



Hon. Robert Joseph Lesnick

Chief Administrative Law Judge (Ret.), U.S. Federal Mine Safety and Health Review Commission

by Hon. Alisa Tapia



Hon. Alisa Tapia is a freelance writer and an administrative law judge for the U.S. Social Security Administration (SSA) in Tallahassee, Fla. Prior to working for SSA, Judge Tapia worked as an administrative judge for the U.S. Department of Agriculture, National Appeals Division, adjudicating exclusively all Spanish-speaking appeals in South Florida and Puerto Rico. Judge Tapia's decisions have been published both in English and Spanish. ©2020 Alisa Tapia. All rights reserved.

With over 25 years of experience behind him, Hon. Chief Administrative Law Judge Robert Lesnick recently retired. A kind and thoughtful judge with a lifetime commitment to government service, he is known for his exceptional knowledge and dedication to the rule of law. Now enjoying retirement, Judge Lesnick's love for the law tugs at him to continue to serve people in many meaningful ways.

Judge Lesnick was born and raised in Edenborn, Pa.—a small mining town on the southwest corner of the state. His parents were hardworking people with modest means and limited education. However, they envisioned a better life for their children and encouraged them to pursue higher education.

Young Robert had a passion for astronomy, and in the seventh grade, his parents bought him a 3-inch telescope. By age 14, and with the eye of becoming an astronomer, young Robert spent his summers picking tobacco to afford a better-quality telescope. Young Robert's dream of becoming an astronomer, however, came to an abrupt halt after his father questioned how his young son could benefit from an astronomy degree. Valuing his opinion, young Robert abandoned that dream and delved into his studies, graduating as class valedictorian from Kolb Memorial High School.

In 1970, Judge Lesnick attended St. Vincent College on a full academic scholarship. St. Vincent College is a private liberal arts college operated by the Benedictine monks of Saint Vincent Archabbey in Latrobe, Pa. It was the first Benedictine monastery in the United States. In his sophomore year at St. Vincent, Judge Lesnick was elected student body president. In this role, Judge Lesnick was the liaison between the student body and faculty for effecting positive change. He initiated and supported student events and planning. His early leadership experience would later foreshadow significant accomplishments in his career. He graduated with a bachelor's degree in economics, *summa cum laude*, in 1974.

Later that year, Judge Lesnick entered the University of Virginia School of Law (UVA), a school of



historical significance with gorgeous campus grounds. In law school, Judge Lesnick contributed to the law student newspaper, *The Virginia Law Weekly*, and was a member of the managing board of The Virginia Legal Research Group. While a law student at UVA, he served as a research assistant to visiting law professor David W. Louisell of the University of California, Berkeley. For well-needed breaks from the rigors of law studies, Judge Lesnick served as a summer clerk for Gilardi & Cooper, a labor law firm, and at the Fayette County Office of the Public Defender. One summer, he spent hours at the Fayette County Courthouse watching trial after trial. He shares, "I knew at that moment I wanted to be a litigator."

Upon graduation in 1977, Judge Lesnick joined the prestigious Kansas City law firm of Smith, Gill, Fisher & Butts, P.C. (now Bryan, Cave) practicing tax and corporate law for such clients as H&R Block and Universal Press Syndicate. After two years, Judge Lesnick left private practice to pursue his passion for litigation and trial practice. To fulfill that desire, he joined the federal government.

From 1979 to 1990, Judge Lesnick worked for the Office of the Solicitor, U.S. Department of Labor. As a

litigator, Judge Lesnick represented the Labor Department before administrative agencies and federal courts. He primarily worked on cases involving the enforcement of the Federal Mine Safety and Health Act, which establishes safety and health standards in the mining industry, and the Occupational Safety and Health Act, which details safety and health conditions in most private industries. Judge Lesnick's strong work ethic did not go unnoticed. He was the recipient of Special Achievement Awards in 1981, 1988, and 1989.

From 1990 to 1994, Judge Lesnick joined the Special Trial Unit at the Office of Thrift Supervision, U.S. Department of the Treasury. The agency is the primary federal regulator of savings institutions. It enforces regulations to ensure that both federal and state-chartered thrift institutions operate safely and soundly. As a senior trial attorney, he handled appellate practice and enforcement issues. One of Judge Lesnick's most memorable cases was tirelessly working with the Special Trial Unit on the well-publicized case involving Charles Keating and Lincoln Savings & Loan scandal (the 1989 loan collapse at the cost of billions of dollars to taxpayers).

In 1994, Judge Lesnick accepted a lifetime appointment as a U.S. administrative law judge for the U.S. Social Security Administration (SSA) in Pittsburgh. After only one year at SSA, Judge Lesnick was promoted to chief administrative law judge, managing 22 line judges; it was the largest office at that time.

For over 15 years and prior to the holding in *Lucia v. SEC*, Chief Judge Lesnick was instrumental in the development of the Administrative Law Judge Examination with the Office of Personnel Management. He assisted in revising the exam to include a full review of an applicant's qualifications and a multi-part assessment of relevant competencies, with an emphasis on courtroom litigation to ensure the solicitation of qualified candidates.

In 2000, Judge Lesnick returned to the Department of Labor, this time as a judge presiding over cases related to the Black Lung Benefits Act, which provides monthly payments and medical benefits to coal miners disabled from pneumoconiosis (black lung disease) due to working in the nation's coal mines. He also presided over cases involving the Longshore and Harbor Workers' Compensation Act, which provides for compensation, medical care, and vocational rehabilitation services to employees disabled as a result of job injuries that occur on the navigable waters of the United States. Finally, he presided over cases involving the Defense Base Act, which provides workers' compensation protection to civilian employees working outside the United States on U.S. military bases. Three years later, Judge Lesnick put on his chief judge robe and embarked on another agency voyage that would play a significant role in his career.

The U.S. Federal Mine Safety and Health Review Commission

From 2003 until his retirement, Judge Lesnick served as the chief judge of the U.S. Federal Mine Safety and

Health Review Commission (FMSHRC), managing the Washington, Pittsburgh, and Denver offices. Judge Lesnick was passionately committed to his work and took his role as chief judge to heart. A son of a coal miner, he saw firsthand the dangers of coal mines. After years of inhaling coal dust, Judge Lesnick's father contracted coal workers' pneumoconiosis. His uncle and grandfather were also both coal miners who ultimately lost their precious lives to coal mining accidents. Judge Lesnick's office at the FMSHRC was filled with artifacts from the lives of coal miners over the past century, which served as a classroom for lawyers, law clerks, and interns. Shelves were filled with miner's lamps, fuses used for explosives, cages for canaries that warned miners of lethal mine "damp," and scrip issued as payment for miners' labor that could only be spent in the company store.

Judge Lesnick presided over several significant mining accident cases. First, the Aracoma mine disaster—where a conveyor belt ignited, pouring smoke through the gaps into the fresh air passageway that the miners were supposed to use for their escape. The accident led to the death of two miners from carbon monoxide poisoning. Second, the Quecreek inundation—where nine coal miners were trapped in a flooded chamber 240 feet below the ground inside the mine. Third, the Upper Big Branch (UBB) mine disaster—where 29 miners were killed in a massive explosion that ripped through a mine in the heart of West Virginia's coal country—the worst coal mine disaster in the United States in 40 years. Judge Lesnick also adjudicated the precedent-setting cases addressing the Department of Labor's new pattern of violations rule.

Prior to the UBB mine disaster, Judge Lesnick alerted Congress about the rising backlog of penalty cases at FMSHRC and multi-year delays in the issuance of final orders involving penalties for noncompliance with safety standards. From 2007–2014, the number of new cases on hand annually rose from 4,100 cases in 2007 to 18,190 in 2014, involving approximately 100,000 safety citations against mine operators. The resulting delays—averaging over 500 days—had real-world consequences because the Mine Safety and Health Administration (MSHA) could not apply its most powerful enforcement tools to serial violators—such as its Pattern of Violations sanction—absent a history of fully adjudicated violations. Although Congress held hearings on the backlog a mere six weeks before the UBB mine disaster, Congress did not provide the requisite funds to hire additional judges and the attorneys in the Department of Labor until it became clear that the Pattern of Violations sanction should have been used against the UBB mine operator.

Once provided with the resources, Judge Lesnick increased the number of judges from nine to 20 using a combination of additional permanent and senior judges, part-time senior judges, and loaner judges. A law clerk and a legal assistant were provided for each judge. The docket office was expanded by seven positions to provide more efficient receipt and processing of cases.



Left to right: Judge Lesnick's daughter-in-law, his two sons, a law clerk, and Judge Lesnick on their way to the underground at the Consol Mine.

It took eight years, but the backlog was eliminated—and every case was given full consideration.

He also took a strong interest in mentoring judges, attorneys, and legal interns. For line judges, he took the initiative to secure funding to provide professional development training that included two annual judicial training sessions and yearly attendance at the Federal Administrative Law Judge Conference. He initiated the law clerk program and visited law schools to recruit students for internships or clerkships, and graduates to serve as attorney advisors for federal service. His dedication to the legal profession did not stop at the hearing office and law schools.

Judge Lesnick is a long-time member of the Administrative Conference of the United States (ACUS). The ACUS is an independent federal agency whose mission is to find ways to improve the procedures by which federal agencies interact with citizens and businesses in carrying out regulatory, adjudicatory, and other programmatic functions. The successful completion of a number of ACUS studies, involving such diverse areas as video conferencing, immigration adjudication, and social security adjudication, have benefited from Judge Lesnick's experience and counsel. Judge Lesnick saw his role as always to address the need for the independence of the adjudicator. Those who would try to tip the scales of justice in their favor will complain about the lack of "accountability" of the judge; however, accountability is the flip side of independence.

In fall 2019, the chair, with approval by the conference's presidentially appointed council, appointed Judge Lesnick as a Senior Fellow at the ACUS. Judge Lesnick has also made time to make formal presentations before the American Bar Association, American University School of Law, the Pennsylvania Coal Association, the Energy and Mineral Law Foundation Conference, and the Federal Administrative Law Judge Conference.

Judge Lesnick occupies a position of unique responsibility in the federal government. In recognition of the significance of these responsibilities associated with the FMSHRC, the Office of Personnel Management

approved his appointment at the level of AL-1. Although there are approximately 1,700 federal administrative law judges at 27 agencies, there are only five AL-1 judges.

With a lifetime of accomplishments, Judge Lesnick is highly regarded as a fair, impartial, and dedicated judge. In 2015, Judge Lesnick was nominated for the Mary C. Lawton Award for Outstanding Government Service. Most recently, Judge Lesnick was the former president of the Federal Administrative Judge Conference. As president, Judge Lesnick had the opportunity to preside over the committee to prepare the brief in the Supreme Court case of *Lucia v. SEC*, and has continued to serve as a valued advisor to Congress in preparing a legislative response to the Trump Administration's elimination of the merit selection process for U.S. administrative law judges following *Lucia*.

The Wonderful World of Retirement

In 2019, Judge Lesnick officially retired from government service. He loved every second of his career, especially mentoring interns, attorneys, and judges and presiding meaningfully over cases. It is no surprise that despite being retired, his deep commitment to serving people in some capacity has followed him into retirement.

Judge Lesnick is currently a contractor conducting civil mediations and presiding over hearings under various whistleblower protection acts and employee discrimination acts. Such acts protect federal employees and applicants for employment who are the subject of discrimination or lawfully disclose information they reasonably believe evidences a violation of law, rule, or regulation. Judge Lesnick finds his work as a mediator and judge in these cases to be exceedingly rewarding.

In sharing his judicial philosophy, Judge Lesnick states, "Being a judge should not be about you but about assuring that those who appear before you get a full due process hearing, and leave the courtroom knowing that even if you do not rule in their favor, they leave knowing that they were given the opportunity to be heard, to challenge the opposition, and their arguments were fully appreciated." Equal justice under the law demands that a claimant's chances in court should not depend on how deep their pocket is. Everyone has a right to expect a level playing field."

When asked what brings him happiness, Judge Lesnick shares, "Happiness is the joy I see in the smiles of my wife Kathy, our family, our children, and our grandchildren.

Judge Lesnick leaves us with one of his favorite quotes from Henry David Thoreau, which he says has served him well throughout his career: "If you advance confidently in the direction of your dreams, you will meet with unexpected success in common hours." ☺