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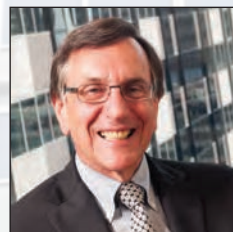
Philadelphia Bar Association Quarterly Magazine

Fall 2014

Family Court Under One Roof

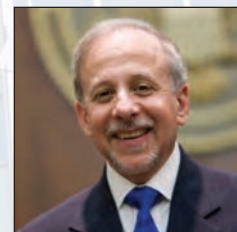
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10 QUESTIONS

for
Mark A. Aronchick

CHAIR, HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER

INTERVIEW BY DANIEL J. SIEGEL

Mark A. Aronchick is a past Chancellor of the Philadelphia Bar Association and was the youngest City Solicitor in the history of Philadelphia under Mayor William J. Green. Aronchick was a leader in the coalition in *Whitewood v. Wolf*, the lawsuit that successfully overturned Pennsylvania's exclusion of same-sex couples from marriage.

DANIEL J. SIEGEL: Why did you get involved in *Whitewood v. Wolf*, what many people call the same-sex marriage case?

MARK A. ARONCHICK: It's hard to imagine a more important case. When Mary Catherine Roper of the ACLU called, in January of 2013, it took us less than a nanosecond to say yes. It was six months before *U.S. v. Windsor* [the Supreme Court case requiring the federal government to recognize same-sex marriages], but everybody knew that *Windsor* and [*Hollingsworth v.*] *Perry* were going to be the seminal cases that year in the U.S. Supreme Court. It was obvious that this case was going to be today's chapter in the major civil rights battles in American history.

How was the coalition created?

The coalition included our firm, the ACLU, and Seth Kreimer, a professor at University of Pennsylvania Law School. We put together a team of five lawyers, Helen Casale, John Stapleton, Rebecca Melley and Dylan Steinberg, at the Hangley Aronchick firm. The ACLU team included their Pennsylvania and national lawyers, including Vic Walczak, Mary Catherine Roper, Molly Tack-Hooper, Leslie Cooper and James Esseks.

Putting together the Hangley team was easy. Just about everybody in the firm wanted to be part of this case. So we put together a team the way we would put together a team on any high-profile, important case that we do for our clients. I sat down and looked at the needs of this case, and figured out a staffing pattern that made sense.

How did you locate the plaintiffs in the case?

It's no surprise that many people wanted to be part of this case. There was a pent-up emotional need and desire to be part of this, like nothing I have ever seen before. The question really was how to put together a group of people who would give us our most compelling presentation.

Remember, this was months before *Windsor* and *Perry*. I personally poured through the records and briefs in every important case from *Goodridge*, the major Massachusetts 2003 case, through *Windsor* and *Perry*, and other cases that were pending at the time. Along with the ACLU and Professor Kreimer, we considered all of the issues that the opposition could conceivably throw at us. Then we focused on possible plaintiffs whose stories and backgrounds answered those questions. For example, if we were going to hear that same-sex marriage is not good for children, we made sure we had plaintiffs who raised children. The opposition elsewhere argued that same-sex marriage was bad for business or all kinds of wacky arguments. But still we were determined to answer any and everything we thought would be raised. We wound up with a group of wonderful, very committed people.



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Also, the important thing about this group of plaintiffs is that they really are a cross-section of Pennsylvania. Their lives and their stories are very typical of almost any group of 25 or so Pennsylvanians. They are us. And when I say that, what I mean is, we have people from all corners of the state. We have young and old. We have people who have children, people who want to have children, people who don't want to have children. We have people who have good positions in business. We have people who are stay-at-home.

We have people with advanced degrees and people who are sole proprietors and entrepreneurs. We have women couples and men couples. We have people who want to get married in Pennsylvania, because they love Pennsylvania. We had an equal number of people who were married out-of-state and want to be recognized in Pennsylvania. We had people of various ethnicities and races and religions. We had a cross-section of Pennsylvania.

If you stop and do nothing more than read the first 15 or 20 pages of the complaint, and if you're a person with a beating heart and a semblance of rationality and fairness, and that's just about everyone, you stop there and say, I'm not discriminating against these people. There is no reason under the sun that I should have the right to marry and they shouldn't.

In short, we showed how denying marriage rights in Pennsylvania hurt people in the deepest sense, in their humanity, their integrity, their respect and their dreams for their children. And we showed this all from a place of real truth.

Would you agree that the diversity of the plaintiffs translated into what seems to be a unique opinion or form of opinion from U.S. District Court Judge John E. Jones III?

Isn't that amazing? How Judge Jones crafted his opinion is amazing. Amazing. He saw that there is something that was going on here, across the country, since *Windsor*. We were the first case filed after *Windsor*, about a week after *Windsor*. Many lawyers around the country have modeled their cases on ours. As these

cases were being filed around the country and federal judges were issuing their opinions, it became apparent that these judges were viewing these as legacy opinions.

So Judge Jones tackled this case after a number of those opinions had been written. He is a remarkably good judge, on so many levels. But I wondered, what is Judge Jones going to do if he's going to go our way, what's he going to do? He wrote a brilliant opinion, structured around the marriage vows. He took each vow and showed how the plaintiffs before him wanted nothing more and nothing less than to make the same public commitments married

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people make every day. He showed how they were living their lives in just those ways. So obvious and so basic, and he put it together in such an elegant manner. He ended with the sentence that has been quoted all over the country, a sentence that belongs in the annals of American constitutional history – that we're better than these laws represent and they belong on the ash heap of history. That is probably the single most quoted sentence from all of these opinions.

Judge Jones was also the judge who wrote the creationism

opinion, and is a Bush appointee. He's not necessarily the person you would predict to be writing either this opinion or even the creationism one, yet, obviously, would you agree that this case shows his independence?

I think it shows something much more than that. That it was one of the great lessons, or great affirmations about our system of justice.

I've been around way too long, and I know that the really great judges, when they put those robes on, know they stand for something profound and they dedicate their lives to the promise of our Constitution. Judge Jones proves that. He's just a great judge.

What else is there, if anything, that you perceive happening with the case after the Corbett administration decided not to appeal, and an additional challenge was dismissed by the Third Circuit?

In early July, Justice Alito also denied a stay request from the Register of Wills from Schuylkill County, who tried to intervene after Governor Corbett announced that the Commonwealth would not appeal.

From day one after Judge Jones' order, the Commonwealth has been fulfilling its responsibilities and has been implementing the order smoothly and efficiently. They will be the first to say that all has been going very, very well. And marriages have happened all over the Commonwealth without any revolution on the streets.

So I think we will see throughout the rest of this year the full implementation of the order. What we're also going to see, in a much more profound way, is an even higher level of acceptance for same-sex marriage, and even more.

As I have said many times, this case has helped demonstrate that same-sex marriage is nothing to fear, and everything to celebrate. I see the attitudes around discrimination in housing, jobs, the daily private issues we all have, shifting before our eyes. I think we're going to see a lot of soul-searching about why we do not have laws that prevent all discrimination. Some parts of our Commonwealth are already there.

Go to the weddings, see what happens. If you want to know what love and joy and celebration mean, take a look, because that doesn't diminish anything, that lifts us all.

Looking back and comparing when you were Chancellor, you dealt with high-profile issues, including Judge Massiah-Jackson's nomination to the federal bench, which became a hot-button issue. How would you compare them?

It's a good question, because when you raise the Judge Massiah-Jackson issue, while they're different, they both touched at the core of who are we, and what kind of people we are or want to be. I've had a lot of major battles in my day, a lot. These are two that revolved around the most profound questions of justice.

In Judge Massiah-Jackson's case, there was this burning question of the need for the fullest recognition of the talents of African-American females in the legal profession. Remember, it came after national battles surrounding Anita Hill, Lani Guinier and others. When I was Chancellor, we had our version of that battle. Judge Massiah-Jackson, by any definition, was and is a very talented, deserving person, someone I knew from almost the first day I started practicing law, who was being vilified.

There was this deep sense, not only in the African-American

community, but in the community generally, that this was unfair. This wasn't right. This shouldn't be. I took on that battle big time. I sensed every day, not only Judge Massiah-Jackson's aspirations, but everything she was carrying and representing.

I remember the press conference with her, when it ended, and I was hugging her and crying, but it was crying out of sadness, profound sadness, that such a good person was treated so poorly. But we fought a very significant and good fight.

When this same-sex marriage case ended, last May 20, I also was crying, but I was crying out of profound joy. In each case, God gave me the privilege of being the leader of a battle about people's deepest aspirations. In one case, we came up short, but it was a good fight and a lot of things changed for the better after that. In the other case, we came up victorious and a lot more things will change after that.

Consider what was at the core of this case. This was about love, integrity, respect. Tell me what could be more worth fighting for? And as lawyers, we watch other professions deal with those issues frequently. We watch clergy deal with those issues and doctors, and lots of other people, artists and



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intellectuals. To fight for those human values is just so elevating and life affirming.

Then, to go to the weddings, see the joy and love. I sat there, aside from when I could stop crying, and that wasn't very often, thinking about all those people out there, a diminishing number, who say that something about same-sex marriage is going to diminish the institution of marriage? Is going to take away something from heterosexual marriage? Go to the weddings, see what happens. If you want to know what love and joy and celebration mean, take a look, because that doesn't diminish anything, that lifts us all.

Aren't these cases about fairness, treating everyone fairly and equally, regardless of their differences?

That's our tradition. And, it is my tradition. It's my Jewish tradition. It is my late 1960s tradition. It is my family upbringing.

You have been involved in many political issues and battled things over the years. This case had such issues, including a newly elected attorney general who refused to defend the law, and a governor who had openly opposed same-sex marriage, but was running for re-election. How did these matters factor into the equation?

This case helped bring about a dimension of understanding of the

political realm we're operating in, as well as the communications and the media realm that go along with it.

When Attorney General Kathleen Kane was considering not defending this case, I did whatever I could to help convince her that that was the right thing to do. I think she always knew this was the right thing to do, she had the great deputies around her, in particular, Adrian King. I had been through similar decisions when I was the city solicitor in Philadelphia, during the administration of Mayor Green. I was able to offer a "been there, done that" perspective.

So I'd been through that fire. I was able to support her and explain the correctness and courage of her decisions. When I did, many members of the media knew that I was speaking from a place of real experience.

With regard to the governor, I think a great deal of the lawyers that he had on his side of the case, Bill Lamb and his colleagues in his firm, Jim Schultz, the governor's general counsel and Greg Dunlap, who is the head of litigation for the Commonwealth. They are people I've known for a long time and people who I could talk to, even while we were opposing each other. That continuous, respectful and open dialogue helped in many ways.

Having the ACLU as partners also was critical. These are lawyers of the highest integrity, talent and respect. You have to understand, there's another level on which we were operating, and that was public education. This

case would not have been successful if we weren't able to explain to the public what we were doing. There was a constant effort to try to make sure that people understood that everything about marriage equality was something to celebrate, and nothing to fear.

What other lessons did you learn from this case?

This case was a team effort, the smoothest I've ever seen. The team that we had at the Hangley Aronchick firm was carefully assembled. Add in the local and national ACLU lawyers, and Professor Kreimer, and you have a murderers row that you don't want to litigate against. Everybody on the team was as important as everybody else. It was one of the joys of this case.

Whatever else comes my way, this case always will mean everything in the world to me. The case, the law firm that handled this case, the law firm that supported this case, the team that we had together, the judge who responded in the way that he did, the regard that people have and the opportunity to be part of such an important chapter of our history. All of that means everything, everything. If nothing else happens, this will be everything. ■

Daniel J. Siegel (dan@danieljsiegel.com), principal of the Law Offices of Daniel J. Siegel, LLC and the president of Integrated Technology Services, LLC, is a member of the Editorial Board of The Philadelphia Lawyer.