What Do You Do When A Federal Court Finds You To Be Anti-Semitic?

Escondido, CA (2/3/2014)--On May 15, 2013, a two-judge panel of the United States Court of Appeals in New York City made a finding that I was anti-semitic. The court ordered that my client and I pay double the costs of our adversaries in defending against the motion I had filed that led to the finding.

Fortunately for my modest resources, these adversaries had incurred no costs opposing that particular motion. Two times zero is still zero. But zeroing out the damage to my reputation will prove harder. Here goes "nothing."

Federal cases create reality. Anyone who puts my name into a search engine from now until the day I die will no doubt read that I was sanctioned in the case of Ellen Mariani. Anyone who writes about me from now on, in court or out of court, can say, "The comments were made by Bruce Leichty, a known anti-Semite." They are free to refer to "Leichty, who was found to be antisemitic...."

I can try as hard as I might, but nothing will ever erase the stigma of this May 2013 ruling by the second highest court in this country. Who are most people going to believe, a federal judge in one of the nation's centers of power, or a virtually unknown lawyer?

But I write anyway. They say that "the pen is mightier than the sword." But whether the journalist's pen can be mightier than the judicial pen is a much more difficult question. Moreover, can the pen of one journalist-by-necessity be mightier than the pens of "true journalists?" Especially when these others are heavyweights who seem intent on perpetuating the surreality of this ruling?

The morning the ruling was released I got three phone calls from New York City newspapers. I had tried previously to get the New York media to cover my client's case, which was about the marginalization of a widow who didn't believe the official 9/11 narrative. No reporter had been willing. But yes, they were now eager to publish a story about the only lawyer in America ever to be found anti-semitic in federal court.

I was driving in downtown San Diego when I got those phone calls and I hadn't even read the ruling yet; I just knew that sanctions had been imposed. The reporters wanted my response to this "unusually harsh" ruling. They had to meet their editors' deadlines, they said. Two of these papers then published stories: the *New York Times* and the *New York Law Journal*. The Times headline said, "Court Penalizes a Lawyer

Over Slurs in a 9/11 Filing" (http://www.nytimes.com/2013/05/16/nyregion/slurs-were-used-in-a-filing-tied-to-9-11-court-says.html). I still remember my surprise. Slurs? Really? What is the word that is most associated with "slurs" if not "racial"?

Although I urged Times reporter Ben Weiser to describe the offending motion in detail--and also urged him to disclose that Times editorial page editor Lincoln Kaplan was married to one of the judges who sanctioned me (Susan Carney)--the Times instead contented itself with quoting from the court ruling, which found that my papers constituted "anti-Semitism in a raw and ugly form."

Caught off guard by the phone calls, and concerned that I might be inviting additional sanctions if I violated professional rules about talking about an ongoing case to the media, I authorized this quote for attribution: "We believe that the two-judge panel erred in making this order and we are considering our options."

Here you can see my Mennonite nature coming out, even when I am under attack. As a Mennonite, I was taught that humility is all important. I still try to practice that; never considered it inconsistent with litigating for the truth. But I didn't grow up arrogating unto myself the right to pronounce The Truth. Instead, as a human being, one always "believed" that something was true. Others might believe differently and we respected them. God alone would decide.

One of my Catholic colleagues, however, rightfully chastised me for the quote, saying, "what you do you mean, you `believe' that the court erred! Of course the court erred!" He knew the case and he was right.

Perhaps I was also thinking, well, I don't have to state a conclusion; the evidence will speak for itself (and you can read much of it at this link--http://www.marianilawsuit.com/). Persuasion, not coercion. It was naive of me to think that the actual evidence would be provided to the public, of course. Instead, I found out that I would have to supply it. This is my initial attempt, after many long months in which I have been catching up with other demands, to at least present some of that evidence in a shortened version to some of those who follow my activism. Or to those who would see my name otherwise dragged through the mud of hatred.

The court was wrong. I am not anti-semitic. I uttered no slurs. I can still find nothing "ugly" about what I wrote. I did provide "raw" documentation to the court.

That is what any professional in my position would have done. It was raw, but it wasn't anti-semitic. Not under any reasonable definition.

You see, my "sin" was to provide to the Court of Appeals copious documentation of the appearance of conflicting interests on the part of the New York trial judge, one Alvin K. Hellerstein, who had been appointed to oversee all the litigation of family members and representatives of those who lost their lives in the 9/11 tragedy.

Judge Hellerstein, I pointed out, had a son who was a lawyer in Tel Aviv, Israel. And the Tel Aviv law firm where Joseph Hellerstein worked represented affiliates and a joint venturer of some of the very defendants who my client was suing in federal court: the company (Huntleigh) handling security at the airport where Arab hijackers allegedly boarded the plane of my client's husband (United Flight 175), and the manufacturer of the aircraft on which my client's husband traveled (Boeing).

Boeing, I noted, had apparently been asked at a deposition in the case why it had not installed "remote control" technology on its planes that could be used to thwart hijackings. The documentation on the Israeli companies represented by Judge Hellerstein's son showed their involvement in some of these same drone technologies.

It was extremely unlikely that Judge Hellerstein was oblivious to these connections, I showed, because he and his wife were ardent Zionists and supporters of Israeli causes. Israel is a small country where security is at the top of the agenda. I even dared to point out that after the 9/11 attacks, Israeli prime minister Benjamin Netanyahu had let it slip that the 9/11 attacks were "good for Israel." He was quoted in the Israeli press. There it was, apparently: my "raw and ugly" remarks. (I will never know exactly what statements made to the court were "raw and ugly" because the court didn't specify. Only characterize.)

I thought that the Court of Appeals should know about this now, even though I didn't know about it during the time I was actually trying to get a hearing in front of Judge Hellerstein. Judge Hellerstein wouldn't even let my client get her foot in his door--i.e. in federal court in Manhattan. And in so doing, we contended, he was ignoring another critical conflict of interest.

I had asserted that my client, widow Ellen Mariani, should be allowed to intervene in the 9/11 litigation prosecuted by her late husband's estate because the probate administrator for that estate had a serious conflict of interest himself: his law firm had

represented some other defendants being sued in the 9/11 litigation (United Air Lines and other air carriers), and not only them, but some of the defendants' insurance companies, who bore the real risks of any adverse judgment on behalf of a victim. Those were the assertions I made in both federal district court and to the two-judge appellate panel who ruled against us, and I can report on them here, but I have to be cautious about what I say about the probate administrator because of a settlement that Mrs. Mariani and I subsequently obtained from the administrator. That is all public record, and it is an interesting story in itself, but would take us too far afield here.

How could this probate administrator, I had asked Judge Hellerstein, carry out his fiduciary duties to the widow Mariani by settling with his own aviation and insurance clients on the other side of the aisle? Such direct conflicting representation is flatly prohibited for any lawyer, I noted. I was simply saying, "You must give Ellen Mariani her own voice in the 9/11 litigation under these circumstances."

A federal rule authorizes such intervention and I knew that Mrs. Mariani had never been barred from intervening (despite an earlier attempt at a time when she nothing about the conflict of interest of her fiduciary) and that she had never waived her rights under the Federal Rules (despite having been advised by one of my predecessor counsel to let a probate administrator take over her case).

What did Judge Hellerstein do with this damning contention? He ignored it. He allowed no hearing, no argument, just summarily denied the motion. Without any acknowledgment of the problems we pointed out, he approved a settlement between the administrator and United and Huntleigh (and their insurers) that (we believed) neither respected the interest of victims in getting at the truth of what happened on 9/11, or the true measure of their loss.

And so Mrs. Mariani and I appealed those rulings. The main argument was not about Judge Hellerstein, although to be sure we were already suspicious about his true loyalties. It was not until the appeal was pending before the court, however, that we realized there was actual documentation showing the connections of the affiliates and joint venturers of 9/11 defendants to his son's law firm.

There are too many nuances to try to cover, and this is but a summary. I located cases where the client ties of family members of judges had factored into rulings on their impartiality. I wasn't asking the Court of Appeals to disqualify Judge Hellerstein, whose

role in the case was already over; I was merely asking these judges as they deliberated on our appeal to consider the possibility--based on this newly-discovered documentation--that the trial court judge might have been lax about the appearance of one conflict of interest because his own role in the case depended on his discounting of any appearance of another.

I would have filed the same motion if the trial judge's ties and those of his son had been with Saudis, or the Dutch, or the Chinese.

Some have suggested that maybe this "duty of impartiality" motion was based on connections that were just too tenuous. But my own thinking was: if the judge's son had been representing the actual defendants at the time his father was ruling on their defenses, many concerned citizens would think that was a problem. Did it become a "non-problem" only because the son was instead representing people who arguably controlled those defendants, or their partners?

Even if one could say the connection was too tenuous, however, was the argument "anti-semitic"? In a "raw and ugly form?" My client was of the same opinion as I was. These connections needed to be brought out into the open. The public deserved to know what kind of justice was being dispensed to 9/11 widows after all.

I believe the truth about my motives should be obvious to all non-biased, thinking people. No, this was not anti-semitism I was indulging. The motion was driven by a sense of justice. It was an act of patriotism. It is patriotic to disclose the possibility of dual loyalties of any federal judge which might be affecting his rulings. It also did not violate any rule. A federal court is authorized to take "judicial notice" of certain facts at any step in a proceeding, or even supplement the record on appeal, if presented with the kind of copious documentation that I presented.

That I was rebuked in such a harsh and public way is therefore telling--but not so much about me, but rather about the state of a compromised federal judiciary. In modern-day America, there are positions that are safe to take, and there are some that are not safe to take. It is not safe to point out possible dual loyalties of judges involving Israel. (It is particularly unsafe to do so in the context of 9/11, in light of cogent arguments made about the hidden hand of the Mossad in the events of 9/11, but that is a different story altogether, and nothing in my motion cited or depended on that.) That will be branded as anti-semitism.

Some have now said, "antisemitic is what you are not when you hate Jews, but when Jews hate you." That may be going too far, because it generalizes--and I try to resist all generalizations (and that is also one of the reasons why I don't take lightly being called anti-semitic, against some who would just urge me to embrace the epithet). But there may also be a certain amount of truth to that observation, because there are indeed those among the Judaic elite who--even if they might not hate me--want to see me discredited, for doing nothing more than revealing the truth.

I will never accept the idea that, by following proper procedure to suggest that a federal judge be held accountable, or even by calling a whole class of people to keep faith with truth and righteousness, I will have engaged in ethnic hatred or sanctionable behavior. In my view, my acts are instead those of someone who loves--in the spirit of my predecessor legal mentor and rabbi, Jesus of Nazareth.

So when you hear that someone is antisemitic and that he used "slurs," you may want to look into it for yourself. I personally will always wear a scarlet letter now. Many will not want to or take time to hear my explanation. But the reality, just like the events of 9/11 themselves, may be more complex than announced.