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Joseph Hayden: A big-case guy

By Maria Vogel-Short

It was 1971. Then-Deputy Attorney General Joseph A. Hayden Jr. was questioning a key witness for the state in an organized-crime trial when Hayden realized the answers from the stand weren't what he expected.



He blinked, stunned. Realized his witness was taking a dive.

He turned to the bench and calmly said, "Your honor, I want this man declared a hostile witness." Then Hayden turned tiger.

The lightning reflexes he displayed then are second nature now to a man considered one of the most prominent white-collar criminal defense lawyers in the state — a man whose photograph probably soon will appear frequently in newspapers statewide when the trial of former basketball player Jayson Williams unfolds.

Hayden has spent most of his 30-plus years representing high-profile defendants in cases where the odds are stacked against them. And many times he turned those odds around.

He is about to tackle another, perhaps one of the most media-focused cases in many years, when his client's manslaughter trial starts Feb. 18 and will be broadcast by Court TV. Williams, a one-time all-star with the New Jersey Nets, allegedly shot his limousine driver to death when a rifle accidentally discharged in Williams' mansion. He is charged with aggravated manslaughter, witness tampering and fabricating evidence.

Williams not only excelled on the basketball court but subsequently — much like O.J. Simpson — became a radio and television sports personality.

For Hayden, 58, the tougher the case, the better. And this one promises to be tough.

But Hayden is accustomed to the limelight. As deputy attorney general in the newly formed Division of Criminal Justice in 1970, he prosecuted the state's first wiretap case and spearheaded a grand jury probe of the Atlantic City police department.

Still, it's representing criminal defendants that has brought him the most renown.

So what makes this man such a hot-shot defense attorney?

Relentless preparation, a clear understanding of the prosecution's strategy and, in his words, "compassion and understanding of the humans involved."

To him, "your adversary's theories, as well as your own defense theory," are crucial when grasping and fashioning the strategies underlying a case.

"I've never been in a case where I haven't understood the essence of the theory of prosecution," he said. "That's my job."

And one of the single most important aspects of his strategy is jury selection.

"It's a process of elimination. You can have the same judge, the same lawyers and the same defendants, but with a different jury, you get a different outcome," he noted.

He calls a trial "pick-and-shovel work" because of the painstaking need for evidence and any crucial details that might lead to acquittal.

"You have to give a very clear, complete defense, and I try to do that. I don't let prosecutors just state their case and just cross-examine or disprove the facts. I mount a defense," he said. "I try and show the humanity of the defendant. I want jurors to walk a mile in his shoes, like the Indian saying goes."

He talks about maintaining a positive approach even when the chips are down.

"I like doing damage control," said Hayden, flashing a rare smile. "But I've never tried a case I didn't think I'd have a good chance of winning. I used to say there may be better lawyers out there, but no one will ever outwork me."

Daunting

In many ways that's his professional signature. Go up against Hayden and you'll have to work your you-know-what off — and then he still might out-manuever you.

He has represented mayors, municipal councils, executives, corporations, high-ranking law enforcement officials and police officers.

In 1983, when he represented William Grunow, a Green Brook businessman charged with killing his lover's husband, he was told it was an airtight capital case.

He proceeded to punch holes in the theory that the murder was planned — the prosecution called it "murder by ambush." Hayden described to the jury — and the packed courtroom — how Grunow got into a desperate fight with his lover's husband and how he was defending himself. The jury bought the picture Hayden painted and convicted Grunow of the lesser count of aggravated manslaughter.

He readily acknowledges even after all these years he never stops learning something new in the trial game.

And those new lessons can be mind-boggling. Truth, he said, is stranger than fiction, noting, "Everything you might see on television and dismiss as ridiculous is true."

For example?

He described how Grunow admitted on the stand that after he killed the man in self-defense, he buried the

body in a 55-gallon drum, cutting off the victim's arms and legs so the corpse would fit.

"No one would believe it," Hayden said, still seemingly marveling at his client's testimony.

Hayden's most important skill may be his ability to recognize the good and evil in every person — defendant or not.

A painting next to his desk depicts that very conflict. It's of a face divided in half by two sets of colors.

"I believe people have a positive and a dark side. There's good and bad in everybody. You can't be surprised that a good person can commit a crime."

Hayden said when it comes to trial work, some of the old rules are gone.

"The presumption of innocence may not be as powerful as it used to be," he said, noting jurors now look for a full explanation of innocence, certainly more than two decades ago.

In addition, he always has been bugged by the enormous balance of power in prosecutors' hands.

"There's a double standard. If a prosecutor holds back exculpatory Brady Law material, a judge can throw the case out and do nothing to the lawyer. If a defense lawyer does the same thing, he or she can be indicted for it."

And some prosecutors, he said, are going overboard. "I'm seeing indictments for matters that were once considered regulatory violations."

And the pace of trial work is faster than ever, he said, also noting it's "more challenging to be creative when you're handling so many details at a fast pace."

Timing

Hayden said he's stumbled onto most of his high-profile cases.

"I've just happened to be at the right place at the right time. In my first year at the Attorney General's Office, I was assigned a bookmaking case which turned out to be the first wiretap case tried by the state. It was only my third trial."

The same thing happened when he left to practice on his own.

"About a year after I left the AG's office, I represented a mayor under fire," he noted.

It would turn out to be a double-header.

Hayden defended North Bergen Mayor Peter Mocco who was indicted in the mid-1970s on conflict-of-interest charges. Hayden secured an acquittal and when Mocco was indicted again a year or two later for official misconduct, Hayden again successfully defended him.

Later, another case hit the headlines.

"It was September of 1982, and they just started allowing live cameras in the courtroom. It was one of the first cases on live television from gavel to gavel,"

he said of *State v. Harris and Gibson*. Hayden represented Earl Harris, president of the Newark City Council charged with 101 counts of theft and misconduct in office. His co-defendant was Newark Mayor Kenneth Gibson. Harris walked.

But as the years passed, Hayden perceived more clearly than ever the problem defense attorneys face: isolation.

He saw that defending notorious clients was difficult, but battling public opinion over the work defense lawyers take on could be even tougher. He felt taking that solitary path required the support of an organization of fellow criminal defense attorneys.

And so in 1986 he founded and became first president of the Association of Criminal Defense Lawyers of New Jersey.

“If a lawyer was kicked around because he defended someone accused of heinous crimes, there was no institution representing the criminal defense bar” he noted. “So, when I had a major case that was adjourned for six months, I got off my rear end and organized a couple meetings.

“We were lone rangers under attack. We needed a forum. At the time, there was only a national organization in D.C., and not a specialty bar. Now, we have a say in the issues of law. We choose our battles carefully, and when we see an issue that deserves an *amicus* opinion, we give it.”

Today it has 520 members.

He points to a photo over his desk of ACDL’s first annual dinner. Pictured are Chief Justice and former Gov. Richard J. Hughes, Raymond Brown, dean of the trial bar, and Hayden. He noted Hughes as chief justice offered tremendous support for the fledgling organization by accepting its award as an honorary member.

Like many successful defense attorneys, Hayden is haunted by the losses.

“When I stop at a stoplight, I think about the cases I lost more than the ones I won.”

He recalls with regret the former chief of police of Orange, Eugene Uricoli, who was tried in the mid-1970s on misconduct charges for fixing a ticket for a family friend.

“We had two hung juries in a row, tried the case the third time and he was convicted. Frankly, I think the case went in better the time we lost,” he said.

His greatest victories, he said, actually are the prominent clients who were investigated, but never charged or indicted.

“I won’t give you names of people who weren’t charged, but I can tell you there were half a dozen grand jury investigations that never got any further.”

Trial prep

Hayden prepares for court like the athlete he used to be. He works out.

A star basketball and football player at St. Benedict’s Prep in Newark, he played a full year of football at Boston College until he realized he didn’t have what it takes to make the pros. That’s when he started becoming a student, he said.

Exercise gives him stamina and energy, and that’s important, he said, adding, “When you go to court, you need all the stamina you can get.”

And he’s getting it. He works out every day and until recently was running 50 to 60 miles a week.

Raised in a family of lawyers, he was used to arguing world and ethical issues at the dinner table.

His father, Joseph A. Hayden Sr., was an Essex County prosecutor and president of the Essex County Bar Association. His sister, Margaret Hayden, is an administrative law judge. His uncle, Francis W. Hayden, was a Superior Court judge. And, of course, he’s married to U.S. District Judge Katharine Sweeney Hayden.

Yet, he has no desire to become a judge. “I’m an activist. I’d be too intrusive, if I were a judge.”

He frequently lectures to lawyers on trial advocacy, that juries decide cases not on facts, but on “impressions of proofs.”

“I tell lawyers to play it straight with a jury,” he said. “Get the facts straight. But give an impression of what happened, rather than be distracted with computer-like information.”

His corner office at Walder, Hayden & Brogan in Roseland is filled with mementos, pictures and awards.

And not far is Judy Koch, his secretary of 28 years, a gatekeeper extraordinaire who knows the time he needs and spends on preparation and detail. She keeps a sign outside his office quoting *The Wizard of Oz*.

“Nobody gets in to see the wizard, not nobody, not no how.”

The awards? He shrugs, declaring, if you practice long enough, you get them.

“My greatest achievement is that I’ve given every client my best effort and treated my adversaries fairly.”

Quickly he seems to sense those words may sound self-serving and pedantic.

He shares a story.

“I got a call from the mother of a man I defended sometime in 1998 or 1999. He was charged with vehicular homicide. His tractor-trailer crushed a car like a tin can, killing two people. His name is Gaizka Idotea. A Spanish man from Basque. I tried it in Somerset County. She told me she wanted me to know that her family thinks of me every day. *Every day*. She told me that I saved their son’s life. That’s a beautiful reason to do what I do.”