action before our court, it eventually was assigned to me, and I had a hearing on the matter. I find out that the father was a kind of a person who is very hard nosed and so forth, and his theory was an order is an order, it must be complied with.

When I talked to the boys in chambers, I said to them, I know you want to be an athlete and practice and so forth, you are now at an age where you understand what's going on pretty much, you have a good feel about it, you know what's going on between your mother and dad, but I'm going to issue an order in which it is going to provide that all previous orders relating to visitations will be vacated, and if your father at any time wants to go with you someplace, he can call you and ask you to do it, if you want to, you don't have to, but it's no mandatory requirement that you can't go to practice and so forth, no requirement you leave at five o'clock and go to his place, that is all gone, that will be vacated. That's the way it ended up, and I thought it was a decent decision and made sense.

MR. SCHUCKERS: Do you find you used your mediation skills even in those type of cases?

JUDGE NARICK: Yes.

MR. SCHUCKERS: Did you find those type of cases very disturbing?

JUDGE NARICK: Disturbing, yes, in the sense that emotionally it really affected me. As I said, at that time in my life and being married as long as I had been and I think I had a good family relationship with my wife and so forth, it was just so difficult. What really brought this thing to a head was I came home one evening about five o'clock, and my dear wife was in the hallway waiting for me, she said, "Honey, I have problems I got to talk to you about." I said, "Honey, I don't want to talk to you about any God damned problems, I had them all day." Her response was, "Honey, I think you better get out of that family division." So the next day I went down and talked to the President Judge and said please reassign me, I no longer want to be in the family division, assign me to the civil division.

MR. SCHUCKERS: Who was the President Judge then?

JUDGE NARICK: I can't think of his name right now, I will think about it.

MR. SCHUCKERS: You were very upset

about the type of cases you had to deal with in the family division?

JUDGE NARICK: Yes.

MR. SCHUCKERS: After one year you were able to be transferred?

JUDGE NARICK: Yes, in the civil division.

MR. SCHUCKERS: What kind of cases did you have in the civil division?

JUDGE NARICK: In the civil division was a whole different ball game entirely. I was involved in civil disputes, commercial strikes, tort actions and also contract actions of some kind. But it was a variety of things and that was very interesting, too, and a lot of interesting cases involving money. Of course a lot of tax-related cases involving residential homes and so forth. Nothing like some of the tax cases I handled when I had been on the Commonwealth Court. I will mention about that in a few moments.

MR. SCHUCKERS: These were tax cases in Allegheny County by individuals?

JUDGE NARICK: Yes, by individuals. What is the fair market value, for example, of a home, 280,000, 250 or something like that.



MR. SCHUCKERS: Those have been appealed from the Board of Assessment?

JUDGE NARICK: Yes, and they would come before me. The interesting thing about that, in those kinds of hearings you had both sides presenting witnesses who are going to give their estimate of what is a fair market value. They came before me, and those situations were non-jury trials, and the experts were good, very sharp but they were disagreeing pretty far apart. Of course, ultimately I had to make a decision, and I never agreed with the experts, and I always came up with a fair market value figure that was not splitting the differences, but maybe 60 percent, 40 percent, whatever. But I came up with a figure, and that was it on the fair market value.

Very few of the cases I handled that way -- and I handled quite a few of them -- were appealed. But the ones that were appealed and came to Commonwealth Court, to my knowledge all of them were affirmed, and I think the Court's idea was that the Judge had the best view and best feeling about the credibility of the witnesses and so forth, and they always went along with that. I never had a case reversed.

Then in the civil division also we had some unique cases. I will never forget one case involving a fellow named Reverend Roth who was a pastor in the Lutheran church. He along with some of his friends were very much concerned about unemployment in the Homestead area of Pittsburgh because of the steel industry collapsing. He was a strong advocate, complaining and even going to the banks and spilling skunk oil on the floors because they wanted to make a point that people aren't concerned about these steelworkers being unemployed and so forth.

As a result of it, he was preaching on Sundays, not so much according to the tenets of the church but talking about the unfairness in the system and not taking care of these people. It was really like a political kind of a speech. It got to the point where a bishop of that Lutheran church area filed a complaint for injunctive relief that this Reverend Roth be removed from the church on Sundays and allow him to put his own pastor into the pulpit.

So that was the matter that came before me, and in that case I was very much concerned because I had only one law clerk, but I

did a lot of research involving what I considered to be critical issues of religion, church-related issues and so forth. After doing that very thoroughly, when the petition was filed in my court for injunctive relief and we had a hearing on that matter, there was no question that there was going to be some problems about the nature of the testimony. It came out very clearly that Reverend Roth was determined to do what he did, and he was a witness and was examined by his attorney. But then I also asked a few questions, I said, "Sir, did you feel that you had an obligation to comply with the tenets of the church, the leaders of your church?" And his response was, "The only person I want to be responsible to is God. That's who I look to, I don't care about anybody else." I said, "Under the circumstances, I'm going to have to do something in the way to seeing that you comply with the bishop's orders to allow somebody else to take your place." The upshot was I issued an injunction in which I enjoined him from standing in the pulpit and so forth, but he completely ignored it.

Then he came back to me to seek enforcement of that order, and again I had to look at that very carefully on whether or not it was a

civil contempt or criminal contempt in not complying with the order, and I did a lot of research and became familiar with the standards followed if it's a civil contempt compared to a criminal contempt. It came back to a hearing again on the issue of whether or not he violated, and of course the witness testified, and it was quite clear he did violate it, and of course he testified yes, I did all that and so forth, but the only one I am responsible to is God.

I had a couple of friends who were authorities on the Bible, and I asked them what does the Bible say with respect to rules and regulations and laws to be obeyed by man. I referred to a certain chapter, a certain psalm, and it said very clearly that man must obey the ordinances of God and man, and to me that was not going to be very difficult to do because it was quite clear in the Bible.

I posed that question to Reverend Roth, I said, "Doesn't that mean you should comply with the ordinance of God and also man? You are only talking about one person, God, but not about the ordinance of man." He said that's his view, so as a result of it I said I'm going to have to find

you in contempt unless you indicate to the Court you are prepared to comply and allow the bishop to have his own pastor at that small church in Clairton, Pennsylvania. Of course he indicated he wouldn't comply, and I said, "Sir, under the circumstances, you have the key to either comply, and if you do, you are home free as long as you allow the bishop to have his own pastor. But if you don't, I'm going to have to impose sanctions." He said, "As far as I'm concerned, I'm not going to comply because I'm going to go and do what I think is right." So under the circumstances since you indicated you are not going to comply, I'm going to impose a sanction of putting you in jail for at least 90 days unless you think about what you are going to have to do and so forth.

As a result of it, he went to jail. I talked to the warden about maybe having to send some people to his jail, and I said do me a favor, please, if you will, that you don't require them to be in the county jail in Allegheny County, put them somewhere else, in Clearfield, Butler and other counties. He said, "We have no problem with that." As a result of it, when I did issue the order putting him in jail, the warden did send him somewhere else. About a week or so later,

notwithstanding my order that allowed the bishop to have his own pastor, the members of the church, including the governing body of about nine people, including Reverend Roth's wife, they barricaded the church so he couldn't get in.

So another injunction was filed, a request was filed, and it was assigned to me, and I had a hearing and heard testimony and so forth about they were barricading the church. So I issued an order to the effect that they must appear on whether or not they should be found in contempt for failing to comply with the order. So I did have a hearing, and I told them you have a decision to make, you have to now comply with the order. Of course, they were all macho, eight of them as macho as could be, they were very excited about it, and I said, "You have to make a very important decision. Are you going to comply or not comply?" And of course their response was, "No way." So I said, "Under the circumstances, I'm going to have to find you in civil contempt, and I'm going to put you in jail for 60 days, and when you come back, you are going to have to let me know whether or not you are prepared to comply."

Again I talked to the warden and

said, "Please do me favor and send them different places if I have to send them to jail," and he did. I did issue an order saying they were going to be in jail for a period of 60 days, but I also talked to the warden before that to please move them in different directions, and he did. He put one in Clearfield, one in Washington, one all the way over the tri-state area, and only one remained in Allegheny County jail.

Interestingly, after a couple days I got a call from the wife of one of the people I put in jail. She called me and said, "Judge, we have a serious problem. We have a daughter only a year and a half old, and we are going to have to take her to the emergency doctors and so forth and see what is wrong, and I would like to have my husband go with me, I can't stand to do it myself." I said, "I hear you." I didn't laugh about it when I heard what she said. I said, "Incidentally, what is your doctor's name?" She gave me the name. I said, "Let me find out a little more about this and I will give you a call back." Sure enough I called the doctor, I said, "Doctor, we have a situation involving this mother saying she has an appointment with you and she wants her husband to be with her and he's in

jail and she said it's very critical." He said, "Judge, nothing to it. It's just a routine examination of this child, that is all it is." So I called this lady, and I said, "Unfortunately, based on what I understand now to be the facts, I'm not going to be able to grant your request to release your husband from jail." So he remained there, the only one in Allegheny County.

It ended up that after the 60 days were over insofar as the eight members of the church were concerned, they had to come back before me, and at this time they had to indicate are you now prepared to comply with the order of not to interfere with the bishop assigning someone as a pastor of the Clairton church, and they all said, very sheepishly, "We had a meeting last night, and yes, we are going to comply." They complied. The same thing when Reverend Roth completed his term of 90 days, he had to come before me, he said, "Yes, I am going to comply, too." And they did.

MR. SCHUCKERS: As I recall, there was quite a bit of publicity, not only in western Pennsylvania but nationally in that case.

JUDGE NARICK: Yes, a lot of people didn't realize they had a following supporting them



in what they were doing, and they had people in the county who made calls to me at home at two or three o'clock in the morning, threatening us in some way and also coming by my house regularly, some way to threaten us, my wife and me and so forth. It got to a point where the sheriff's office, the township police and also the county police, they started becoming concerned, so the township police had a person parked across from my house in a driveway of a neighbor, and they were there most all day. The sheriff's office had a car go by my house about every hour. Then they were threatening the church, they were threatening me, and the telephone calls were something that were very distressful for Becky and me, but primarily Becky.

What happened on that score, our son suggested we ought to have a recording of those telephone calls. If you have a recording of those telephone calls, that could provide a basis for which they could be indicted and so forth. I remember before I became a Judge, I had a case involving young people working in a coal mine who wanted to get a day off and couldn't get it, so they decided to pretend like there was going to be a bomb in the mines, and they closed up the mine and so

forth, but it turned out it wasn't true at all. How they indicted them was because of the telephone call, they had a recording of it and were able to trace the call to this young person and an older person, there were two of them involved, and that's the basis upon which they were indicted. My son came up with that suggestion, and that was the cure of the telephone calls, because those were recorded and that's how it turned out.

The upshot was of all that litigation, the pastor was selected by the bishop and he took care of the church, and to my knowledge Reverend Roth left Pittsburgh eventually. I'm not sure whether he and his wife are still living with each other, but I understand he's in a very difficult situation. He's not a pastor in any church, and I understand he's having very difficult financial problems.

MR. SCHUCKERS: Were you head of the civil division at that time?

JUDGE NARICK: I was Administrative Judge.

MR. SCHUCKERS: You assigned that case to yourself?

JUDGE NARICK: Yes.