

REMINISCENCES
OF
HONORABLE JOHN A. MACPHAIL
(COMMONWEALTH COURT JUDGE)
1978-1988

JANUARY 2010

I was born on January 20, 1924 in Johnstown, Pennsylvania (residence in Windber, Pennsylvania) to Marie Anna Trapp MacPhail (German born immigrant mother and father) and Donald Cameron MacPhail (Scottish born immigrant father and mother). My father and mother were married on November 26, 1919, after my father, a decorated WWI soldier, returned home from France. Neither my father nor my mother graduated from high school. I was an only child.

The period from 1930 to 1941 was difficult. We moved four times while I was in first grade. Dad left the coal mines because of his health and lack of work. In 1937, we moved to Gettysburg where my parents operated a small inn. The best thing that happened for our inn was the celebration of the 75th anniversary of the Battle of Gettysburg in 1938; otherwise, the business was non-profitable. I graduated from Gettysburg High School in 1942. My parents had moved to Chester, Pennsylvania, in 1941. After high school, I was employed by the Sun Shipbuilding Company as an apprentice electrician and enrolled in the Drexel University night school in the electrical engineering program.

In 1943, the United States Army called me. I served three years, including 18 months in the European Theater. Thanks to the G.I. Bill, I enrolled at Washington and Jefferson College in

1946 and married Jeanne December 28 of that year. We had been classmates in Gettysburg High School. I graduated cum laude with a major in political science and a minor in English. (A wise member of the faculty suggested that engineering really wasn't my forte.) From 1948 to 1951, I was enrolled in Dickinson School of Law in Carlisle. Our first child was born in 1948. I worked at Montgomery Ward in afternoons and on weekends. I graduated close to the middle of my class, and I was editor of the yearbook. Our second child was born in 1951.

In 1952, I began the practice of law in Adams County where there were 12 practicing lawyers. Prior to our marriage, Jeanne had worked at a two-lawyer firm there. My starting salary was \$75 per week. (Jeanne was unemployed, and we had two children. That's real depression!) Probably the most interesting case I had (it was featured in the Sunday Parade section) was a failed effort to zone the township surrounding Gettysburg which would have saved the U.S. taxpayers millions of dollars in "saving" the battlefield by purchasing private and business land at inflated prices. I served in all the community organizations that time would permit such as president of the Rotary Club, Commander of the American Legion and chairman of the local Community Chest. I was not an officeholder politically but served in the background as master of ceremonies at the county Republican dinners. My law practice was across the board – from adoptions to criminal trials.

In 1966, Judge W.C. Sheely died. He had served as a common pleas court judge for more than 30 years. The Adams County Bar was still quite small, and no Republicans were interested. When I asked to be considered, there being no other choice, I was suggested to Governor Scranton and appointed to fill the vacancy. The following year, I ran unopposed for a full term. My jurisdiction covered two counties, Adams and Fulton, which were 50 miles apart. I oversaw the renovation of the Fulton County Courthouse and the building of an addition to the Adams County Courthouse. I ordered the number and location of the new justice of the peace districts as well as the number and boundaries of the new school districts. In Fulton County, I decided the cloud-seeding case and in Adams County, the Gettysburg Tower case. Because my jurisdiction included everything civil, criminal, juvenile, and probate in two counties for most of my term and because my wife and now four children saw little of me, I decided to forego retention election and rejoined my former law firm in Gettysburg.

In 1978, I received a phone call from Burton Morris of Governor Shapp's staff, who said I had been recommended for appointment as an additional judge on the Commonwealth Court. This was a complete surprise because I was unaware of the legislation to expand the Court and in view of my decision in the Gettysburg Tower case. Before giving Mr. Morris an answer, I called Commonwealth Court Judge Mencer, whom I knew personally, and he encouraged me to give an affirmative answer. I did so and was told that the other judge to be nominated was David Craig from Pittsburgh, whom I did not know, and that if appointed, the Legislature would be asked to make it possible that if David and I were appointed, we would be given a full term without a statewide election. I told Mr. Morris that I was interested. After an interview with Governor Shapp and the Senate Judiciary Committee, I was appointed. Unfortunately, the legislation to avoid a statewide election failed.

While serving the temporary appointment, I came to know the other Judges on the Court, including David Craig, whom I found to be a very capable and amiable person. I also found President Judge Bowman to be a stern but fair taskmaster whose primary concern was that the new Commonwealth Court would be the best and most efficient Court in the Commonwealth. The staff did everything they could to make my transition comfortable.

Because the legislation to avoid a statewide election failed, David Craig and I had to handle a full load on the Court and participate in a statewide contested election. The combination of these two experiences put quite a strain on me and my family, physically and financially. Fortunately, even miraculously, I was elected as the Republican candidate.

The ten years I served on the Court were the best of my legal career. My colleagues on the Court became best friends as well. Judge Blatt was particularly kind to Jeanne and me. Judge Rogers and I took a memorable trip to Scotland and England. Judge Wilkinson offered the hospitality of his Harrisburg apartment – and his culinary talents – several times. Judge Mencer and I continued our close friendship. As new Judges came on-board, they quickly recognized this unique characteristic and joined in. The death of P.J. Bowman was tragic, but his successor carried on well together with the staff. Speaking of staff, my own secretaries and clerks did an outstanding job under sometimes stressful conditions.

No doubt my own qualifications for the position were called into question since in my limited private practice and the cases I handled as a Common Pleas Judge very seldom touched on areas within the jurisdiction of the Commonwealth Court. Nevertheless, my experience on the bench gave me an advantage as a duty Judge, and my dealings with convicted criminals gave me a “leg up” in probation and parole cases in the Commonwealth Court.

Quite frankly, I never did get the “hang” of public utility cases until I discovered in such cases both sides endeavored to overwhelm us with facts and figures that really had nothing to do with the case being argued! Perhaps the only truly memorable case I decided was as a duty Judge. The issue before me was whether or not a legislative enactment regarding abortion was constitutional. I held that it was; and soon after my opinion was filed, it became the subject of much publicity and a batch of hate mail to me personally. President Judge Crumlish rightly listed the case for reargument before the Court en banc. My decision was reversed, with Judge Craig and me dissenting. One other case bears mentioning. The charitable exemption from real estate taxes came before a panel of which I was a member. The panel decided that the trial court erred in granting the exemption. I wrote the opinion for the Court. The decision was appealed to the Supreme Court, which affirmed. Some time later, I received a “Dear John” letter from the President of Washington and Jefferson (my alma mater) telling me that the decision made by the Commonwealth Court was now being used to remove the tax exemption they had previously enjoyed. Woe is me! Fortunately, the Supreme Court found a way to distinguish the holding in our case and the college’s exemption and my status as an alumnus were restored!

As the time neared to decide whether or not to seek judicial retention, I found myself in a quandary again. Jeanne’s health prompted us to buy a small house in Florida while I stayed in Pennsylvania. This meant long distance communication and periodic traveling. This was stressful for both of us. Since my retirement and Social Security would “kick in” before my term expired, it seemed the thing to do was to retire early and give my successor an opportunity to fill a vacancy and then campaign for a full term. In any event, that is what I did in 1987 and the reason for it.

Memories of the Court are abundant, but this has gone on too long already. Whatever status I may have attained while on the Court I owe to my own staff, the staff of the Commonwealth Court and my colleagues on the Court. I miss them and think of them often.

Since retiring, I did some teaching at a community college in Florida, helped initiate a mediation program in Highlands County, Florida, became involved in Habitat for Humanity and served as a volunteer caseworker in the Highlands County probation program. In Spartanburg, I

keep physicians and pharmacies busy and occasionally answer a legal question my son raises as a lawyer here in Spartanburg. C'est la vie!

JOHN A. MACPHAIL, Retired Judge of the Commonwealth Court of Pennsylvania

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