

THE ORAL HISTORY

OF

JUDGE JAMES L. FOREMAN

AS TOLD TO

COLLINS T. FITZPATRICK

CIRCUIT EXECUTIVE

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

1996

CTF: Today is April 19, 1996, and we are in the chambers of District Judge James L. Foreman of the Southern District of Illinois. I am Collins Fitzpatrick, the Circuit Executive, and we are doing the oral history of Judge Foreman. Judge Foreman, maybe you can tell me a little bit about where your ancestors came from and how they got you to Metropolis.

JLF: Well, as you know and you have already alluded to the fact, I did come from Metropolis, Illinois. My ancestors on both Mother's and Father's sides are of German ancestry. As a matter of fact, my Grandmother Foreman came from the area of Hanover, Germany, back in the 1800s and we have a real heirloom in our home which is a trunk that she brought with her when she came over here. My grandfather on the Foreman side also came from Germany and settled initially in Indiana and then moved to Southern Illinois, specifically Metropolis later in life.

CTF: Where in Germany did they come from?

JLF: The area of Hanover, Germany.

CTF: About what time was this?

JLF: It was in the mid-1800s.

CTF: During the 1840s there was a lot of revolution going on in Germany against the emperors and kings and so there was a lot of political turmoil at that time. Was that an incentive to come here or was it more of an economic issue?

JLF: I really have no idea about that, but they came about that time, if not a little bit before, because on the trunk – which is the heirloom I spoke of – there is the date of 1832. There is a German inscription on it and it indicates another name of Neicamp, which is of course very German, and there are some people by that name in Metropolis. I had a similar situation with my mother on her side of the family. Her maiden name was Henne and her father and mother were also of German ancestry. My grandfather Henne was a blacksmith; he shod horses and repaired wagons and did general blacksmith work for years. I can remember seeing his shop when I was a toddler years ago. So my family has deep German ancestry on both sides.

CTF: The name Foreman wouldn't be a name that I would think was German.

JLF: I often hear that and there is a story that was told that at one time, and I can't trace it down by any means, that the name was originally spelled F-o-h-r-m-a-n-n and it evolved to Foreman, F-o-r-e-m-a-n . I can't vouch for that, but I was told by one member of the family that might be the case. How the name evolved to where it is today I can't explain.

CTF: I notice that in the current edition of the Southern Scene that they are having a Germanfest. So we know that Cincinnati was settled by a lot of Germans, and I take it that the Germans settled along the Ohio River at least down to Metropolis.

JLF: Especially in Metropolis. Metropolis is in Massac County and it is extremely heavily populated with people of German ancestry because they were the original settlers of the county. They are still there although the German population is being diluted because of the industry and people coming from other parts of the country. But it is almost as German as Cincinnati was or still is. As a matter of fact, I had some relation that lived in Cincinnati and when I was a youngster some of the family would visit back and forth from Cincinnati and we would go there. And my father's sister lived there at one time.

CTF: When your grandparents came to Metropolis, did they know people there already? Or do you know?

JLF: I really don't know. I think that they were basically farmers and they saw the opportunity for farming in that area. I don't actually know that they knew other people, but I really doubt that they did.

CTF: What did your father do?

JLF: My father was initially in the automobile business. He sold cars. He told me about them and I remember as a child actually seeing some of them. He and his brother were partners in the automotive business with the Pontiac agency. But long before that, they sold Whippets, Willis Knights, Maxwells and cars that I am sure only an automotive museum would be able to show to anybody today because nobody else ever heard of them. I doubt if you even heard of them. But anyway, later they sold the more popular, well-known cars, Pontiac and Chevrolet. He eventually sold that business and he was in business for a period of time with his brother in the wholesale grocery business and then later, when his brother died, he went into the insurance business and sold regular casualty and automobile insurance.

CTF: Now, you were born at the beginning the Roaring Twenties, right?

JLF: I was born in 1927.

CTF: 1927 – the end of . . .

JLF: The end of it.

CTF: So do you have much remembrance of the Depression and what impact that had on your family?

JLF: I have very little recollection of it because at that time I would only have been five, six, seven years of age during the course of it. I guess you are talking about the late '20s and the early '30s. I have very little recollection of it. I do remember my parents talking about it, but I don't have any great recollection of it. I do remember hearing talk about Franklin Roosevelt and what his attempts were to rectify the bad times.

CTF: Just about the time you were becoming a teenager there, were dark clouds coming from Europe in the War. You are living in a heavily German-American community though you were a long way from any war. What did people think about World War II?

JLF: My recollection was there was no dissent to America's position in the war. I never recognized any in the community. I'm sure there must have been some reluctance to get involved, but I was never aware of it.

CTF: When you finished high school you went into the Navy?

JLF: Well, that is kind of an interesting story. I felt that I was going to be drafted and I was seventeen when I was in my senior year of high school. The draft age began at eighteen and I was going to have to register and through the influence of my parents, I guess, as much as my own, I did not want to be involved as I had heard about the skirmishes of the land war in Europe. I joined the Navy in effect to get around the draft. So I joined the Navy at age seventeen, still a senior in high school. And there are a couple of coincidences that happened I never will forget. I was sworn in on May 7, 1945 in Springfield, Illinois. When I got out of the recruiting station after being sworn in, the newsboy came along on the street and said "War in Germany Over!" I thought, what in the world have I done? I joined up here and the war is over and I just got sworn in. Well, at any rate, I was sworn in when I was seventeen, and my birthday was the following week on May 12, and one month later I was called into the service in June 1945.

CTF: Had you finished high school then?

JLF: I graduated in May of that year and finished high school, went into the Navy, being called up in June 1945—immediately transferred to Great

Lakes for boot camp. I am the only child in my family and I remember when I left Metropolis that day on a Greyhound Bus to go to Great Lakes my mother was not very happy about that occasion, or my father either. I stayed at Great Lakes through the summer. My grandfather Henne died that summer and I was granted a three- or four-day pass to come home for his funeral, which I did. Then, another bit of good fortune happened in August 1945 – the bomb was dropped on Hiroshima and the war with Japan promptly came to an end. That was good news for those of us just finishing boot camp. I shipped out from there and went to the West Coast thinking I was headed for the South Pacific, but I was stalled at Terminal Island in California and never had to go overseas.

CTF: So you spent the rest of your career at Terminal Island?

JLF: No. I probably made a big mistake in my life at that juncture in many ways. I received a congressional appointment to the United States Naval Academy at Annapolis. The war was over and I didn't accept it. I don't know how to put it. I lost interest obviously in the service because the war was over and I never followed through with the appointment to the Naval Academy. In retrospect, it certainly would not have been the worst thing a young man could have done in his life to have gone to one of the service academies and had a career in the military service, but I chose not to do that. I spent some time in California and was shipped to Camp Perry, Virginia, which is very near Williamsburg, Virginia. Enjoyed my stay there very much because William and Mary College is there and the old Town of Williamsburg that the Rockefeller family restored. I was transferred to Minneapolis and discharged at the end of June 1946. So I served about thirteen months in the military service in the Navy.

CTF: Then you came back to Metropolis?

JLF: Came back to Metropolis that summer and with the help of the high school principal I applied and was accepted for admission at the University of Illinois for the fall of 1946. Never really thought about going to college anywhere else.

CTF: What did you study undergraduate?

JLF: I studied economics. At first, I really didn't know what I wanted to do. Although I had in the back of my mind that I wanted to be a lawyer.

CTF: Did you know any lawyers?

JLF: I knew some lawyers; I didn't know them well. I knew them more by reputation, not any personal friends other than being in a small town you would always be able to speak to them but I never really went to talk to

any of them about going to law school. I was sort of on my own and I was not one hundred percent sure at that time that's what I wanted to do. At the University of Illinois I took some liberal arts courses, political science, economics and finally wound up in the School of Business Administration. I made up my mind at the end of the third year that I wanted to go to law school, applied and was accepted. At that time Illinois had two different programs. They had a program where you could go three years undergraduate and, if you had acceptable grades, you could apply to law school and graduate with an LLB after three more years. The other program was a four-year program in law school with two years undergraduate work. That program is no longer offered.

So Mabel and I, my present wife of forty-eight years, were married while I was an undergraduate. We were married in 1948 and our oldest daughter was born in 1950 while I was in my first year of law school.

CTF: Was Mabel from Metropolis?

JLF: Mabel was born and raised in Metropolis just like I have been.

CTF: Has her family been in Metropolis?

JLF: Her family has – her mother comes from almost the same German ancestry that my parents come from but her father, whose name was Dunn, has an Irish ancestry. He was born in Branson, Missouri which, as a family, we often visited. It's inconceivable to all of us that it could be the entertainment capital of the Midwest that it is today.

CTF: D-U-N-N?

JLF: D-u-n-n, Irish ancestry. Her mother was German and her father was Irish. My wife has always been known by a double name of Mabel Inez. She also is the only child in her family. Both of us were born to older parents. My father was a little bit older when I was born, maybe not by modern standards but at least at that time. Her parents were older too. So we had the benefit of older parents, or the disadvantage of older parents. I don't know how you want to look at that.

CTF: When did you meet Mabel?

JLF: Met her — she tells the story and I'm not going to tout it, but our parents were good friends and I am about seven months older than she, and I guess they passed around some clothing one to another, or exchanged it. She often tells the story that she used the same diapers that I used. They were all cloth at that time, you know. Her mother's sister lived next door to my family in Metropolis. She visited there a lot and was a

playmate when we were in grade school and then we dated in high school and it just seemed like the natural thing that we would be together. We were married then in 1948. She had attended school in Chicago, the Vogue School of Design, and then later, after a year, transferred down to the University of Illinois and spent about a year or so there. Then we were married and she never actually fully finished her college education as a result of our marriage.

CTF: Were you in any activities in high school or college?

JLF: The biggest activity I was in was playing basketball. It was the war years. I went into high school in 1941 and the war was at a high point that year. Then the Japanese bombed Pearl Harbor in December 1941.

CTF: Right.

JLF: So, the war was really picking up and I remember very well my father was on the rationing board. They rationed gasoline, tires, things of that sort and they dropped football in high school. We had always had a football team and they cut it out so I didn't get to play football. My parents didn't want me to anyway — my mother didn't. Probably would have in spite of her desires. I did play basketball and we had some pretty good basketball teams in Southern Illinois. We came within two points of going to the state tournament, which was a big deal at that time. We got beat by Carbondale in the sectional tournament in 1945 and did not make it to the big show. But that was my primary activity in high school. There were not a lot of organized activities. I helped with the school paper that would come out occasionally in mimeograph form, but it really wasn't a school paper. It was more of an announcement of things coming and events that had happened. I would say those were my primary activities in high school.

CTF: What about Champaign?

JLF: When I went to the University of Illinois, I had two friends in Metropolis that were members of the Lambda Chi Alpha Fraternity. They had gone to the University of Tennessee and they touted me to join the fraternity. They wrote letters of recommendation and I was "rushed" by the Lambda Chi Alpha Chapter at Illinois. There is a fair coincidence here. The person who "rushed" me at the fraternity was Stan Roszkowski, later United States district court judge at Rockford (Stanley J. Roszkowski, IL-ND 1977-1998).

CTF: But you didn't know him from . . .

JLF: I didn't know him from anybody else at the time. He was from Royalton, Illinois, a little town not too far from Benton, which is in a coal mining area. He and his brother were fraternity members. His brother's name is Herman. They recruited me, so to speak, or touted the fraternity to me and I joined the fraternity. That's how Stan and I became very good friends. I spent two years in the fraternity house. That was 1946 and 1947, and Mabel and I were married in 1948. So, obviously, I moved out and we had an apartment from there on. But Stan was also married in 1948 to his present wife, Cathy. We became very good friends, very close friends and maintained that relationship all through the years. I got ahead of Stan in this respect. I went on to law school. Stan graduated and went out in the real world for a couple of years and then came back and was admitted to law school when I was a senior. So, he finished his legal education and moved to Rockford. I moved back to Metropolis.

CTF: You mentioned this before – you did the three and three program.

JLF: Yes. He did the four and three since he already had an undergraduate degree.

CTF: As you were growing up in grammar school and high school, who had a big influence on you and why?

JLF: That's a tough question. I guess my father had the most influence, then my mother, and grandfather – he lived with us for several years. Actually, I don't have many heroes in my life. Probably, my wife is the one that I admire the most. I just don't have anybody that I would have to say greatly influenced me other than my family. I guess that's why I have a little bit of disdain for some of the hero worship that goes on today with the movie stars, the rock singers and the athletes.

CTF: Now, you finished law school in '53?

JLF: 1952.

CTF: Did you always know, you and Mabel know, that you wanted to come back to Metropolis?

JLF: Yes. We never really had any doubt about that. Both of our parents were there. We thought we were well-connected and established. I say connected now – never even heard that word back then – but were well-established and knew a lot of people and we were home town kids and just never really thought seriously about going anywhere else.

CTF: Did you start as an assistant attorney general?

JLF: No, I hung out my shingle in the summer of 1952. There's a little thing here that I'd like to say that was very helpful to me. Something interesting happened to me. At the time I was in law school in my senior year and I had gone to summer school the year before to build up enough credits to take the Illinois bar exam. I took the Illinois bar exam in February of 1952, which was in my senior year in law school. I could not graduate because I didn't have the full six-semester residency required but I went ahead and took the bar exam. In April, about six weeks later, I got the six-cent letter – postage was three cents at that time. If you got the six-cent letter, you knew you passed the bar exam because it had papers in it for you to fill out for the character and fitness examination. If you got the three-cent letter, you knew you had not passed the bar. I received that in April and it came while Mabel and I were home visiting our parents from school that spring. So, that was a very smug feeling that I had being a senior in law school and already having passed the bar. I went ahead and finished my classes that semester and graduated and then immediately came back to Metropolis and hung out my shingle, and I started practicing by myself. Opened an office which was my father's old insurance office as he had sort of retired by that time and I moved in the building where he was, where he had his office, and took it over.

CTF: This is at the time when his last career was really selling insurance.

JLF: That's right. Insurance and real estate. Then that fall or the next spring a position became available for an assistant attorney general. The Attorney General of Illinois at the time, and I am sure you'll well remember the name, was Latham Castle, later on the Seventh Circuit Court of Appeals. (1959-1986) There was a little competition for it. There was another lawyer in Metropolis who wanted it but I was successful in getting it. I had the assistant attorney general's job for a couple of years. Then, shortly after that, I was an assistant state's attorney in our county.

CTF: Was the assistant attorney general position in Metropolis?

JLF: It was in Metropolis and it was mainly auditing inheritance tax returns and helping with right-of-way condemnation cases.

CTF: Did this allow you to also have a private practice?

JLF: Oh, yes. This was simply an adjunct to my private practice. I think at the time I received \$200.00 a month, something like that.

CTF: Now, when you just came down and hung out your shingle, you had an office in the area because your dad had been in there but most law students when they graduate aren't familiar with the forms that a

particular court might want or the procedures that a judge might want done. When somebody came in and said they had this problem, it's not like there is a senior partner there to tell you to go do this and do that, how did you handle this?

JLF: Well, you fumble around with some of that. I did some income tax return work, for example, with which I was already familiar. And I remember the first divorce, I had to ask another lawyer what to do and he told me and gave me the forms. You'd hang around the courthouse and the circuit clerk's office and the older lawyers would help you out some. The circuit judges which we had at that time were tolerant and fairly helpful. I had no clinical experience at all because they don't have clinical experience or didn't have back in those days. It's a big thing today in law school. I had none of that. You learn by feel, touch and smell. You just do it. Learn the hard way. You know, I had some tough lessons. Some older lawyers would teach you some pretty good lessons in the courtroom sometimes.

CTF: What are some of the memorable cases from that early part of your history, where you were trying cases.

JLF: Well, it's difficult to say. I can't say I had any really memorable cases in the sense that they received a lot of publicity. Most everything that happened was local in nature. I tried a few cases as assistant state's attorney, but not very many. Most of them were settled with a plea or something of that sort. Then in 1955, I went into partnership with a gentleman by the name of Robert Chase and we had a kind of a combination practice. We did trial work and represented one of the local banks. Later on I represented one of the major insurance companies that loaned money buying up thousands of acres of land in Southern Illinois, and we represented another major company that bought up land for a paper mill that eventually located in Kentucky. We represented generally insurance carriers doing defense work. Country Mutual was a big client of ours. State Farm had their own local counsel in Vienna at the time and when an accident would occur and there was a lawsuit filed, we generally had all the defense business in the county and, to some extent, the surrounding area.

CTF: Did you ever do any admiralty work?

JLF: No, never did any admiralty work. It is surprising but Metropolis was never a riverport as such. Paducah, Kentucky, which is across the river about ten miles away, was a riverport and the admiralty work gravitated, it seemed like, into Kentucky. Then, there have always been connections that the big firms from East St. Louis and Alton always seemed to

dominate the marine work. I think I know now how they got that work, but it was foreign to me at the time when I was practicing.

CTF: Was Robert Chase about your age?

JLF: No, Bob Chase is much older than me. He graduated from law school at Illinois also, I believe, in the year 1939 or '40. He was about fifteen years my senior. He and I then had the partnership known as Chase and Foreman and practiced together from 1955, when our partnership was organized, until 1970, when he was appointed as circuit judge in our circuit, which is the First Circuit. He then left the partnership. I carried on the practice until I was appointed to the federal bench in 1972, actually about two years after he left.

CTF: Was it just you two the whole time?

JLF: Just the two of us. We did not have any other associates or partners.

CTF: Now, you had been, I assume, active somewhat politically. I know from our past talks that you were very instrumental in Senator Charles Percy's campaign.

JLF: I'd been active politically, that's true. Our county, the little county of Massac, was always rock rib Republican. Germans tend to be conservative and that always seemed to be the party of choice. It's not so much that way now.

CTF: It's interesting that you should say that because if you went up and talked to John Reynolds (district judge, WI-ED 1965-2002), he would tell you that the Germans in Milwaukee tended to be Socialists.

JLF: Well, that's not so in my part of Illinois.

CTF: A different kind of a German.

JLF: I guess so. Maybe it's where they came from in Germany.

CTF: Do you have any breweries in Metropolis?

JLF: No, no breweries. That's funny. They sure have them in Belleville.

CTF: There are different Germans, I think.

JLF: Yes, I think so. No, it was just, you know, it was always – voting was four to one; then it got to be three to one; it got to two to one and it's pretty well even now. Industry has brought a lot of outsiders in. A lot of

people not natives, I should say. So it's about "even steven" now. How I got involved with Senator Percy was he decided he wanted to run for governor and he kicked off his political campaign – his very first campaign appearance was at the county fair in Metropolis.

CTF: You didn't know him prior to that time?

JLF: I did not know him prior to that time. No, he decided to kick it off at the Massac County Fair which was always the week of July Fourth every year, so he came to the fair with some of his family and wife Lorraine. This was his very first campaign appearance, very first plunge into politics. They stayed at our home. We liked them. They seemed to like us. I never will forget the night we took him out to the county fair. The grandstand was reasonably crowded. He said, "Jim, now what do I do?" I said you take your coat off and go up and start shaking hands with people. That's exactly what he did. He took his coat off and went through the grandstand, "I'm Chuck Percy and I'm running for governor." That was sort of a hallmark of his thereafter because at every meeting, usually dinner meetings, he'd forego his meal or take a bite of it and then get down and meet everybody. That was the way he handled it. Then he was unsuccessful, as you know, not winning the governorship. Otto Kerner won the election and Chuck stayed out of politics and formed the Committee for Illinois for about two years, and then came back and announced he was going to run for the United States Senate against Paul Douglas. A lot of people thought Douglas was so entrenched that he was fighting a severe uphill battle, but he was not one to shrink from challenges and as we know he was elected, beating Senator Douglas. That would have been in 1964 because he ran for governor in the early '60's, might have been '62 but I'm not sure.

CTF: In those days, the governor was on the, I think, was still on the presidential year.

JLF: Then he was elected in '64 and our oldest daughter wanted to go away to school, her last two years of high school, and we debated seriously about that. We searched for places for her to go and it finally wound up that she went to Ferry Hall, which is at Lake Forest. This caused some economic strain on the family's budget. So Beth for her last two years in high school went to Ferry Hall. You have probably heard of Ferry Hall or it's now part of Lake Forest College. There was Ferry Hall School for Girls and Lake Forest College.

CTF: Boys and girls.

JLF: There was Lake Forest College. Ferry Hall was an all girls school at that time. And while she was there in the late '60s we visited the Percys who

lived in Winnetka. They had a lovely home and we would visit with them occasionally and Beth visited with Sharon Percy some on the weekend. When that terrible tragedy occurred with Valerie, when she was killed, it was a weekend that our daughter Beth was scheduled to visit them but did not for some reason and I can't remember why.

We stayed friends. I had no political ambition at all particularly. I was State's Attorney for Massac County. I was elected in 1960 and decided not to run again in '64. I served four years and I had no further political ambitions. My law practice was doing pretty well. We were building up some clientele for estate work. We had an insurance practice. I represented some major corporations in buying land in Southern Illinois and I was doing okay.

CTF: Now, you mentioned your oldest daughter, so tell me about the rest of your family.

JLF: We have three daughters with Beth being the oldest. She is married to Burton Banks and they have four children, two girls, Whitney and Sidney, and two boys, Harold Burton Banks III and James. Whitney is attending school at Stephens College in Columbia, Missouri and Sidney is at SMU in Dallas. The two boys are in school at Paducah, Kentucky where the family resides. Burton, our son-in-law, owns and operates the Super Valu food stores in Paducah, Kentucky and Cairo, Illinois. Our second daughter, Rhonda Riepe, is in health care administration at Memorial-Herman Hospitals in Houston. She is a single parent with her daughter, Allison, presently attending the University of Texas at Austin. Our youngest daughter, Nanette, is married to Michael Love and resides in Paducah, Kentucky with her two boys, Michael, Jr. and Conrad. Her husband operates several McDonald restaurants in Western Kentucky and Southern Illinois.

CTF: The state's attorney position at that time, and maybe still today, was it part-time?

JLF: You could practice. Yes, you could practice and I did. I had no assistant. I was a full-time person in that sense because I had no assistant, but it was acceptable to practice. You had to because the salary wasn't sufficient for you to live on. We stayed in touch with the Percys through Beth going to college and through just being friends. When he would come to southern Illinois we would usually meet them and spend the day with them. They would come through Metropolis occasionally and spend the night with us.

Then, I received a call in late 1971, after I had my first coronary bypass operation in March of 1971. I had severe angina and to make a long story

short, the doctor thought I was going to have a heart attack. Bypass operations were in their infancy at that time. It was in February and I thought about going to the Cleveland Clinic, but the weather was so bad we couldn't get there so I was operated on at Barnes Hospital in St. Louis in March 1971. I got along very well after that. I remember Henry Schwartz, who was the U.S. Attorney at that time, called me, as I'm sure he called a lot of other people because he was very politically oriented in the sense of getting along with the lawyers. Judge Juergens (William G. Juergens, district judge, IL-ED and IL-SD 1956-1988) had decided he was going to step down and take senior status. He wanted me to know about it and he said, ". . . I'm telling a few other people." I immediately talked to Mabel about it and decided to throw my name in for the position. I let it be known to Chuck Percy that I was interested. There were several other people that applied for it. He had formed a committee to investigate the applicants. The committee and Chuck Percy thought I was qualified for the position and recommended me to President Nixon. I was nominated by President Nixon in March 1972, and confirmed by the full Senate the day after my hearing before the Senate Judiciary Subcommittee. Bill Bauer (William J. Bauer, district judge, IL-ND 1971-1974, circuit judge, 1974-), Dick McLaren (Richard McLaren, district judge, IL-ND 1972-1976), and Phil Tone (Philip W. Tone, district judge, IL-ND 1971-74, circuit judge 1974-1980) had all been appointed the year before. I knew Bill Bauer as State's Attorney from DuPage County. I didn't know Phil Tone and I didn't know Dick McLaren prior to that time.

CTF: From when he was a state's attorney?

JLF: We knew one another through state's attorney conventions in the early '60s. People would say, "You're not going to get through – it's an election year. I doubt if you will ever get through." That type of thing you would hear. But sure enough I had no trouble. President Nixon sent the nomination right on to the Senate and I had a hearing before the subcommittee and was then approved by the full Senate the next day as I have already mentioned.

CTF: Did you have any opposition?

JLF: Not that I know of. If there was any opposition I didn't hear of it. I don't know whether the Senator had any or not. He never told me about any.

CTF: Now, was Schwartz trying to . . .

JLF: Yes, I think he wanted the position very much. A well known lawyer in Southern Illinois, Jim Wham of Centralia, I understood, was interested in it. I never did inquire nor did I ever find out who all was interested other than those two that I knew about, but there were several. Chuck thought

I was qualified and our personal relationship was very helpful to me in getting the position. I don't think that's terribly unusual, or wasn't at that time.

CTF: No, not at all. The time you came in was the time when the courts were in the process of closing courthouses, and originally in this district we had a courthouse in Cairo.

JLF: At that time the district that I was appointed to serve in was the Eastern District of Illinois. We had actually four places of holding court: Danville, East St. Louis, Benton and Cairo. Cairo had a wonderful old courthouse. It's still there. Certainly at that time it was the best courthouse in the district. Cairo is at the extreme southern tip of the state and it is very much out of way. There was very little litigation originating in Cairo. Consequently, both Judge Wise (Henry Wise, district judge, IL-ED and IL-CD 1966-1982), who was the chief judge at the time, and myself found it impractical to go down to Cairo to hold court. There just wasn't enough business, to put it bluntly.

In the late 1970s, middle to late '70s, I can't recall the exact date, we decided to abandon the federal courthouse in Cairo. It stayed in that condition until GSA or the post office took it over and rented the rooms in the building. But it was strictly because of lack of business being generated in that area and it being at the extreme southern part of the state, which was so horribly inconvenient for the attorneys to attend court. There was just no need for us to maintain it.

By the way, the Alton court facility, which we abandoned later, was reported to the Grassley Committee when they asked the question about courthouses and the need for the future ones and what is being done, in effect, to economize in the federal judiciary. I pointed out two places where we have closed two courthouses in this district.

CTF: Your reference to the Grassley report is to the questionnaire that Senator Charles Grassley sent out to complete this year asking each federal judge a lot of questions about their workload and how to save money.

JLF: That's right.

CTF: When you came on board this was a big mining area. Southern Illinois was known for its coal mines and a lot of other minerals and a lot of the docket in those days dealt with mine cases. Do you want to talk a little bit about those?

JLF: Well, we had more than our share of mine strikes in the '70s and it was something relatively new to me because I had never practiced in that

area of the law. The UMW, United Mine Workers, was very strong. Coal mining in Southern Illinois was extremely strong at that time. There were about seventeen or eighteen thousand coal miners in Illinois, but the bulk of them were in the Benton-East St. Louis area. They would wildcat strike. I would have as many as three wildcat strike hearings a week. Sometimes I would have them almost every day. Obviously, the United Mine Workers was not getting along with the coal companies. They were showing their strength and they would strike over the least little thing.

Coincidentally, with all the strikes, the *Boys Market* case came out. *Boys Market, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970). That was the *Boys Market* case out of California which said, in effect, if there was a labor contract with a no-strike provision in it, and the people walked out in spite of that provision, and if the general principles of equity were against the union, then you could order them to go back to work. This was getting around the anti-injunction provision of the *Norris La Guardia Act*. The *Norris La Guardia Act* provides that you cannot enjoin a labor dispute, generally speaking, but where there is a contract which provides or by implication you can interpret that there is a no-strike provision, then you can enjoin them.

I issued many injunctions following the *Boys Market* case out of the Ninth Circuit. Generally speaking, they would go back to work. The truth of it is the vast majority of them, I don't think, wanted to strike because that took money out of their pocket and bread off their table but the leaders would call a strike or somebody who was dissatisfied with the mine where he was working and he would walk out, dump his water out of his lunch pail and then everybody would walk out. That happened frequently.

CTF: What do you mean by "dump his water out?"

JLF: Well, that's a tradition in mining, at least in this area. If an individual is a miner or a member of the union was seen by the other miners as turning his water bucket upside down and dumping his water out on the ground or down in the mine that was a signal that they should strike or that he was going to strike, at least, and then the rest of them would follow him out. That's what they call "dumping his water out." When he would do that that meant there was going to be a strike.

CTF: Were most of these strikes over what the miners thought were unsafe working conditions or were they over hours that people were being asked to work overtime and didn't want to?

JLF: In spite of the *Boys Market* case, if it was a safety issue they could still strike and you couldn't enjoin that. I had many hearings where the real purpose of a union striking was not safety but was over mainly personnel decisions where a fellow was fired, where he was disciplined, or when he filed for a particular job he was jumped over by somebody else. The vast majority of them were personnel matters, some of them were working conditions and a very few of them were really truly safety issues.

CTF: A lot of those mines are now closed, right?

JLF: A good many of them are. There's probably only now four or five thousand people in the coal mining industry in Illinois, so it has fallen off that much due mainly to closing of the mines, but also to machinery and automation that they have been able to bring into the mines such as longwall mining and things of that sort.

CTF: And part of that is due to just the high sulphur in the content of the coal here?

JLF: That's true. That's very true. It's the high sulphur content of the coal that makes it not very marketable under the Clean Air Act, so you either have to have scrubbers to scrub the sulphur out of it or you have to mix it with the coal that has low sulphur content.

CTF: Another area that gave you a lot of litigation was Marion Penitentiary, which was the successor to Alcatraz. That reminds me of the funny story that I always tell of the case you were trying in which the issue on appeal – I just laughed every time I thought about it – the issue on appeal was shouldn't you have declared a mistrial when the juror said "guilty" as the defendant bolted from the courtroom. It's kind of a cartoon picture that I can see in my mind when we framed the issue. Needless to say, the Court of Appeals did not think you should have declared a mistrial in that case. *U.S. v. Chaussee*, 536 F.2d 637 (7th Cir. 1976). I know of a lot of interesting cases, particularly since you had some very dangerous felons who had murdered guards, murdered inmates while inside the penitentiary.

JLF: That's right Collins, Marion is a unique institution as you have already alluded to by simply the designation that it replaced Alcatraz. I would say that all of us who started in the early '70s were just on the threshold of the long, arduous task that the judiciary has had in determining prisoner rights. There were a lot of headaches with that. The particular case you were talking about was an actual criminal case being tried, but the others were prisoner petitions that all of us who came on in the '70s had to suffer through. I remember very well when Luther Swygert was chief judge of the Seventh Circuit and he, as well as the other circuit

judges, had to wrestle with it also because they had the final say in it. I remember very distinctly talking with Judge Swygert (Luther Swygert, district judge, IN-ND 1943-61, circuit judge, 1961-1988) one time about the constitutional rights and grievous loss issue. Everybody searched for the definition of grievous loss and we could never really pinpoint that very well and then, finally, it was in the era that John Paul Stevens (circuit judge, Seventh Circuit 1970-1975) went on the Supreme Court, that it finally settled down to loss of liberty was the thing that substituted for the grievous loss situation. But most of the prisoner litigation involved disciplinary conduct in the institution. A few of the cases involved situations where they were deprived of some of their commissary money or deprived of their belongings. Another big area was access to the courts, having the ability to get to a library and law books and things of that sort.

CTF: One of the issues I always remember when this first came up while I was still in the law clerk mode and hadn't been to visit Marion at that point was – maybe I've got the listing here – one of the suits against Carlson. I don't know if it was *Bono v. Saxbe*, 620 F.2d 609 (7th. Cir. 1980), *affirming in part and remanding in part* 450 F. Supp. 934 and 462 F. Supp. 146 (E.D. IN 1978) but it dealt with the boxcars, the segregated units with the steel doors. I often wondered how that case would have come out if the assistant U.S. attorneys had done a better job in representing what was actually going on in Marion from the standpoint of the Bureau of Corrections. I got the impression that by just labeling these things boxcars they created an image in the minds of anybody including jurists who saw it or heard that term. If a better job had been done describing what the cell was like and the reason for the cell and weighing the sort of emotional term a boxcar represents – boxcars are a very emotional term because it is obviously what the Jews and Slavs and other people were moved to the crematorium in by the Nazis – as well as this idea that there's no light, there's no sun. It's sort of dank.

JLF: I think that's well taken. I think what happened was . . . at first, I don't think the prison people recognized that terrible connotation. It came from the inmates. The inmates are the ones who started calling them boxcars. It just permeated the institution and the next thing you know everybody is talking about it in the term of "boxcars," and what they were. They were cells that had nothing but a steel door on the front with a little slit and you could only see out through that, and some of them didn't have that on it. You were confined in this cell because you were violent. They were fighting, killing one another, killing guards, hurting one another and the institution – in defense of them, I think actually didn't know what else to do but to put this guy in a cell by himself where he couldn't see anybody or harm anybody or anything of that sort.

So we had the *Bono* case. There was very impressive testimony, very impressive testimony. There were certain health professionals that testified, Carl Menninger among them. I simply don't recall all of them now—but they were very prominent people and they testified that there was a lack of sensory perception by these people being in these so-called boxcars or isolated cells. They couldn't see out, they didn't have any fresh air, they didn't have any sunlight, they didn't have any light of any kind other than what was in the cell. So there was a realization, I think, even within the institution, and I ordered it also, that they put windows in the doors or provide some form of ability for the inmates to be able to see at least outside their cell into the institution if nothing more. A lot of them were close to the outside wall so they could see the outside. I think the people in the Bureau of Prisons finally more or less acceded to that and thought that was a reasonable way to do it anyway. But they were confronted with these people being very violent, wanting to square a grudge with anybody, not only the other inmates but with the people in the institution. One day they killed two guards in one day.

CTF: That was . . .

JLF: Fountain and Silverstein. Fountain and Silverstein and Gometz was in on it too. This was going on during the time when these prisoner rights were evolving and nobody had any great experience with how this fit into the constitutional guarantees and humane treatment of prisoners. Everybody was groping with how to handle this.

CTF: Well, I've mentioned to people in the past as far as I could tell, Marion was the equivalent to a post-doctoral program, that you didn't go directly to Marion unless you were really a special defendant.

JLF: That's exactly right.

CTF: That you were a graduate of Terre Haute or Leavenworth or Atlanta.

JLF: Anywhere. Anywhere there was violence in the federal system and that particular institution where that occurred was not equipped to handle them, they sent them to Marion. That's right. They were the most violent individuals in the federal system and there was a bunch of them down there and still are, I guess. Most of them have been transferred out to Florence, Colorado because they built that institution specifically as a Level VI institution. Marion was the only Level V at the time but in a sense, although it replaced Alcatraz, it still wasn't built to cope with the violent nature of the inmates that came along in the '70s. They were just absolutely violent, resentful, didn't care what happened to themselves personally and they wanted to get back at somebody. It was a tough time for the court going through the civil rights era of prisoner rights.

CTF: My first exposure to the Aryan Brotherhood or Aryan Nation was Thomas Silverstein and Clayton Fountain. *U.S. v. Fountain*, 768 F.2d 790 (7th Cir. 1985). Do you remember? I think you were the one who explained to me how they got ranking in that organization.

JLF: Well, the way I always understood it you had to kill another person, which meant you “made your bones.” Nobody ever told me that other than through the grapevine of the institution. You had to kill somebody to be in the upper echelon of the organization. In the Aryan Brotherhood, they hated blacks. At one point during the early days it was thought that the blacks were being predators in the institution and they just weren’t going to take it any longer. They formed the Aryan Brotherhood, and Sein Fein, which is another group, joined them and then the Mexican Mafia all joined together. I have to say that in many ways it did settle a lot of marauding going on among the black population.

CTF: One of the recurring issues in some of the litigation that arose out of the fact that Marion not only took federal prisoners but it also took some of the worst state prisoners, and because D.C. is a sort of special case. The District of Columbia would have some of their worst prisoners come to Marion. Some of those were under different rules in effect for their parole, etc. How were those litigations managed? I remember one of those was a Hawaiian that got transferred out here, a big case.

JLF: I vaguely remember that. I can’t call the name right now, but that’s exactly right. Lorton was the D.C. facility for federal prisoners and there were too many violent prisoners there so they transferred them to Marion. But at any rate, to explain a little bit, we did have that problem with conflict of rights, what they were entitled to being sentenced at D.C. in Lorton compared to the law generally. That was always a little bit of a problem because they would ship these guys out here who were violent and they would cause a lot of problems, as we know. I remember on one occasion they shipped all of the Muslims. Remember when they holed up in a building in D.C.?

CTF: Is that the one where they took over the home of Lew Alcindar (Kareem Abdul Jabbar)?

JLF: I don’t remember that. Anyway they holed up in a federal building in D.C. They had bus loads of people who came in protest of them being there. All kinds of things like that happened. Leonard Peletier was there. He was the one who allegedly, I guess, was convicted of killing the two agents at Wounded Knee and there were all kinds of demonstrations on behalf of Leonard Peletier through the years. He’s not at Marion now.

CTF: Were those demonstrations at Marion, at the penitentiary?

JLF: It's out in the country about eight miles from the City of Marion on a government reservation. They would keep the demonstrators off the reservation, but they would get on the public road and picket the entrance. They would have bus load after bus load of demonstrators come in. They have video tapes of them. They came here a lot. They had a demonstration one time for Leonard Peletier at the Arch in St. Louis – a couple thousand people there, I think – and several hundred of them went down to Marion Penitentiary.

CTF: Did you try Gary Trapnell?

JLF: No, I did not. That case was tried by Harold Baker (district judge, IL-ED and IL-CD 1978-).

CTF: That's the second time.

JLF: I didn't try him the first time either. I guess Henry Wise did. I didn't try him. I missed him both times because it was the luck of the draw. The way we had divided up the cases in the district it just wasn't my good fortune. I offered to try Gary Trapnell for Harold Baker when he first came on the bench, and he said no, he wanted to tackle it. I offered to try it for him. I did try the *Azarelli* case which came out of Kankakee that was his. I took that over and tried it as being a bid-rigging case of a road contractor.

CTF: Gary Trapnell – just for the record, I don't know how he got into Marion in the first place – but, he's written a book called Crazy Like a Fox and has supposedly a very, very high I.Q. He originally conned a woman, who it was suggested was a “do-gooder” who was writing to the prisoners, to commandeer a helicopter out of St. Louis to fly down to land in the yard and rescue him and some others. And then the pilot on the way down got into a fight with the woman, got the gun away from her and killed her.

JLF: That's right. The pilot didn't, I think, initially know where they were going and she directed him there in the air to go to Marion. That's correct.

CTF: Trapnell then talked the daughter of this deceased woman who tried to commandeer the helicopter into hijacking a TWA plane. That plane landed at Marion and the deal was for him to be escorted out of Marion to get on the plane. The government didn't allow it to go.

I don't think we want to go into it any more than that. I just wanted to identify it so that if somebody wanted to follow up they could.

JLF: Well, just a brief thing. The reason he got the daughter to do that was because he tricked her into believing he was her father.

CTF: Oh, I didn't know that.

JLF: Yes, that's how he did it. He said her mother and he had a secret romance years before and she was the result of that romance. Terrible tragedy about the whole thing. When the girl was tried in Benton, and convicted, and later testified against Trapnell, she was kept some at the hotel and she got pregnant by one of the guards. The whole thing was a mess.

CTF: I'd say. We've been talking really just about Marion Penitentiary, and over the years the Eastern District of Illinois had what I refer to as a pledge program for the new judge. When Henry Wise came on board, Judge Juergens, as I understand it, assigned all the prisoner cases to Judge Wise and when Judge Juergens took senior status and you came on board, Judge Wise assigned you all the prisoner cases. Want to talk a little about that?

JLF: Of course. That goes back a little bit. I didn't know very much about that field of the law at all and the prisoner cases just proliferated, not only out of Marion but out of the state institutions as well, and we had the biggest state institution at Menard and those cases also began to proliferate. I was sitting in East St. Louis at the time and this was the area in the District where they were filed and I got stuck with them. Later on I talked to Judge Wise about it and he agreed to take some of them. We divided them up – he got about twenty percent and I got about eighty percent, something like that. But he did later on agree to take some of the cases.

CTF: What were the cases like that came out of Menard?

JLF: They were disciplinary in nature – constitutional issues raised in disciplinary procedures mainly. The big case that I had of which I am very proud was *Lightfoot v. Walker*, 486 F. Supp. 504 (S.D. Ill.1980), and that was a health care delivery system case. It resulted in the whole state changing the system for delivery of medical services to the inmates. That case went on for about ten or twelve years. It was a long and involved situation and I don't know whether you want to go into it on this tape.

CTF: Yes, why don't you talk about it.

JLF: Well, it involved the fact that the inmates were not treated properly medically at Menard.

CTF: Is this in the general population or the psychiatric?

JLF: Both. The general population initially, the psychiatric did not factor into it until later on, but this was the general population. Some of them had tuberculosis. They had real diseases. They had an old infirmary there that I inspected several times; it was built back in the turn of the century and hadn't been changed. It was cold in the winter and hot in the summer. They had no real organization of the nurses. They had a contracted doctor who would come in periodically and see to them. The hospital was relatively unkept; the thing spilled over into the food handling and supply of food to prisoners because there were rats in the storage area where they stored the food inventory. And all of this bore on the health care issue. Some of the people had serious illnesses. I can't recall all of them, but I remember tuberculosis for one, and diabetics were not treated properly. Some of them had appendicitis and things of that nature, and they had experts that would come in, and they were not treated properly.

The Land of Lincoln Legal Assistance Foundation, Inc. filed this lawsuit attacking the delivery of medical services to the inmates. The State of Illinois fought it "tooth and toenail" – never would concede for a minute that there was anything wrong – and the Land of Lincoln, Harvey Grossman in particular. . . you may know Harvey Grossman – he's now in Chicago – he was lead counsel on the case.

CTF: Right.

JLF: He did a very good job. We had eight weeks of hearings in East St. Louis. I finally found that there was a constitutional violation of failure to properly deliver medical care to the inmates. We tried to negotiate a settlement during the process and we could never do that. I appointed three experts. One was Lambert King from the Monassori Hospital and Rikers Island in New York, and there was Ronald M. Shansky, who is now the director of medical services for the State of Illinois and has been since that happened, and a fellow by the name of Bill Pietro from California. They were my court-appointed experts. They came in and viewed the situation and made certain recommendations which I thought were reasonable. They found it unacceptable the way it was and we tried to negotiate a settlement, but failed, so we had to have a trial. I made the finding and then we still had a difficult time after that. Gail Franzen was the director of the Illinois Department of Corrections and we met here in this courthouse many times in Benton. I tried to persuade him and finally did, I think, because they never appealed the case. I told Mr.

Franzen that you've got it laid on a platter for you – an outline for the best possible way of delivery of medical care to the inmates as recommended by this very well known, well thought of expert group of people and you ought to follow it and then you can go out in the country and tell everybody, "Look what we're doing in Illinois. We've got the best institutional medical facilities in the country." Sure enough, he didn't say that's the reason he did it but he did. He bought it. Then later on we had a little further difficulty toward the end of it with a new Director of Corrections, Michael P. Lane. They wouldn't compromise on the attorney fees. I finally awarded about \$800,000.00 to Land of Lincoln for attorney fees after another hard fought court battle. They fought the whole thing "tooth and toenail" again.

CTF: They fought that on appeal, I think. (*Lincoln v. Walker*, 619 F. Supp. 148 (S.D. Ill. 1985) *affirmed* 826 F.2d 516 (7th Cir. 1987).

JLF: Yes.

CTF: Do you think one of the reasons they didn't appeal the decision the first time was because they were looking for somebody to tell them what to do so they could say to the legislature, "It's not us making this recommendation. It's the court order?"

JLF: I think that might have entered into it. They wouldn't agree to anything. I had to order them to do everything. I think eventually, after my talks with them, I finally persuaded them to a great extent and they began to see the light. Number one, they had a loser. They couldn't possibly have won the case. They had a bad situation and it was a thing in this day and time that wouldn't be tolerated and they saw the handwriting on the wall, plus the fact we set it up for them. I set it up for them with my three-person committee, the most recognized prison people in the country on delivery of health care systems, and told them what to do. So he had it laid on the platter to him and I said look, why don't you take this and run with it. It's here. You put it in place. They finally did hire Shansky, who is still there now. They finally hired him. "You're a politician. You can go out in the country and say, "Look what we're doing in Illinois. We got the best system in the country." I think he bought that to an extent. It could have been that they wanted the court to tell them. That's the same thing, I guess, the school bussing thing and all that. You have the court taking the rap for a lot of that. They built a new hospital down at Menard as a result of it and they spent, I think, about twelve million dollars. They cleaned up the food handling and . . . some of this comes back to me. . . a lot of it was just not properly testing the people when they came into the institution for tuberculosis, Aids, diabetes, or what have you. They just put them in the general population with nothing more than a perfunctory testing. They knew they had to shape up with

the law developing the way it was. That was a big, big case in the state and I feel very good about it. I feel it put into place a very good health delivery system within the institution that is not overdone, but one that would pass constitutional muster for treatment of inmates. It was an Eighth Amendment type of case.

CTF: You had experts in this case who were court appointed. Over the last ten to fifteen years a lot of experts have been given a poor rating by judges in general because of two factors: one is the idea that they might tailor their testimony to the party who has asked them to testify, and two, that some of their scientific basis is what is referred to as “junk science.”

Now, over the years you’ve had a lot of different experts come in. Do you want to comment at all on how you see . . . in this particular case you went out, I assume, and they knew coming in they were the court’s experts and not a party’s experts. This really doesn’t deal with what is commonly known as “junk science.”

JLF: No. This is a very specialized thing. It was people that had dealings with penal institutions in the country. There were some very talented doctors that testified on behalf of Land of Lincoln. There was one world-renowned doctor out of Chicago who came down to East St. Louis who testified for a day. They had others, but he was an outstanding expert on diabetes or allergies or tuberculosis. I can’t remember which. Very impressive. There were two kinds of experts: one, testifying about all the diseases that were prevalent in the institution and how they were handled, saying, in effect, that they were inappropriately handled in the prison institution, and then there was the other aspect of it, of how to correct that in the prison setting. And that’s where the experts that I appointed came in – how do you handle this in the prison setting? I was very well satisfied. You have to have experts in certain cases or you can’t prove the case, but I’m lukewarm toward the proliferation of experts as they are now in the federal system.

And at that time there was new litigation in federal court in this area and the workload increased perceptibly – especially with the Marion Penitentiary. Not only were we having prisoner petitions, but we were having substantive lawsuits such as murder trials, escape, and things of that sort. We needed more of a full-time staff at the Benton Courthouse. The clerk eventually put a person in here full time, then two people, and I gradually started spending more time here and, as it was not set up as a full-time court facility, that necessitated renovation and I supervised that renovation. When that was completed we still had the post office here. We didn’t have any bankruptcy court facility and it was becoming apparent that it was needed. So we gave the post office notice, with the permission of GSA, to move. As a result of that, after taking about five

years to get that accomplished, they finally moved out into a new two million dollar building and left the post office vacant here in this building. We renovated that and made a bankruptcy courtroom.

CTF: In the trying of cases and case management, you had a number of innovative things you brought to the Southern District. Do you want to talk about some of those? I know one was the summary jury trial, but there were other things.

JLF: I was proud of the fact that early on, Collins, we were developing a case management system here in this district before it was very popular to do so. Of course, it is very popular now with the Civil Justice Reform Act. It's catching on in other districts. We would have scheduling conferences long before scheduling conferences were authorized specifically by Rule 16 of the Federal Rules. By that, we would schedule the trial date, we would schedule the discovery cut-off date, we would schedule the filing of dispositive motions by a certain date, take up any discovery matters and try to anticipate as much as possible the accurate length of time it would take the case to get to trial. That was very successful. It kept the attorneys on their toes. They knew early on as to the timing and what to expect and, virtually, that identical thing has caught hold in many of the districts in the country.

One other thing that I thought was very helpful through the years was the summary jury trial. I guess I got on to the summary jury trial through Tom Lambros (Thomas D. Lambros, district judge, ND-OH 1967-1995), who was most recently the Chief Judge of Northern District of Ohio in Cleveland (1990-1995). I did some of that. It was resisted and still is, generally, by the bar. They are unfamiliar with it. They don't particularly like it. What you do in that case is impanel a jury of generally six people with two challenges to each side. It's an informal matter. All the parties are there including the plaintiff or plaintiffs and representatives of the defendant, and, in effect, it amounts to a trial by oral argument with the attorneys telling the jury what they expect the evidence would show if the matter was called to trial. After an hour or hour-and-a-half on each side, without witnesses generally, the jury retires and comes back with an advisory opinion as to what they think the outcome of the case should be. It's a very helpful settlement tool. I have not done it recently because I've been on senior status and haven't had the occasion, but I found it to be very helpful when I was an active judge. All but one of the cases I tried in summary jury trial settled.

The other thing that I'm really very proud of is back about five years ago we got authority for another full-time magistrate in East St. Louis. We already had a full-time magistrate there and a full-time magistrate in Benton and we needed a third one in East St. Louis. At my request, and

the other two judges, Judge Beatty (William L. Beatty, district judge, SD-IL 1979-2001) and Judge Stiehl (William D. Stiehl, chief district judge, SD-IL 1992-1993, district judge, SD-IL 1986), acceded to this. When we appointed this magistrate, we wanted he or she to be a settlement magistrate and their primary duty to be the handling of settlement conferences. They agreed with that and we appointed an experienced lawyer, a man respected by the bar. His name is John Ferguson and he developed a settlement procedure whereby each case would, at a certain point during the course of the case in court, have a settlement conference with him. It's rather formal. It requires a lengthy statement be prepared in advance which is confidential. The attorneys must be present, of course, along with their clients— not standing by their telephone but actually in person. This duty has spread to the other two full-time magistrates in the district, who are also now conducting settlement conferences as well as this one magistrate, and it has been highly successful. It's a form of ADR, Alternate Dispute Resolution.

I am very much opposed, personally and philosophically, to mediation and arbitration because, number one, it takes it outside the auspices of the court. The parties have to pay for it. It is an added expense to litigation and I don't believe in that. I believe we have a system of courts that can handle the workload if we would handle it efficiently. This system does not require any additional cost to anybody. It has been successful here and I think it could be successful in a lot of other districts, too, if they'd follow it.

CTF: You also had quite a bit to do with redistricting of the federal court districts in Illinois, so tell me about your role in that.

JLF: When I first came on the federal bench in the early '70s, I never thought much about redistricting until I got my feet on the ground and was making my official duty station in East St. Louis. At that time, the Southern District was north of the old Eastern District. Actually, the Southern District was in the central part of the state with places holding court in Springfield, Peoria, Rock Island and Quincy. The boundary line between the Eastern District and the Southern District was the Madison-St. Clair County line which divided the Metro-East area squarely in the middle and, by the way, the Metro-East area is the largest metropolitan area in Illinois outside of Cook County. With Madison County only 20 or so miles away we constantly had problems with the difference in local rules, mainly involving our requirement of having local counsel in each case if the attorney handling a case was from outside our district, and we had a lot of attorneys from Alton, Edwardsville and Collinsville with cases in the Eastern District. Also, when we empaneled grand juries, who at the time were chosen from the entire district, people had to come from as far away as Kankakee, which didn't set well with them

especially, coming to East St. Louis. These factors and others indicated that the district lines as drawn just didn't make sense; so I initiated the idea with Senator Charles Percy to consider redistricting the Eastern and Southern District boundaries. He thought it was a good idea with which then-senator Adlai Stevenson agreed. As a result, the Mackay Committee was appointed and, after several hearings around the state, the Committee recommended the realignment and renaming of the Southern and Central Districts as they are known today. Of course, this took Congressional action which, in turn, followed the recommendation of the Committee.

CTF: I know this must have been very gratifying to accomplish the redistricting, but there were other things you initiated during your years as chief judge, weren't there?

JLF: Yes, there were several others.

CTF: Since the new Southern and Central Districts were being formed, you had other ideas of things needed in your district, didn't you?

JLF: Well, certainly one of the most significant of the other projects I initiated was a new courthouse in East St. Louis. The courthouse at that time was typical of the type constructed during the early 1900s, being a combination federal courthouse and post office. The East St. Louis courthouse was poorly arranged and woefully inadequate in space for the clerk's office, marshal's office, probation and bankruptcy. So I wrote my good friend Congressman Kenneth J. Gray and told him of the situation and, after looking into it, he sponsored the legislation that Congress passed appropriating something like five million dollars for a new "Federal Courthouse and Parking Garage" for East St. Louis. It helped that Congressman Gray was Chairman of the subcommittee on Public Works and Grounds that had to approve every new federal building.

There were two interesting things that happened before the construction of the new courthouse. First, GSA's initial plans called for just a courthouse to be built. I called to their attention the legislation enacted provided for a "Federal Courthouse and Parking Garage" with which they did agree after some grumbling.

Secondly, the first idea GSA had was to go out and buy land at a new location in East St. Louis to build the new courthouse. I knew well and good if this happened most of the money would go for land costs, and we would be left with another inadequate court facility. So, I persuaded GSA to simply add on to the present courthouse. Since the post office had moved out of the building there was adequate land available, at no extra cost, for the U-shape nature of the building I proposed and they

adopted the idea of using that old space for an atrium, which added dramatically to the design and character of the new structure. It tied the old building and the new building together quite nicely, plus we wound up with double the space.

CTF: You haven't mentioned the start-up of the Federal Defender Program in your district.

JLF: That's something you also know quite a lot about. To make a long story short, as chief judge I was getting vibes from the Seventh Circuit that they might call into question the adequacy of representation of the court-appointed attorneys on criminal appeals from my district. However, the Southern District did not have a sufficient number of criminal cases to qualify for a district federal defender program. So we joined with the Eastern District of Missouri and the Central District of Illinois, combining our statistics to organize a joint federal defender office.

This is where you come in, Collins, because I know there was resistance in the Eastern District of Missouri to setting this up, but thanks to your help, and the strong support of Chief Judge Swygert of the Seventh Circuit and Chief Judge Lay of the Eighth Circuit (Donald P. Lay, senior circuit judge, Eighth Circuit Court of Appeals, chief judge, 1980-1992, circuit judge, 1966-), we got the program off to a rocky start that eventually became fully accepted. Interestingly, as you know, this was the first federal defender program that encompassed federal court districts from two different circuits.

CTF: You probably have some other things that deserve mention, having been in the district for over twenty years.

JLF: There are a few other things that might merit some mention. For example, I set up a full-time federal court in Benton, including a new building for probation, the United States Attorney offices and Federal Defender. This required moving the post office out of the courthouse to a new two million dollar building. Prior to my setting this up in the 1980s the Benton courthouse was used only as an "outpost," meaning it was used only occasionally, and now people from this area do not have to go to East St. Louis for their federal court needs. In conjunction with Dean Harry Haynsworth of Southern Illinois University Law School, we set up an American Inn of Court. Then I had the privilege of appointing the first committee required under the Civil Justice Reform Act of 1990 which mandated that we set up certain procedures, many of which we were already being used in the Southern District of Illinois.

CTF: Is there anything along those lines? If not, I was going to talk to you a little bit about your recollections of Henry Wise and Bill Juergens?

JLF: No, I can't think of anything right now.

CTF: When you came on board, Henry Wise was the chief judge. I don't know what the distance is, about one hundred fifty miles from here?

JLF: It's more than that to Danville from Benton.

JLF: I'd say it would be more like one hundred seventy-five miles. Two hundred twenty-something to East St. Louis.

CTF: So your contacts with the Chief. It amounted to . . . these kinds of districts when there is one judge in a division – I tend to think of it as a one-judge district court.

JLF: Essentially.

CTF: The clerk's office looks to you, the probation office looks to you if they are there for supervision?

JLF: Yes.

CTF: Were there any issues that divided you?

JLF: I think probably you've already hit the nail on the head – the fact that we were so far apart that we did not see one another very often. Our communication was by letter or telephone and there was collegiality there, but it was not very intimate because we would see one another maybe twice a year, something like that. That would be only by planned meetings – it would never be by chance. So that made for a lack of closeness between the judges. And you were hardly ever able to sit down and talk about some of the problems in the district or with some of the cases that one another had that the other one might help with on advice or suggestions of how to handle. It was a pretty awkward thing for that reason. As a matter of fact, like you've already suggested, there are essentially two separate divisions within the district.

CTF: What about appointment of clerks, chief deputies and chief probation officers?

JLF: Well, that was always the prerogative of the chief judge and that was never questioned. When I became chief, I always consulted with the other judges about who was to be appointed. The court was managed by a consensus of we judges, especially on personnel matters.

- CTF: What about your relationship with Judge Juergens, who was by then a senior judge?
- JLF: Well, my relationship with Judge Juergens was not as close as it was with Henry Wise. As you know, I succeeded Judge Juergens who had his office at that time at Chester. That was his official duty station apparently and he held court in East St. Louis and here in Benton. When he took senior status, he essentially retired. He did hold court around the country a little bit. I think he had a case pending at that time in Minneapolis or some place in Minnesota. He may have gone to Puerto Rico to some extent at that time occasionally. He would generally allot me two weeks a year for work in this district. I very seldom saw him. Only talked to him when we had sittings, asking him the number of cases he wanted and that kind of thing. We had very little communication with one another.
- CTF: During a good portion of that time we had a good number of judicial vacancies here. It was rare for you to have full time all judgeships filled when you were chief, if I remember correctly. We had some lengthy vacancies before the appointments of Bill Beatty and Bill Stiehl. How did you cope with the situation?
- JLF: Well, we just, I guess, trudged along. Just the best that one could under the circumstances. I remember when we had redistricting, there was a hiatus in time of about eighteen months before Judge Beatty was appointed and I handled all the work for the district. You just did the best you could. You had to try the criminal cases first because of the Speedy Trial Act. Otherwise, you would have to put out fires. We still had occasional coal mine strikes and there would always be some disputes discovery-wise in civil cases. It wasn't much fun. You were just constantly overwhelmed with work in both East St. Louis and Benton. When we did get the third judge authorized, it was two years being filled, and now we have a temporary judge authorized, and there has been a vacancy of one district judge in this district for over five years. If you can imagine that, neither President Bush nor President Clinton has appointed one and they've each had the opportunity, each of them for over two years.
- CTF: Jim, when you came on board, we already mentioned that Benton was just an outpost with no permanent staff, and there was no defender program. There were commissioners, I think, but there were no magistrate judges.
- JLF: That's right.

CTF: We had one referee in bankruptcy. We had two district judges. The number of probation officers and the number of people in the clerk's office was dramatically different. You already pointed out that the U.S. Attorney's office has gone from a U.S. Attorney and two assistants to thirty-one assistants. You've seen a lot of changes in the judiciary. Where do you see the judiciary going, based on your experience? Are we going to continue to expand in any programs that you can contemplate or where do you see us headed?

JLF: I'd say it is probably inevitable that there will be additional expansion. I hope there isn't. But I don't know what else can be said about that when Congress continues to make new federal crimes and expand the federal jurisdiction of the Court. I don't see how there can be any other solution to it except to expand the judiciary. I am opposed to it. I don't like it. I think there should be a cutback in federal litigation, federal jurisdiction, the big area is doing away with diversity cases.

CTF: As a half-way measure towards that, would you favor awarding attorneys fees – loser pays – in diversity cases.

JLF: My gut reaction to that is yes. But I must confess that I haven't examined the full merits of that, pro or con. I do believe that would stop a lot of litigation. It is totally abhorrent to our system of justice as I've grown up to know it. I am not opposed to radical changes for that matter in the court jurisdiction, generally. I think it is something very worthy of serious consideration.

CTF: One area that we haven't touched on is your service. You were appointed by the Chief Justice to serve on the Judicial Resources Committee of the United States Judicial Conference. You never had an opportunity to be the district judge representative on the conference as most district judges don't have that opportunity. Most circuit judges don't have that opportunity either. But you did get service, I think, for six years, was it?

JLF: Yes.

CTF: What were some of the issues that you dealt with there on that Committee that you felt were important?

JLF: The Judicial Resources Committee was tagged by the Judicial Conference to, in effect, handle personnel matters and matters involving salary for the people working in the judiciary and that's what we constantly talked about. We talked about adjusting the salary schedules yearly. We had two meetings a year, one in June and one in December, and it seemed as though we'd talk about salary schedules at every meeting. There were a lot of issues which I did not know about until I got on the Judicial

Resources Committee that the Administrative Office gave attention to on an ad hoc basis. For example, they would give a judge or somebody in the system an extra secretary occasionally, or they'd give them an extra law clerk. Court reporters were a big item, and what court reporters should receive. And then there was always the ongoing thing about COLAS, about adjustments in the judiciary compared to private industrial employment.

Accordingly, the Committee was asked to study the revision of the Judicial Salary Plan (JSP) which ultimately led to the development and implementation of the Court Personnel System (CPS). As I remember it, the Hay Group conducted the initial study of the JSP's classification and pay system in 1990 and 1991, and due to the far ranging recommendations of the Hay Group, the Administrative Office engaged the National Academy of Public Administration (NAPA) to continue the study which resulted in a recommendation for a flexible compensation system affecting about seventy-five percent of the court employees. The Judicial Conference approved the Committee's recommendation in about 1993 after I was off the committee. I understand the process for adopting the Court Personnel System (CPS) was finally adopted on a court-by-court basis in 1995 and 1996.

I enjoyed my six years on the Committee and learned a lot about the importance of the Administrative Office of the Courts and how concerned it was in dealing with the court personnel.

CTF: Have you enjoyed your life in the judiciary?

JLF: Yes, I have. It would have been a lot more enjoyable if I had been closer to my work all the time. That sounds funny and you can say, why didn't you move closer? Well, number one, nobody is going to move to East St. Louis. I'd always pointed to coming to Benton anyway, so if I'd moved there, or to that area, I would have had a second move probably down here. I'd say, on the whole, I've enjoyed it, but I would've enjoyed it more had I lived in the same town where the Court is located.

CTF: That's all I have. Thank you.