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## Judge Calls Out Lawyers for Remarks in Traffic Court Trial

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The tension in the courtroom seemed to elevate in the Philadelphia Traffic Court trial Tuesday as a prosecutor and defense lawyer sparred over burden of proof issues during the questioning of a witness.

During one of several sidebar discussions, U.S. District Judge Lawrence F. Stengel of the Eastern District of Pennsylvania was heard saying "cut it out" to one of the attorneys and later, after the sidebar, admonished lawyers on both sides for "off the cuff" remarks made during trial.

"I don't want to hear ever again at sidebar, 'Your redirect was absurd,'" Stengel told counsel after asking the jury to file out of the courtroom.

"I don't need this off-the-cuff commentary," Stengel added. "It's distracting and it's not civil. It's going on on both sides and it's not helping."

Defendant Michael Lowry's lawyer, William DeStefano, then apologized to the court for making the spur-of-the-moment comment.

The debate that led to Stengel's action originated out of an objection made by defendant Robert Moy's attorney, Paul Hetznecker, to a line of questioning made by Assistant U.S. Attorney Anthony Wzorek to witness Robert DeEmilio, former deputy court administrator for traffic court.

Wzorek had asked about citation hearings conducted in the absence of ticket holders. Wzorek specifically noted that since the defendants were not present at the hearings, no defenses or arguments were presented on their behalf.

Hetznecker objected, arguing that the jury would misconstrue Wzorek's comments to mean that the burden of proof was on the defendant in not just traffic court hearings, but in all criminal proceedings.

"I think it is a dangerous precedent that the government is setting," Hetznecker told the court.

"I don't believe the words 'burden of proof' ever came out of my mouth," Wzorek responded. "I simply asked the witness about the procedure of a trial in absentia," adding "that a defendant was not present to raise a defense."

Stengel said when the time comes, he would instruct the jury that the prosecution in any criminal case has the burden of proof, but noted that he did not believe that Wzorek's questioning was a "veiled attempt" to persuade the jury otherwise.

Hetznecker, however, persisted with his objection, asking the judge to further clarify to the jury that the prosecutor's burden of proof applies in traffic court hearings.

"You objected, I sustained the objection," Stengel said to Hetznecker. "You won this one."

On redirect examination, Wzorek talked to DeEmilio about "equal protection" and asked, "How is our system of justice supposed to work?"

DeEmilio responded, "Fair and impartial."

When Hetznecker again questioned DeEmilio, he asked if the former administrator was aware of a federal lawsuit brought against the Philadelphia Police Department for racial profiling in traffic stops.

Wzorek objected, arguing that the issue was irrelevant.

Hetznecker said Wzorek already "opened the door" to the subject of equal protection and added, "The government has to take into consideration that there may have been other reasons for the number of tickets given" and eventually dismissed.

"This is just an attempt to inject race into this case," Wzorek said, adding that equal protection meant fairness in court proceedings.

Stengel intervened, noting, "I understood Mr. Wzorek's redirect as focusing on the concept of equal protection and due process in the context that every case should be handled as [DeEmilio] has described in open court ... that there shouldn't be a process of consideration by any outside influences."

Also during the trial, and as with the admonishment of the lawyers for editorializing, Stengel also had strong words for members of the public seated in the gallery. His apparent irritation surfaced after Wzorek had told the court that individuals in the audience were commenting on the case out loud during sidebars.

Wzorek mentioned that after the remarks made by the individuals in the gallery, defendant Michael Sullivan turned around and said, "This is real ticket-fixing."

Sullivan's attorney, Henry Hockeimer of Ballard Spahr, said Sullivan was talking to his wife in a whisper, that he apologized, and would not repeat the behavior.

Stengel reminded all in attendance that this instance was not the first time he had to address the issue of commenting or gesturing while the jury was in the courtroom.

"Next time I'll take it up in the presence of the jury, and you'll be sorry I did," Stengel said.



"We keep our mouths shut and our expressions focused. We have witnesses on the stand; it's very obnoxious for members of the gallery to react in a visual way ... these people are nervous enough."

After DeEmilio completed his testimony, William Arnold, owner of a construction company, took the stand.

Arnold testified that he received citations from an incident in which one of his tractor-trailers became stuck under a bridge. He further testified that he called Sullivan shortly after the accident.

The prosecution played the phone conversation in which Arnold detailed the nature of the incident to Sullivan, and told him about the citations he was receiving.

"I got a little bit of a situation I might need help with," Arnold said on the recording.

Sullivan responded, "Text me when you get to court," and told Arnold to let him know when he received the traffic citations.

"Now listen," Sullivan added during the recording, "Don't say nothin' to nobody, right?"

Wzorek asked Arnold how his tickets were adjudicated and Arnold said Sullivan found him not guilty.

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