

**THE ORAL HISTORY**

**OF**

**MILTON I. SHADUR  
SENIOR DISTRICT COURT JUDGE  
of the  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**AS TOLD TO**

**COLLINS T. FITZPATRICK,  
CIRCUIT EXECUTIVE OF THE SEVENTH CIRCUIT**

**2008**

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**CTF:** This is the Oral History of District Judge Milton I. Shadur. Today is Monday, November 24, 2008, and we are in the chambers of District Court Judge Shadur. I am Collins Fitzpatrick, the Circuit Executive of the Seventh Circuit.

Judge Shadur, why don't you tell us a little bit about where your ancestors came from, about where the Shadurs came from--your father and paternal grandparents.

**MIS:** Before I tell you about that, maybe I ought to tell you what is in a sense more interesting: How I discovered what I know.

I was the fourth son, the youngest son. My dad was well into his latter forties when I was born. My mother was close to ten years younger than that. My dad never really talked about his life in the old country. He was what was called a Litvak, which meant he came from Latvia--sort of on the border between Latvia and Lithuania. I knew from him that he had left there because he was already in the Russian army and he didn't look fondly at continued service there. Although he was in this country in the paper box business, he did say that the one matter of distinction in the Russian Army was that he played the clarinet in a band with Heifetz's father.

But in any event I knew that my parents had met in Montreal, not having come in through Ellis Island, as was most often true in those days. One person would come into a place, and then they would send for other members of their family. My mother, for example, came to this country by herself when she was either 12 or 13, and she quickly started a business at that ripe old age. The way that they met was that my father's sister had married my mother's uncle, and the two of them met through them in Montreal and then settled, as the whole family did, in the Twin Cities--in St. Paul.

**CTF:** Did the families know each other in Lithuania?

**MIS:** No. My mother was originally from the upper Ukraine, from a small city near Kiev, and so they were not at all from the same area in Europe. My father died when I was very young: I was 15 and I was just graduating from high school. He had, in the preceding couple of years, set up a paper box business in Des Moines, Iowa, so he was spending time away, and I never really got to talk to him much about his forebears.

My assumption was that the Shadur family, because the Shadur name is an unusual one, was an extremely small one. Later on I knew about two other people with the name Shadur. One fellow, Lawrence Shadur, was

with the Metropolitan Opera, and another one was Robert Shadur, whose existence I learned about when our own son Bob went to UCLA as an undergraduate and started to get mail for a Robert Shadur that was someone else. It turned out that fellow's father, Harry Shadur, had worked for my father, Harris Shadur, in St. Paul in the paper box business and then went out to the west coast. That was the total extent of my knowledge.

**CTF:** When did your dad come here, do you know?

**MIS:** I don't know exactly. But probably, since he was born, as I later found, in 1876, my mother was probably born in 1886, and therefore she came to this country before the turn of the century, before 1900. My guess is that he must have come at about the same time--that is, some time in the late 1890s.

**CTF:** And they both went to Montreal first. Montreal is where they met.

**MIS:** Yes. I am not sure whether they married there or after both families had moved to St. Paul, where other antecedents had already moved.

In any event, in about 1996 two things happened, amazingly within the space of about a week of each other. I had learned earlier that we had a relative in Israel as a result of my daughter, who is an artist, having been an

entrant in an art show. And when we got there we saw that not only was Beth Shadur represented in the show, but also someone else named Shadur from Israel. And I thought, "How odd." It turned out that she was one of the most prominent artists in Israel and her husband, Joseph, was a Shadur. And within the space of a week I got a book that Joseph had written about the way that his family had escaped the Holocaust. They had smuggled an Oldsmobile and gotten hold of some gasoline, and they went across borders all the way from Belgium to Portugal, concerned that at any moment they might be stopped at a border and shipped back. In his book he talks about his family background and where the name Shadur originated.

**CTF:** Do you know the name of the book?

**MIS:** I have it right here. It is called *The Drive to Survival*. Within a week of that I received an e-mail through Mike Dobbins. What happened is that a young man named Mark Shadur from Queensland, Australia, a professor at the University there, had a young son, a teenager, whom he could not interest in the Internet, and he told him that it is enormously powerful. He said, "Look, I will put my name in the Internet, and you will see my articles are going to come up." He puts the name Shadur in the Internet and gets not only his articles, but my name comes up as well. So he gets in touch with the court here and asks Mike Dobbins whether he can get my e-mail

address, which he gets, and then I get a letter from him that says essentially, “My half brother and I--my half brother lives in Sydney and I live out here--are the only two Shadurs in all of Australia. But my guess is that in a country such as the United States, Shadur must be sort of like the equivalent of Smith or Jones.”

In any event I communicated with him, and sure enough he sent me a lot of material about his father having emigrated from Europe to Australia with no connections at all, and he sent me some papers from there. It turns out that this fellow was from some tiny little town, Dvinsk, on the border between Lithuania and Latvia. So it was quite obvious to me that we have a common forebear some generations back--and I am just speculating about that. It turns out that Joseph--and they pronounce it Shā-door in Israel--had also referred to this in his last chapter, which is the epilogue in his book about the odyssey that they had, that talks about where the people came from and the name.

So some years pass, and all I knew was that, yes, we had this relative in Israel, and one in Australia, and then I got from a guy in London a communication that said that for many years he came, as one of his forebears, from a family that was the Sadur family. He said it suddenly dawned on him that Sadur was a corruption of Shadur, and so he went into

research on that and he came up with an enormous amount of information. I will say parenthetically, by the way, it is interesting because when Mark Shadur sent me stuff about his father, including for example photos of his passport, I realized something. That is that the “s” in those countries, in Lithuania and Latvia, has a diacritical mark over it, which means it is pronounced “sh,” so that sure enough Sadur is really a variation of Shadur.

And as a result I got the essential family tree from this fellow, Paul Hattori in England, which had an enormous number of different branches. He sent me information that went back to about the 1790s in which he traced somebody named Iosel, who had among his children somebody named Itzik (and all these names are transliterations from the Hebrew and this is the most common spelling) Shadur, who was born in 1819 in the same city. And the town, to give you an indication of how treacherous these things are, is there referred to as Salakas instead of Dvinsk. But these were all little tiny municipalities.

It turns out that Itzik, who was born in 1819, had four children, the oldest of whom was Meyer Ezra. It turns out that Meyer Ezra was my grandfather. Indeed, my oldest brother, who has since passed away (as you might guess, as he was in his nineties), was named after him.

Meyer Ezra was born in the late 1830s. And, this was the really big surprise: The family tree discloses that he had eleven children, of whom the fourth was my father. And so my father, according to the information, was born in 1876, as I indicated. His younger sister, who was born about five or six years later, is the eighth child, and she is the one who married my mother's uncle. My mother's maiden name was Kaplan, and this fellow George Kaplan was the one who settled and became a prominent businessman in St. Paul.

So that is really the story of the family tree. But what was astonishing, if you think about this, is that we went from what I thought was a very small family to the knowledge that my father was the fourth of eleven children! Which meant that there are Shadurs all over the place! They are on different continents. And so, as part of the information that was given to me--the descendants of this Iosel Shadur, the one who was born in the late 1700's and then everybody in the generations beyond that--I have been able to track down that information.

**CTF:** And you really did not know anything about your father's history?

**MIS:** I didn't have the slightest notion about this at all.

**CTF:** And there were no cousins that you knew?

**MIS:** Oh, well, the cousins that I knew were all cousins on my mother's side, because my mother was one of six children. As it happened, when we lived in St. Paul (where I was born), her one brother and all of her sisters and she all lived very much in the same neighborhood. And so most of the kids were contemporaries of one another. So we used to play with our cousins, and we knew all the members of that family, but I knew none on the Shadur side at all.

On my mother's side I knew, as you can imagine, the one brother, and I forget whether there were five or six sisters. All of them had a last name other than Kaplan, except for my Uncle Jack Kaplan, who also turned out to be in the paper box and envelope industry in St. Paul. And the thing that led to our moving to Milwaukee was that he and my dad, who got along very well together, decided that the business really could not support two families. And I do not know if they flipped a coin or what, but my dad and our family moved to Milwaukee when I was about eight years old, in the very early 1930s.

**CTF:** Did you start a paper box business in Milwaukee?

**MIS:** Yes, we did.

**CTF:** Tough time to be starting a paper box business, I would assume, in the middle of the depression?

**MIS** Well, as to the paper box business, interestingly, as I learned much later as you can imagine, I knew that it was a prince-and-pauper business in the sense that a paper box manufacturer, and I am now talking not about folding boxes but set up boxes, things like candy boxes and so on that are set up, rather than the folding boxes that you assemble, depended on your having an inventory of box board, which was cut into sheets that were properly sized. So you had to be skilled in terms of figuring out what size sheets to be buying. But most importantly, you were dependent on the board mills. What we did not know until I became a lawyer, and indeed a judge many years later, was that there was an antitrust conspiracy among the board mills in which they were carving up markets and also fixing prices, so that you were a captive of the board mill that served your area.

**CTF:** This is the famous anti-trust folding carton case.

**MIS:** Exactly right. The net result of that was that if you had board that you had acquired at a relatively low price and prices were moving up, you were

making a profit. If on the other hand you had a high priced inventory of board and prices were dropping, you were barely surviving. So what my dad used to do--he had no education at all, but he was a very savvy business man, very quick with numbers. He was able to quote prices based on observation, which was a rare art. So what happened is that because the box business as such was, as I say, a prince-and-pauper operation, he used to supplement it by buying and selling used paper box machinery.

A couple of years before his untimely death from a coronary when he was 61, he had heard that the Munsingwear Hosiery plant in Des Moines was going out of business--in terms of making their own boxes, as they did, because they could get them cheaper from Cedar Rapids, about 100 miles away, than doing it themselves. So they had advertised a sale of their used paper box machinery.

My dad goes to Des Moines to attend the auction and sees here is the largest city in Iowa, I guess it had a population of maybe 170,000 or so, and he sees there is no box plant there. So he goes to the head of Munsingwear and says, "If I could sell you your hosiery boxes at 'x' dollars a thousand, would you buy them from me?" You have to understand that in the set-up box business, when you transport them to customers you are basically shipping air. You load up your trucks, and they occupy a lot of

space, unlike folding boxes. As a result, the transportation costs represent a substantial part of the selling price. The guy says, "Of course. I have to pay more than that to these people in Cedar Rapids." So my dad then proceeded to buy the machinery, rented an old plant in Des Moines and set up his box plant himself. As a result he ended up with my two oldest brothers running the plant in Milwaukee while he was setting the thing up.

Unfortunately he had his first coronary at that point, and my brother next to me in age, who was seven years older than I, had to drop out of Marquette, where he had started, and went to Des Moines to assist my dad with the business. Then he married a girl in Des Moines and he became a permanent Des Moines resident, where he stayed the rest of his life. But that is how this second box plant got founded--as a result of a kind of savvy evaluation of the market.

So much for the background that I know of my dad's family. As far as my mother's family is concerned, I did not have the good fortune of having anyone like this guy in London who has made an enormously widespread genealogical search. So I don't really know anything about the Kaplan family background other than what I have already told you.

**CTF:** They came from the Ukraine?

**MIS:** Yes, they came from the Ukraine. That branch settled through Montreal in the Twin Cities, just as my family did, but in that case all of them did. It happens that one of my cousins, who became a professor of music at the University of Minnesota, now retired essentially, got in touch with me a number of years ago because his son was here and was thinking about going to law school, and asked did I have any recommendations? It turned out that his son was married to an artist who was already a very close friend of our daughter's. Just sheer coincidence. His name had been changed from Weissman to Walker, so that I would not have known. We know Adam Walker and his wife well here, but that is all I really know about the remaining part of the family. I suspect that there are very few of my generation still living, maybe one or two, but I really don't have any input to speak of on my side.

**CTF:** Your dad came here to get out of the Russian military. Do we know why your mother came? She was 12 years old.

**MIS:** She came because, I think, her uncle had come here, and it was really a matter in those days, as the rumor was, that in the United States the streets were paved with gold. So they went from these little shtetls in Russia where life was very tough, and everybody thought of America as the Promised Land. In those days--that was the time when the Statue of Liberty

really meant what it said at the base, which is, “Give me your poor and huddled masses,” and the poor and huddled masses came. They came in search of a better life. So she was the second oldest sister. Whether the oldest sister had already come to Canada at that time I don’t know, but I do know that her uncle, who I think was the first one to have come, married my dad’s sister and was already an entrepreneur. What used to happen in those days is that they would send money back to enable the next person to come over. They would send them just the cost of transportation, and then when they came to this country they had to figure out a way to sustain themselves. My mother literally became a dressmaker when she had barely entered her teens.

**CTF:** So we don’t know why either of the families went to Montreal as opposed to New York, other than the ship went there.

**MIS:** The ship went there. That is right. The ship went down the Seaway. That is one of the things that led to settlement in the Midwest rather than in the East, which I suppose might have been a more likely destination for people coming in through Ellis Island. By the time that the youngest ones came, the entire family may already have moved to St. Paul. So they may have taken Montreal as a sort of way station en route to St. Paul. I am not certain about the timing of that.

**CTF:** Where did you live in Milwaukee?

**MIS:** We lived in what was the Washington High School area. Hu Will, you know, when I first came on, made a nice talk to the court because I succeeded him. Hu said, "You know this guy has been following me my whole life. I was valedictorian at Washington High School, and then Milt was valedictorian at Washington High School. And then I went on to the University of Chicago, and Milt later went on to the University of Chicago. And then at the law school. And now here I am taking senior status, and Milt is following me to this one."

We lived at 46<sup>th</sup> and Hadley, and Washington High School was on Sherman Boulevard, which is 43<sup>rd</sup> Street. That is basically north and west in terms of the internals of Milwaukee. Ironically, Newt Minow lived directly across the street from us when I was growing up. Newt was a couple of years younger and I knew Newt then. Although I did not know it at that time, Ab Mikva lived about three blocks away from us in that area. So we really contributed to the population of Chicago lawyers in a big way in later years. Also, Bud Fieldman, who was with Jenner and Block, was, I think, a classman of Newt's and Ab's at Washington High School. I was very young, just a year older than Ab, but I was three years ahead of him in

high school, so I didn't know him then. I graduated from Washington when I was 15, so I got out of there young and went to the University of Chicago.

**CTF:** How did that affect you, going through high school and graduating at 15?  
Tougher to play sports?

**MIS:** Yes. Although it is true in the junior yearbook, which I did not retain, I was pretty much--in the mass photographs of the literary societies and so on, I was pretty much in the front or middle row in my junior year. And between my junior and senior year I grew six inches. I went from about five feet six inches to six feet. So in my senior yearbook, here I am in the back row of most of the photos. So it really did not affect me.

We had what I suppose today would be called a gang that was devoted almost entirely to sports, a group called the Gladiators. We participated in all kinds of sports, and I really did not have any problems with that. Although I was younger and I suppose that the primary formative time in terms of coordination and so on came about that time frame, I did not suffer any disadvantage at all. I participated very actively in sports. Milwaukee had a great program--a playground program during the summer-- in which . . . [took phone call]

**CTF:** Jim Shapiro, one of the bankruptcy judges up in Milwaukee, just sent me an autobiography by Len Zubrensky, who talks about playing in the Gladiators.

**MIS:** Yes, that is right. Lenny is the one who introduced me to my wife. To move fast forward a couple of years, in those days--the days of World War II--you had to have registered for the draft at age 18. So I accelerated my time at the University of Chicago and I got my undergraduate degree at age 18. I was coming down for my senior year and I had come down a week early, freshman week, because I had some functions I was running for the incoming freshmen. I called up Len Zubrensky to say goodbye because he had just been drafted into the Army, and in those days the Army used to give what was called pre-induction leave. If you had been drafted, they would give you a leave status before you actually went into active duty.

So when I called him to say "goodbye," he asked where I was calling from and I said I was calling from the station at the Milwaukee Road, taking the train down. "Listen," he said. "I have got this leave, and I have got these three aunts who live in Chicago, and I have not seen them in a long time, and I think we can get some free meals out of this." And he said, "How about waiting for me at the train station?" I said, "Sure." So he came down and we took the train down, and sure enough we make the

rounds of these aunts of his--and the third one was my wife Eckie's mother. And so we got one of our free meals there, and I was instantaneously smitten.

Len and I had gone to a show with the late Buddy Ebsen--he later became the guy from the Beverly Hillbillies, but at the time he was a song and dance guy. So I had this pair of opera glasses, and I left them at Eckie's house. And I called her up and I said, "You know, I forgot my glasses at your house." She said, "Well, we will mail them to you." And I said, "No, no. Don't bother. I will come down."

So I came out and we went for a walk, which was about all I could afford in those days. She tells this story that when I would say, "Do you want a soda?" I would say it with a kind of trembling in my voice lest she say "yes." But in any event I also said, "You know, I am going to marry you." This was literally the second time I had seen her. I had met her on her half birthday--she was 17½ and I was 18. She went home and of course told her mother, and her mother told her she had to watch out for guys like that: "They are only thinking about one thing." But it turned out I was a pretty good predictor. And that is how we met and later got married.

But Len--as a matter of fact, we were just with Len and Ruth several weeks ago because for the first time--Len is older than I, and for the first

time they are becoming grandparents. We have a couple of great-grandchildren, you understand. So Ruth gave a baby shower, and we went up and went to the baby shower, and then we visited my only surviving brother, who is regrettably suffering from Alzheimers at this point. Aaron is probably 95 or 96.

**CTF:** Milt, let's discuss your siblings right now. When were they born?

**MIS:** I have a hunch that my brother Meyer lost a year somewhere along the line, because I remember very vividly when I was at the University and he had turned 30 and I was I think 16, I sent him a wire. In those days you used to communicate by Western Union. I sent him a wire saying, "Don't really fret. Everybody has to reach middle age sometime." I was only half kidding, you understand, but Meyer had a very good memory--and guess what happened when I reached 30? I got the same wire. But Meyer, according to this thing, and I am not sure whether the year is right, it reflects that he was born . . . I know he was born May 16<sup>th</sup>, and it shows him as being born in 1911. I am not sure whether that ought not to be 1910, but I will accept the 1911, which would put us about thirteen years apart.

My second brother was Aaron, who is still living and was born on February 13, 1913, so he was born a little less than two years later. Then

my brother Mel, who died quite young (he died when he was less than 60), was born on August 12, 1917, and then I was born seven years later. I was born June 25, 1924. So that is the four of us.

My mother . . . this stuff lists the fact that she had had one stillbirth earlier, but I think that she had a couple of miscarriages as well. So she had not started to have the four of us until she was maybe 25. She was about 25 when Meyer was born. They had been married for a couple of years before Meyer was born, and in those days they did not maintain accurate records—and they certainly did not in the old country. It was always, “Well, you remember, she was born in the winter of the big snow,” or whatever it was. So I suspect that my mother lost a year or two in the translation somewhere along the line, too. But on my birth certificate she is reflected as being 38 at that point, which would match with her being about 25 when Meyer, the oldest, was born.

**CTF:** You skipped three grades.

**MIS:** I skipped two full years.

**CTF:** Was that in grammar school?

**MIS:** Yes. By the time that I got to Milwaukee when I was probably eight years old, I was already past the third grade. But fortunately, in terms of the curriculum I really did not lose anything that was really critical. Indeed, I found, when I came to the University of Chicago, that I had received an astonishingly good education in a public high school in Milwaukee, better than my classmates who came from the touted places like the Lab School at the University of Chicago, like Latin, like Frances Parker.

So the result was that I came into the University--for example, in those days under the Hutchins system, every year's course you would get your grade through a six-hour comprehensive at the end of the year. Attendance in classes were not compulsory. Indeed, I never found out where some of my study groups ever met, because I regret to say I took advantage of the comparative freedom in moving from a very Teutonic high school to a libertarian university. I depended on the fact that I could knock off exams at the end of the year.

What I did in part was, for example, I took one quarter of mathematics and I took an exam covering the entire math sequence--a three-quarter course--so I got credit for a full year's math as a result of taking one course and then taking the exam. I placed out of a full year's English as a result of an absolutely marvelous education at Washington High School.

The net result was that I was able to take divisional courses in English, divisional courses in math and physics--which is what I did my undergraduate degree in, math and physics both, although the physics was primarily theoretical physics, so it was to a large extent math as well--but the result was that when I went in the Navy they gave us an exam. And my pride would not permit me, although I wanted to get into destroyer duty, to conk out on an exam. So I ended up in radar school. That is what my active duty was in the Navy. I was a radar officer aboard carriers during my time in the service.

**CTF:** Let's go back again. In grammar school, you are in the Gladiators, you are playing sports with them. What was life like? This was the Thirties, the Depression. What impact did the Depression have on you?

**MIS:** I really was not conscious of that. We were I suppose what you would characterize for income purposes as maybe middle class, and maybe below the mid-level of middle class. And I was totally unaware of it. I had no idea. Life functioned that way. We were never in need. We always had adequate housing, we always had adequate food. In a sense, you know, my dad after all as a business man was an entrepreneur, though that did not carry the idea of wealth with it, but it meant making a living. And as a result I really did not accept--from what I read in the newspapers and what I

observed second-hand in that sense, the Depression really did not have any kind of significant impact on living or on lifestyle for our family.

**CTF:** What did you know in the Thirties about the persecution of folks in Russia and the Soviet Union and in Germany?

**MIS:** I knew a great deal about what had been historically the pogroms in Russia, because that, of course, was the main reason for much of the flight from Russia. And you have to remember, by the way, that although I speak of Latvia and Lithuania, they were part of Russia. They were not independent countries at the time. So my father in that sense came from Russia, just as my mother came from Russia.

And the pogroms there--there was a high level of anti-Semitism, a great deal of discrimination involved. I know that much more from my history of Eckie's dad, who went through grade school in Russia, came to this country and in the space of a few years went through college and medical school, but always said that his opportunities in Russia were nonexistent and that was the reason for his having come to this country. He went back many years later and he could still speak Russian. He came back and he said, "You know, the people there have simply traded one czar for another." He had hopes that there would have been change, but he came

back really quite depressed to see what had not changed in Russia. Of course this was years ago.

**CTF:** So this is when it would have been the Soviet Union?

**MIS:** Yes.

**CTF:** But what did you know about Hitler?

**MIS:** Well, of course, we were not aware of the death camps. We knew that people were in concentration camps. We knew, all of us felt, and I think this was the general feeling in the United States as such, although maybe more keenly felt by Jewish families, that Hitler really represented a kind of evil that had to be stamped out. And that was one reason that . . . you know, when I say that I was eager to get in the service I was no hero, but I can assure you that the general sense was not just to avoid the stigma of being thought of as a draft dodger, but people genuinely wanted to get into the war in order to eliminate the kind of evil we read about at that time.

**CTF:** Where were you when you learned of Pearl Harbor?

**MIS:** I was at the University. I know I was in the dorms when I learned about it. And at that time I was 17, and that accentuated my desire to get in the service. So I really turned my energies . . . what I had been doing to a substantial extent was take math and physics simply because I liked the discipline, I liked the fields of study. But I then quickly shifted. And I have no idea what my goal was really in those terms. But I quickly shifted my focus in order to be able to accelerate my graduation. So I concentrated. I was already in the divisions at that time. Chicago had a system under which you technically spent two years in the so-called college, which meant that you had to take a total of seven year-long courses to get out of the college, and then you entered the divisions. But I was already doing divisional work in the math and physics departments when I was in my second year at the University. So I simply shifted the focus on that.

Funny, you know, you asked about that. There are two things that in retrospect I should have been aware of but was not. One was that we were always very unhappy because we could not get the doubles court to play squash. We would sign up for the singles court, and whenever we would try to play doubles we would get this song and dance: "The courts have been signed up for this time or that time." And I learned only years later that is when they were doing the atomic bomb in this doubles court underneath Stagg Field at the University of Chicago. The second thing that I never

realized, never made the connection, was that one of the math professors retained me as a kind of research assistant to work on some things for him. I was dealing with theoretical problems, but I did not have the slightest idea of what the utilization was. So in that sense, I have had two totally tangential and tiny connections with something that none of us knew about. And I learned--again, only years later--that was also a prelude to work on the atomic bomb.

**CTF:** Did you ever meet Einstein?

**MIS:** No.

**CTF:** You mentioned your academics at the University of Chicago. You said you used to partake in extracurricular activities?

**MIS:** Really, because I was loading myself up heavily with courses . . . for example, carrying the normal load you had to go through seven courses in the first two years. So the normal load would be three in one year, four in another. When it came to my last quarter at the University, I actually had signed up for six courses, and I had to find a seventh so I could finish up and come down to the office of Naval Office of Procurement to enlist and end up in Midshipmen's School.

So basically my extracurricular activity came at the early time that I was there. In high school I had been the head of our literary society as well as being on the school paper. I was sports editor of the paper. But I was also a debater. So when I came to the University of Chicago, I immediately joined what was then—and Chicago was still in the Big Ten—the debate team. So I was a full-time debater, and we actually won the Big Ten Debate Championship one year, which was unusual because Northwestern, which was historically the hot spot for debaters, used to have people all the way through law school on their debate team. Seymour Simon, who later became my very good friend, was one of the Northwestern team that earlier won the Big Ten Debate Championship. But debate was primarily the extracurricular activity that I engaged in. I tried to play some freshman basketball. Those were in the days of the two-handed set shot. There were no jump shots. So I played that to a modest extent, but that was really not much.

**CTF:** Did you play that at Washington?

**MIS:** No. In that respect I think that my being younger really made a lot of difference. I used to compete with the late Pat Harder, who later became a famous football player at the University of Wisconsin and then with the Green Bay Packers. I used to shoot hoops with him because I could shoot

pretty well. But I was really not that good an athlete, not so I could be on the teams at Washington High School.

**CTF:** Did you ever work in your brothers' factories?

**MIS:** Oh, yes. I did. I used to work summers all the time. Terry Evans, you know, tells the story that he worked at the Shadur box factory when he was young. I don't know what he was doing, but in the summers I used to work on the truck for deliveries. When I was younger and the workers were basically on piecework, which was an opportunity to earn more than the pittance that they were earning on an hourly basis, I used to do--because of my penchant toward math--all of the calculations of the piecework earnings for the plant. I started that when I was ten or eleven years old, but that was about the extent of that.

**CTF:** You graduate from the University of Chicago when?

**MIS:** June 1943.

**CTF:** So you go to Midshipmen's School. Where at?

**MIS:** Notre Dame. I went to Notre Dame for Midshipmen's School. That was basically a three-month or thereabouts Midshipmen's School. And then, as I said, they made their decisions about what kind of service you were going to have. So during the latter part of that they gave an exam to people who had at least some background in math and physics in their undergraduate work. I took that exam, and ended up assigned to radar school--which I was not happy with, by the way, because I felt that was going to take nine months and I was eager to get in. But you did not fight with the Navy.

But anyway that was at Harvard and MIT. At Harvard you took the theoretical part, which was on the Harvard campus, and then the MIT part, which was the practical part, the application, was not on the MIT campus. They had rented some top space in some old building overlooking the harbor. I am sure that people had to know what was going on. There was the name of some business listed on the building directory, but if people saw guys in Naval uniforms streaming in and out, they had to figure out that there is something going on.

Well, of course, that top floor was terrific, because it gave us an opportunity for checking the radar sets because there were ships in the harbor. So the whole practical training consisted of the instructors putting problems into your set, and it was like problem-solving. You had to do

detective work to detect where the problems were. Remember, in those days there were no computers, no chips, so you were dealing with diodes and vacuum tubes, and that meant that the connections were soldered connections. There were a great many things that could and did go wrong. So they would introduce a problem, and you would set it up on an oscilloscope, and you would detect. If the things were going right, you would be seeing this wave on the screen. But if you are not, you are seeing this, so that would enable you to track it down to something else. So you learned basically by analysis, and by working out what the innards of the radar set were or were not doing.

**CTF:** Now radar is new at this point, right?

**MIS:** Totally new. Totally secret. As a matter of fact, so much so that my lab partner and I had a great time, because you see you could not take homework out. So what we would do is we would get through with our lab work as soon as possible, and then head out to Red Sox Park. I saw more ball games with the Red Sox that year than I think I have seen in the years since then. So it was a great thing. And also, it was totally independent living. There were no constraints of the kind that you have now.

**CTF:** You weren't in barracks? You were just in apartments wherever you went?

**MIS:** Well, no. Actually, we were living in a hall in the Harvard Yard, both at the time at Harvard and at MIT. So I was living in Wigglesworth Hall, which was right in Harvard Yard. But the point is, coming and going you were totally free. There were no hours. Nothing. It was a wonderful kind of existence. I got to love Boston that year, and I have never lost that love affair since. It is a great city. That was a very good opportunity.

**CTF:** So when you went into this, you did not even know about radar?

**MIS:** Nothing.

**CTF:** You were tested. They sent you to this, and then told you about what it is?

**MIS:** Right. And it was totally secret. We learned it from the British essentially, but we had developed the thing in a way. And so after that, when I got assigned to an air group, I was radar officer for a night fighter group, for whom radar was particularly important. Because if you think about it you would not have had visual sightings at night, and therefore you were dependent to a much greater extent on radar. Moreover, when you are aboard a carrier, when you think about the carrier landings and what a punishing effect that has on the equipment when the hook catches and the plane is brought to a screeching halt. That would automatically knock your

radar set out of kilter, particularly in those days because you had the vacuum tubes and connections you were dependent on. So what would happen is when any plane came in off a night hop, you would immediately take the radar set off the plane, the nacelle, which is on the wing. You take that radar set off, take it down to the radar shop and remount a set that you had reconditioned in the meantime. So you were always switching radar sets for the aircraft. My radarmen and also my radiomen were kept busy full time with this, as you can imagine, because of the physical impact of carrier landings on the aircraft and the electronic gear.

**CTF:** So the radar you worked on was the radar that was on the planes, not the radar on the ship?

**MIS:** Right.

**CTF:** But I assume somebody was doing the radar on the ship?

**MIS:** Yes.

**CTF:** That did not have the same problems?

**MIS:** No. Part of the ship's complement--that was basically stationery stuff--did not have anything even remotely resembling the servicing problems that you had to have for the aircraft radar.

**CTF:** What aircraft carrier were you on?

**MIS:** The first one that we were on was called the Sangamon. There were four converted Esso tankers. They had been converted from tankers to baby carriers, and they were terrific in the sense that they did not have the same speed as a converted cruiser, but they were much more seaworthy. If you think about cruisers--which are after all built primarily for speed--if you think about their shape under the water, it is a sharp "V"-type hull shape. You stick a flat flight deck on top of it, and you think about what that does to the center of gravity. As a result, they were much more difficult to fly off of and land on than the Esso carriers. There were four Esso carriers, all named after rivers. One was the Sangamon, one was the Chenango, one was the Santee and the last was the Suwanee. So we were assigned to the Sangamon. That was our first ship.

Then after the Okinawa campaign ended with our taking the capital city, Naha, we were kamikazed coming out of Naha harbor in May of '45, and that knocked the ship out of commission. There were a lot of people

killed as a result. A kamikaze attack consisted of one Japanese plane. The gunners on the carrier had shot down one kamikaze that had narrowly missed us. But the next one, which had just one 500-pound bomb, landed smack in the middle of the flight deck and went through to the hangar deck below, where a lot of our planes were already fully loaded. And it was sort of like the Fourth of July. All of the ammunition went off, and it blew a hole the size of a room in the side of the ship. We had two planes that we had been able to get off just as we were pulling out of the harbor--we had not really gotten to the sea--and the two planes that got off thought that our ship was sunk, so they went on elsewhere.

Fortunately, our ship survived. It was very seaworthy. An interesting aspect of it was that all of our electronic gear was knocked out, so we had no means of communication to the rest of the fleet. Interestingly, there was one plane on the catapult that had been ready to take off, and its wing had been sheared off, but there was a radio in that plane. So my radioman and I go into that plane and hook the thing up, and that became our sole means of communication to the fleet, because the fancy stuff up in the bridge was out of commission.

We got orders to go back. So we limped back to Pearl Harbor. Our air group was taken off the carrier and awaited being assigned to a second

carrier, which was the Chenango--it was the sister ship--and so we went back out and we were warming up for the ultimate invasion of Japan when the atomic bomb was dropped in August of that year. At that point our carrier dropped us off on Okinawa, as chance would have it, because they were used to repatriate American prisoners, to take them back to the states. So that is how we finished up the post-war period, simply waiting to get picked up. We were on Okinawa that fall during that big typhoon.

**CTF:** Were you in Pearl Harbor when the bomb was dropped?

**MIS:** No. We were in the Pacific as part of the impending invasion of Japan.

**CTF:** So the ship had been repaired? Or were you on a different ship?

**MIS:** The ship was actually sent back when they dropped us off. It went back to the United States for refitting. So we were then assigned to another ship. The ship went out, and it was as I say part of a fleet in readiness trying to soften up the route to the Japanese mainland when the atomic bomb was dropped--which of course ended it.

**CTF:** You had a girlfriend back home during this time. You graduated. You met her when you were 18 and you got to a third date.

**MIS:**

A very long, involuntary engagement. So when I came back we immediately scheduled a wedding. I came back in December '45 and we scheduled a wedding for June. As a matter of fact, my father-in-law had the Tower Room at what was the Stevens, now the Hilton Hotel you know, reserved for the thing, and then I was reassigned to the Naval Air Station in Anacostia in Washington originally. Then I was sent down to Boca Chica, Florida, where the rest of my air group was.

Now at that point we were simply waiting to get out because at that time they used to assign points as the priority for getting out. Married personnel, for example, people who had previously been married, would get ten points toward whatever the release time was. For every month overseas you would get a quarter or a point. I said, "You know, that is treating marriage like forty months overseas!" But, in any case, all of us were now just awaiting discharge. Or, as in the case of Naval Reserve, you did not get discharged, you got released to inactive duty.

And so what I did down in Boca Chica, which was the second key in from Key West, was, since the planes were only doing bounce-hop landings just to stay in shape, I sent away to the University of Chicago for a lot of home study books. And I was teaching most of my ARMs and ARTs--radar technicians, radio mechanics--I was teaching them math courses home

study. I figured I would fill in my time, and we were all just waiting for that time.

It was spring, and Eckie was in her last year with just a quarter or a semester to go at Northwestern. Eckie flew down to Miami, her aunt and uncle were there, and I said, "What are we waiting for?" So we got married in March instead of waiting until June. So the June date turned out to be a nice wedding party for us, as we had already been married in March of '46.

**CTF:** When did you decide to go to law school and why?

**MIS:** Well, both the when and the why are peculiar. What happened is that my brother Mel and I had been--my brother Mel was already in the service. He was in the Army, and had spent years there. His wife actually ran the business during the war. I think she was all of 19 or so. She would go into, for example, the Younkers Department Store and seek an order for boxes, and when they would give her a hard time she would start to cry and say, "My husband is out there fighting for you, and you won't give me an order!"

So she kept the business surviving. When both of us came back, Eckie and I went out to Des Moines and I was sort of the junior partner of

the box business. My dad had already died, as I indicated, and it was pretty obvious that the business, although it was a nice business, would not really sustain two families. Now Eckie and I did not like Des Moines anyway. We used to drive in every other weekend into Chicago. In those days there were no superhighways. There was a two-lane highway, and you are going 360 miles each way, and my mother-in-law said to us, "You know, you kids are going to get killed on the highway one of these weekends. There has got to be something else that Milt can do!"

There was no market for used radar officers, you understand, so with about ten days left to go I decided to go to law school. The only place I could apply was the University of Chicago, because they had my transcript. I could not apply any place else because it would have taken time to do it. So I applied and got admitted, and that is how I got to law school.

Really, I thought until recently that I had never intended to go into law, but I discovered. You know, recollection can be selective. Eckie had run across stuff of my mother's that she had saved, which she gave me a photocopy of from high school, and in this *Who's Who* thing which gave the story about me, at the very end of it it said, "Having been awarded a full scholarship, Milt will attend the University of Chicago where he plans to take up law." Now, I have no such recollection; and really, as I say, that

had not been my intention. My intention really was probably to become a math teacher or something along those lines. My ending up in law school was that total accident that I talked about. And so that is how the whole business got started.

**CTF:** Now in law school, I think you meet Jim Parsons?

**MIS:** Yes. Jim was a classmate. Jim had been a teacher downstate, I think in Decatur, and he had been spotted by the publisher of the Chicago Defender, John H. Sengstacke, and the rumor in the law school was that Jim was being groomed to become the first African-American federal judge on the continent. There had been another one, Bill Hastie, who served in the Virgin Islands. Jim was about ten years older than I.

**CTF:** Not being groomed to be the first state judge?

**MIS:** First federal judge in the continental United States. That was the story.

**CTF:** All the way from law school?

**MIS:** Oh, yes. And it turned out to be true. In his career, for example, he was a prosecutor in selective service cases, which is like winning an adoption case

really. So his career--he was really groomed for that. And it was really terrific because Jim, as you might guess, said some very nice things about me when I was inducted as a judge because he was our Chief at the time.

It is very interesting, because every chief judge has his or her own style, and it has been remarkable over the years to observe. That is true at the District Court level, the Court of Appeals level, everybody does--and it has been very interesting to observe that and see how that shapes people's style of dealing with the thing of being . . . what do they call it? *Primus inter pares*? First among equals? You know that being a chief judge--I can only tell you that I am very fortunate, from my own perspective, that my timing was exactly right so that I could not become chief judge, because I would have hated it, to tell you the truth.

**CTF:** But you had the sense to run a business. You were managing . . . .

**MIS:** Oh, wait a minute. I managed the law firm, too. Don't misunderstand. I am not talking about lack of organization or lack of ability. I am simply talking about the fact that that would not have been an activity that attracted me at all. Quite the contrary, I am very delighted to have not been saddled with that.

**CTF:** You did very well at the University of Chicago.

**MIS:** Yes. I was first in my class, and rumor has it that--Frank Easterbrook may challenge this, but I think not--my average there, and they pride themselves on not having grade inflation, is probably the highest that has existed in the intervening sixty-some years.

But it is funny. I have thought about that a lot. Exam-taking is kind of a funny phenomenon. I happen to have--I won't call it ability, because it is not an ability. I have the quality, for example, of having total recall about a lot of things. My clerks are always startled when I tell them that I remember a case and I remember the name and sometimes even the citation, or very close, and I had that in law school. So when I took exams I was able to cite cases and refer to them by name, and I am sure that that made a big hit with the professor who felt that he or she had made an impact on you in the way that the course was taught. And that reflected itself a lot in grades. So the net result was that I did very well in grades. I also suspect, though supposedly we were anonymous (we were assigned numbers, we did not sign our blue books with names) I am sure that the professors were aware of identity. I can tell you that after I became Editor-in-Chief of the Law Review and I was spending the bulk of my time on the Law Review, my average continued to go up. So you cannot tell me that was the result of

somehow my superior performance, when I am spending less time studying. My guess is that professors--I should not say that. I don't want to accuse them of anything untoward.

**CTF:** No. But if you know somebody is really very good and you are reading something, you are clearly going to give them the benefit of the doubt.

**MIS:** I guess.

**CTF:** I am sure you do that with lawyers that you trust.

**MIS:** Of course.

**CTF:** And the flip is true, too.

**MIS:** Yes. Exactly. And I loved it. I have to tell you . . . I loved it! I have practiced for three decades in a law firm. I was not a litigator at all. I shouldn't say that. The only litigation I was ever involved in was pro bono stuff: civil rights, civil liberties stuff. Essentially I was a transactions lawyer. I was a negotiator. I was a counselor. I had practice across an extremely wide variety of things. I did antitrust work. I did corporate work. I did labor work. I did everything. And I loved it. I used to love the idea of

coming down in the morning, because I would have challenges in different areas.

Well, I felt the same thing when I came on the court, you know. Within about a week it was as though I had never done anything else. And I have maintained the same kind of childish delight ever since. Truly.

**CTF:** Let's go back. You graduate from law school. You are married. Where do you go to look for a job?

**MIS:** In those days there was no such thing as summer employment. First of all, our class, because it was the first veterans class, went straight through. So I did nine quarters including the summer quarters. So I am now coming up to graduation and we are not only married, but we have a little boy at this point. Bob was born at the end of my first year in law school, and so I went to one of my professors, the late Walter Blum, and I said, "Do you have any thoughts in terms of what I might do in terms of a job?" And he said, "Well, I know these three lawyers who formed a firm, and they have been practicing for a couple of years, Goldberg, Devoe & Brussell, and I know they are looking for somebody because they just fired a young associate." It turns out to have been the father of David Mamet, the playwright, who had just lost his job there.

So he said, "I know they are looking for somebody." So I went down and I met with them and I was really very impressed, but I had no predicate for judgment at all.

A kind of funny story about that. I went back to Professor Blum and said, "You know these people seem to be very nice, but I have never been inside the door of a law office in my life." He said, "Well, I'll tell you. If you want to see sort of how the other half lives, my classmate, Dan Smith, is with Hopkins & Sutter, and I know they are looking for a young associate. If you want, I will set up an appointment with Mr. Smith, with Dan." I said that would be really nice. So he does that, and I go down to Hopkins & Sutter and I go in and the young lady at the reception desk says, "Whom are you here to see?" I said, "I am here to see Mr. Smith." She said, "I am sorry. He has been called out of town unexpectedly. Is there anybody else who can help you?" I said I was there to see him about an associate position, and she said, "Oh, you want to see our hiring partner, Harry Orr, and he is busy on the phone." So I said, "Well, I would be delighted. I will wait."

So I sit down, and you know they have this glass door--the door has glass fluted columns, and I am reading the names backwards through the glass and I see Hopkins, DeWolf, Sutter, Mulroy, Owen, Wentz, Smith, and I sort of got a message. She says, "Mr. Orr will see you now."

So I go in, and Mr. Orr looks like Yale '07. He has everything except the turtleneck sweater and the block "Y" letter. And he said, "I understand you had an appointment with Dan Smith, but I am really the hiring partner." He said, "Tell me, where are you in school?" I said, "I am at the University of Chicago. I just graduated." He said, "Are you on the Law Review?" And I said, "Yes, I am Editor-in-Chief." He said, "How do you stand in your class?" I said, "Oh, I am first in my class." I see that his ears come to a point, and his eyes start to gleam, and he says, "Did you take tax?" I said, "Yes, sir." He says, "Let me pose a problem to you." So he gives me a problem. I told you about my overweening pride, which won't permit me to blow something if I can answer it. So I answer it and he says, "Well, you know, our firm started basically when the two name partners were in the Internal Revenue Service when the Constitutional Amendment was adopted. But we are basically starting to expand a great deal, so we are going into other areas." He said, "We are planning to break through from the floor below up to this floor, and really we are in an expansion mode. We are really looking to expand. I am sure with your record you have probably been meeting with some of the other principal firms like Winston & Strawn."

And as a matter of fact, I had been looking for a point at which I could introduce a delicate subject without introducing it, and I said, "I was

sent by my law school professor down to see a small firm that has expressed an interest.” And he said, “Oh yes? What is that?” And I said, “Goldberg, Devoe & Brussell.” To his credit he is not fazed at all. He does not change his expression. “Well,” he says, “our plans are somewhat uncertain, but you are just the kind of young man we are looking for. If an opening develops, I certainly plan to get in touch with you.” So I said, “Thank you very much Mr. Orr.”

And I get out of there and go back to the law school and I meet with Professor Blum, and I say “Where did you send me?” He said, “Well, didn’t you see Dan Smith?” I said, “No. Mr. Smith was out of town.” He said, “Well, you have to understand something. That firm, which is indeed expanding, has some Jewish businesses as clients. And their clients are saying to them, how is it that Kirkland & Ellis has Hammond Chaffetz as one of their partners, and you don’t have anybody?” So I said, “And you expected me to be a show Jew in their front window?” He said, “Well, you wanted to know how the other half lives.” So that was my non-hiring experience.

I started with the small firm and they were very foolish. They figured that the thing to do if they really had confidence in you was to throw you into everything. They literally gave me responsibilities that I had no

business having, considering the lack of experience. I learned as I went. The one thing that, of course, I knew how to do coming out of law school, as every graduate does, was how to handle appeals. So in my first year I handled maybe a dozen matters at the appellate level. But outside of that I was doing everything, and it was wonderful. There was no expectation at that time. I had no clients, no prospects of any clients, but they did not care. So I became a partner in two years in that firm, and I stayed with them my entire practicing career.

**CTF:** You actually argued a case, didn't you?

**MIS:** Yes, that is true. I did.

**CTF:** It was in the Seventh Circuit?

**MIS:** Right. And it was a funny story, because what happened was that I had done the brief and Abe Brussell, who was then the litigator of the firm, said to me, "How would you like to argue the case?" And I said, "Would I? Of course!" He said, "Well, I have got to call the Clerk." So he proceeds to call Ken Carrick. Ken was then the Clerk, and he said, "I will have to check with the Chief Judge," who was then J. Earl Major. So Ken calls Abe back and says, "He said it is okay."

At that time the court was up at 1212 Lake Shore Drive. So Abe and I walk over from our offices to Lake Shore Drive because I am trying to quiet the butterflies in my stomach, and we arrive in the court and Judge Major is presiding over the panel. So they call the case, and Abe gets up and makes a very nice talk about me--about how I have taken the bar exam but I have not yet passed the bar--and he moves my admission. Judge Major looks down at him and says--did you know him, by the way? He was a wag.

**CTF:** Yes. I just caught the tail end of him when I started clerking for Circuit Judge Roger Kiley. He would not have known me, but I knew him.

**MIS:** Anyway, he looks down at Abe and he says, "Well, counsel, I am not so sure." I thought Abe was going to die. And the thing is I knew I was going to die, because it seemed that a century passed--it was probably ten seconds--and he breaks into a smile, and he says, "Well, under the circumstances, I think that it is all right." So that was the approval for my initial argument before the Court of Appeals.

**CTF:** Did you win it?

**MIS:** Yes, I did. I learned about having won it, as a matter of fact, a couple of months later when I went down to Springfield to be sworn in. I had a case to

argue before the Illinois Supreme Court the next day and I heard, when I was down there, that I had won the case in the Seventh Circuit. Unfortunately, I lost the case in the Illinois Supreme Court, but I didn't learn that for a couple of months. So for a while there I was really on cloud nine.

**CTF:** So you come back here. You not only get active in the firm and become a partner in two years, but you are also active in the Chicago Bar Association and the Chicago Bar Foundation. At some point you move to Glencoe, and become active in civil affairs there?

**MIS:** Yes. I became a Village Trustee. We moved out to Glencoe in 1955. I had been admitted in '49, so this was six years afterwards that we moved out to Glencoe; for educational purposes, for our kids. Our son, at that point, was eight years old. Our middle one, a daughter, was four years younger and our little one was a year-and-a-half.

**CTF:** Where were you living at that time?

**MIS:** In Austin. We had been living with my in-laws when we first got married, which was bizarre. There was no housing post-war, so my brother-in-law and sister-in-law, when they came back from the Army, moved in with my in-laws in this second floor of a two-flat, three-bedroom apartment with one

bathroom. Now I come back from the service and there is still no housing, so the two of us move in too. Now we have six adults in this three-bedroom residence with one bathroom. Then Eckie's sister has a baby. So, at that point, there are six adults and a baby! Then we had Bob, so it's then six adults and two children.

My mother-in-law, bless her, had the patience of a saint. She was very tiny. If she stretched to her full height she was maybe four feet nine inches. Remember the Old Gold ads that showed the box of Old Golds with legs dancing underneath it? Well, that is how she used to look coming back from the store, because she would have these two huge grocery bags, which would conceal her body, and then there were these legs coming out. And how they managed, I don't know. Truly, they were saints.

Well, right at about that point housing opened up somewhat, so my sister-in-law Mimi and Howard, my brother-in-law, moved a few blocks away to a place on Van Buren Street. And we moved into a little builders house on Quincy Street, also no more than four blocks away from my in-laws. So that is where we lived until we moved out to Glencoe.

**CTF:** How did your wife get her nickname?

**MIS:** Eekie? I think probably because my sister-in-law, who was four years older, had trouble pronouncing Eleanor. My standard gag is that we had been married for three years before I found out her name was Eleanor. She hates it simply because so often people get it wrong. People are calling her Essie and this and that, but all of us, including my grandchildren and my great-grandchildren, call her Eekie. And so she is stuck.

**CTF:** And she doesn't mind when they call her Eekie?

**MIS:** No.

**CTF:** So you move to Glencoe, you become active in the village, become a Village Trustee--which I assume is an elected position?

**MIS:** Well you know I headed the ticket, and I think I got 107 votes. Glencoe operated on a caucus system essentially, and therefore I was originally named to the Village Board when Stanley Harris, who was then on the board, resigned because he was looking into the possibility of Glencoe doing some of its banking with the Harris Bank, which would have posed a conflict of interest for him. So when that happened the caucus then approached me and asked if I would be willing to fill out the balance of Stanley's term. I said "Yes." I served that couple of years, and then the

next time that I came up for election, basically, as I say, the caucus slating was essentially the thing that did it. It was not a competitive election really. I served for six years as Glencoe Village Trustee, including fortunately the time of Glencoe's observation of its 100<sup>th</sup> Anniversary. It was founded in 1869. So in 1969, who comes across from Scotland but the mayor of Glen Coe, Scotland. And he brings with him honorary citizenship for Glen Coe, Scotland for each of the trustees. That was the great perk of my service on the Village Board.

**CTF:** You were active in the Chicago Bar Foundation.

**MIS:** Well, actually I was secretary of the Chicago Bar Association for a couple of years, and I was also on the board of the Chicago Bar Foundation, which was really independent of that. I had been chairman of a whole group of committees at the Bar Association. I was chairman of the Legislative Committee. I was chairman of the Ethics Committee. I was chairman of the Judiciary Committee. I was really very active in it and enjoyed that. As a result I ended up as secretary, which is not one of the stepping stones to the presidency of the Bar Association, but it is one of the officer positions.

**CTF:** While you are there at the Chicago Bar Association, maybe on the Judiciary Committee, the Chicago Council of Lawyers is formed.

**MIS:** Yes. I was one of the founders of the Chicago Council of Lawyers. The Chicago Council of Lawyers was viewed as a real enemy by the Chicago Bar Association. It was actually formed to a large extent as a protest against what were viewed as sort of antediluvian views on the part of the Chicago Bar Association. For example, it was during the time that I was on the Board of the Chicago Bar Association that we had our first African-American member of the Board, Bob Ming.

You know the reason the Cook County Bar Association got formed was because of an exclusionary policy on the Chicago Bar Association and, interestingly, I was about the only one who had my foot in both camps. I tried as best I could to create an acknowledgment that the Council of Lawyers played a useful role in the thing. Interestingly, Frank Greenberg, who was the first vice president at the time of my first year as secretary and became the president after that, and who was a very good friend of mine, was one of those who was totally hostile. I really could not understand that mindset-- totally hostile to the existence to the Council of Lawyers. I never asked Senator Percy, who was the first one who promoted me for a judicial spot, but my strong suspicion is that Percy, who is not a lawyer, felt that he could rely much more on the independent judgment of the Chicago Council of Lawyers.

**MIS:** I was saying that I know that the Chicago Council of Lawyers must have played a significant role in Senator Percy's decisions about whom to sponsor for federal judgeships, because I know for example that he was relying on them primarily for Pren Marshal and I am sure others. And my suspicion, although I have always been too diffident to ask, is that probably my name first got mentioned to him by the Council, though I am really not aware of that. I have never asked about it.

I have a very odd view toward judicial selection. Senator Percy used to practice the equivalent of the Groucho Marx phenomenon--you know, "Any club that would have me I would not want to belong to." Percy considered that anybody who applied for the job would not be considered. Percy felt that the job ought to seek the person, not the other way around.

Well, as you know, that has undergone a dramatic change in recent years. But Percy, for example, when he first put my name in for the District Court, the first time he had ever called me was to ask whether I would be willing to be on the short list for the Court of Appeals. It took me a nanosecond to say "yes" to that, because like all young lawyers my notion was that a Court of Appeals place would be a wonderful place to go. I have changed my views since then. On that short list, by the way, were Bill

Bauer, who ultimately got it, and Ed Levi--and so I was very flattered, and I of course said "yes."

Then about a year later I guess it was, during the Ford administration, he called and asked if I was interested in the District Court. I really was not a litigation person anyway, and I said, "Frankly, I cannot afford it." At that point I had five in college: Eckie was back getting her master's degree in English, our son Bob was at the University of Chicago Law School, his wife was getting her degree, our middle one was just graduating from Denver, and our youngest had just started at Brown. I really could not afford the cut in income that was going to represent. So I told him that I was not sure that I was qualified, and I really could not afford it, and that I was really very much flattered, but that I would just have to decline.

**CTF:** This was about the time that Dean Pollak from Penn was put up, wasn't it? He had a problem because he had not been a trial lawyer. He turned out to be a great judge.

**MIS:** Right. Then the next year--which was in '76 I think, which would be the last year of the Ford administration--I again got a call from Senator Percy, saying, "You know, I am tired of asking. I am going to send your name up

to the Senate.” He said, “Now I have got to tell you that this is a Presidential election year.” In those days, you know, the freeze was a very short term freeze. It typically would set in during the summer, after the conventions. But he said, “I have never asked your politics, and I am not going to, but I suspect that Adlai Stevenson, [who was then the junior senator from Illinois] would not blue-slip you.” He said, “Maybe you won’t get caught in the freeze.” So he did. He sent my name up, and of course I did get caught in the freeze.

A couple of years later, during the Carter administration, I got a comparable call from Adlai Stevenson, whom I didn’t know at all--I had not known Percy, and I did not know Stevenson--asking whether I would be interested. By then I guess I had gotten the local equivalent of Potomac fever, so I said, “Yes.” That is what ultimately I ended up with finally--being named. Indeed, the day that I went before the Senate Judiciary Committee, Senator Stevenson (whom I had met, you know, when he invited me out to talk with him at the beginning of that year) had a very important committee meeting, so he could not come over. Percy came over and basically made a very flattering talk on my behalf to the Judiciary Committee. So he really turned out to be a very good friend for somebody who is not a friend.

**CTF:** Well, he was a great friend to the Judiciary just by the quality of his appointments. No one did not like him, before or since then.

**MIS:** So, anyway, that is how I ended up on the court.

**CTF:** We ought to get the kids' birthdays, and the grandkids' too, on this tape.

**MIS:** Well, Bob was born in June of 1947, Karen was born in April of 1950, and Beth in May of 1954. As to our grandchildren, Heather just turned 40 on October 22<sup>nd</sup>, which I remember vividly because it also happened to be the day of Eckie's father's birthday. And Jen, who is the mother of our two great grandchildren--Jenny has just turned 37--I can never remember exactly which year--and our two great grandchildren: Spencer is ten and Jake is eight. Spencer is about as tall as Eckie already--not a hard task to accomplish, you understand.

**CTF:** Do they live in the Chicago area?

**MIS:** Yes. Jen and the boys live in Evanston, although they are just about to move. She has been staying with her mother in the house that Bob and Ron used to occupy up in Evanston right across from Clinton Place near the

hospital. And Jen has just gotten a place of her own, which she is going to be moving into on January first.

Heather has told us that she is moving to Hawaii. Now how she is going to manage that, given the fact that she has worked for public relations people and she has got a lot of involvement at agencies--so how she is going to manage that from Hawaii I don't know, but I guess she is old enough to know better. Our son, Bob, and Julie . . . Bob practiced law here for over 25 years but never really enjoyed the practice of law. He was at a very important place. He was basically in real estate financing. He represented, among others, Citibank as well as other major companies. He did a lot of that. He was with major law firms, including Winston, but he never really enjoyed it. Our daughter-in-law Julie, who still goes by her maiden name Anixter, has her own business activity which is basically that of branding, and she has major national and international clients. So her offices had been in Cincinnati. She was spending three days a week in Cincinnati and they lived in Riverwoods. They decided that was silly, so they decided that they were going to move. They moved to Georgetown, Kentucky, which is right near Lexington and is down the interstate from Cincinnati, so Julie has a commute of about an hour each way. They live down there.

Bob decided to become a teacher, so he went back and has gotten his master's in teaching. He is on the tenure track for a Ph.D., and he has just become the Director of Strategic Planning for the entire Eastern Kentucky area by affiliation with Eastern Kentucky University. He is heavily involved in that project, so this year he has not been teaching, and probably will not be next year either. They wanted him to teach at the university level, but he didn't want to. He loves kids--on top of which, when he teaches at the high school level, he coaches the baseball team. He is a left-handed pitcher by trade, I understand, so he loves that. And he coaches their debate team.

**CTF:** Did he play in high school and college?

**MIS:** He played soccer in high school at New Trier. He tried out but did not make the baseball team. In college he was at UCLA as an undergraduate, and then he went to the University of Chicago Law School. He did not participate in athletics at the college level, but he is a certifiable sports nut. So he loves that.

The teaching--he is happier now than he has even been. It is interesting. When I have gone up, as I have done each of the last several years, to sit with the Sixth Circuit in Cincinnati, Bob would bring a class of

his up to observe the oral arguments, and they would have gotten a set of the briefs in one of the more interesting cases. The students are knowledgeable about it. He always manages to integrate it with the part of his curriculum in which he is teaching about the judicial system. So typically each year we have stayed on the bench and spent time with the kids and they just love it. They call him “Mr. Bob,” and he is as I say happier doing that than he ever was doing law. It is a great thing.

**CTF:** Let me bring you back to the Judiciary Committee with the CBA. I graduated from law school in 1969, and when I came here I joined the Council of Lawyers. One of the reasons for doing that was because the CBA’s Judiciary Committee evaluation was not much . . . at least it did not appear to an outsider to be much of an evaluation . . . and working in legal services I was appalled at the folks that were over at the Civic Center.

**MIS:** CVLS?

**CTF:** Cook County Legal Assistance Foundation. I had a Reginald Heber Smith Community Lawyer Fellowship.

**MIS:** What shall I say? The Chicago Bar Association was so hidebound in its attitudes that it was really an extraordinary struggle to get them to even

consider the possibility of change, which is the reason that the Council of Lawyers got formed. It was out of frustration at the inability to get this juggernaut to move in another direction, or maybe to move at all, that I felt in many ways being active in the Chicago Bar was as though I were boring from within. That is, I was really trying to work at change and also to work at accommodation, so that they would recognize something that they refused to then and for several years--to recognize a place in the professional organization system for the Council of Lawyers. They viewed them as upstarts and so it was really very difficult. So as I say, I felt like I was carrying water on both shoulders, because I was one of the founding members of the Council. And the very idea that organization, which I thought was and remains extraordinarily worthwhile, was regarded as anathema by the organized bar was really very troubling. To a substantial extent, the same kind of difference in mindset continues to exist today, although of course I have not been active in the association.

**CTF:** Except they do recommend some people not be retained.

**MIS:** Oh, well, but the worst thing that we ever had, what was regarded as a compromise in Con-Con in 1970 gave us the worst of all worlds. Because, you see, before that, before the retention notion applied, if somebody was really a bad actor and known to be a bad actor, the party could dump that

person and sometimes did. Today? No way. You can catch somebody with the hand in the till and they are still going to end up with the necessary 60 percent and be retained.

So what we have done--you know, the so-called merit selection approach of having a system of appointed judges was something that was resisted, and they felt that somehow they were compromising, when in fact it was not a compromise. It ended up drawing the worst aspects of both systems. And frankly, the one reason--if we did not have to have in Con-Con a total overhauling contemplated, which would lead to all kinds of kooky things being proposed, I would have been a staunch proponent of a Constitutional Convention this time. Because I think that the Judiciary Article is in drastic need of overhauling and has been for a long time. And how do you bring that about except through a Constitutional Convention? We ought to have a mini-Constitutional Convention. But who is going to push for that?

**CTF:** What are the cases that you think were important as a lawyer that you handled, or the transactional business that you did, that you are most proud of?

**MIS:** Do you remember the 2000 Year Old Man, the Mel Brooks and Carl Reiner thing in which Mel Brooks, one of the great comedians of our time, plays the 2000 year old man? And there is one point at which Reiner says to him, "Tell me, do you have any children?" And he says, "Yes. About 2000, and not one sends me a card on my birthday."

Well, I am sort of the same way. You ask me what would be the case handling highlights . . . I would really have to think very hard about that, because in that sense I love all my children and I really do not know the answer to that. I have never thought of it in quite those terms.

**CTF:** Now, when we do this, if you want to plug something in during transcription that is fine, because the follow-up question is going to be similar. It is going to be your service as a district judge. What are the cases that you are most proud of?

**MIS:** You know, I have generated close to 9,500 opinions in the space of 28½ years. If you run Lexis and Westlaw--that is just my own count, I keep track--if you track on Lexis and Westlaw, probably 6,500 opinions. Now to think back and try to select first among equals, or even a first group among equals, is very hard for me. And part of that is complicated by my own idiosyncratic thought process, which is that I really enjoy what I am

doing at the time enormously. I have just dictated an opinion in a removal case in which I am dealing with some of the intricacies of removal and remand and, I have got to tell you, I find that just as fascinating as the constitutional issues that I dealt with. For example, I upheld the constitutionality of the motor voter statute, which you might say was a big deal. *Association of Community Organizations for Reform Now (ACORN), et. al. v Edgar*, 880 F. Supp. 1215 (N.D. ILL. 1995), modified & aff'd, 56 F.3d 791 (7<sup>th</sup> Cir. 1995) But to tell you the truth, it was not that much a bigger deal than the things that I do each day that I really enjoy. I have this tendency to get fascinated by technical problems, and I love to deal with them.

Frank Easterbrook once wrote in an opinion, though I think he may have pulled it before it saw the light of day, he referred to me as a "jurisdiction hound"--which I think to Frank was maybe a compliment, but I am not really sure.

**CTF:** That would be a compliment.

**MIS:** But it is true. Jurisdictional problems fascinate me. I love them. I will deal with those, and I get a real kick out of those things.

**CTF:** Actually, that has been a major change in this circuit, because there was a day when unless the parties raised it, then the court would not raise it. And now it has clearly become a gatekeeper.

**MIS:** Listen. I had a case years ago when I sat with Walter Cummings and Ilana Rovner in a situation in which what happened was the case comes up from downstate Illinois and I take a look at the thing, and it is a diversity case. *Shaw v Dow Brands, Inc.*, 994 F.2d 364 (7<sup>th</sup> Cir. 1993) It has the typical recital, and I think it was then \$50,000 was the amount in controversy. I take a look at this thing, and I think to myself there is no way in the world this thing involves \$50,000. So we asked the lawyer in oral argument and the lawyer said, I think it was Montgomery County, one of the remote counties downstate, and he said, “No, never had a judgment over \$40,000 in such a case.” So I said that I don’t think we have jurisdiction. Walter wrote the opinion for the panel in which he said, “Well, they have acknowledged jurisdiction by their statement that there is more than \$50,000 in controversy.” I took the position that you cannot confer jurisdiction by consent. So I wrote a very polite dissent in which I said--it was kind of ironic--I said, “You know, what we ought to have is something under which before it can be decided whether a case gets removed [because this was a removed case] the lawyer on the defense side gets an acknowledgment from the plaintiff’s side, either ‘Yes, there is at least

\$75,000 in controversy,’ or ‘I am not prepared to say that there is not.’” In that case,” then I said, “I think that the good faith belief of the defendant in removing the case will prevail.” So Walter includes in his opinion for the panel, “You know, we think that is a good idea, and maybe that ought to be adopted, but we don’t have it now.” So I now come back to wearing my other hat on the district court and say, “Why don’t we adopt this rule?” Which we did. And of course years pass, and then Frank Easterbrook torpedoed the thing and said that that was a terrible idea. So it just goes to show you.

**CTF:** You have done a lot of work on the Rules. You were the Chair of the Advisory Committee on the Rules of Evidence. How did you find that work?

**MIS:** That was really an extraordinarily rewarding project. The Committee had been out of existence for almost two decades, and if you think about how rules get amended, that meant that there was no clearinghouse available for anybody who wanted to suggest a change. So what happened is that it would only be in the kind of accidental situation in which either the Civil Rules Committee or the Criminal Rules Committee, rarely the Appellate Rules Committee, so usually one of those two would come up with a question about something.

So Chief Justice Rehnquist decided after about two decades that the thing to do was to revive this committee. An invitation came to me truly out of the blue! I do not know how he got to me. I did not know him. What he did was to appoint a committee, and he gave each of the committee members different terms--three years, two years, one year--so there would be rotation like an ongoing body--like the Senate. And Ralph Winter of the Second Circuit, who had been an evidence professor at Yale, was made the chair of the committee and did a terrific job. So what we did at that point was to combine two things: thoughts that we had as to possible amendments, but also when we went through them we went through all the rules, rules as to which we did not consider the prospect of a change. So when it went out for public comment, essentially we invited input on every rule: some on the basis that we were not proposing changes, some on the basis that we were inviting comments on suggested changes. So what happened was that we went through the rules from A to Z, and that served then as the grist for our mill for working.

Then after Ralph, Fern Smith, who was then a district judge in California, became the chair. And during her tenure the time came to write the rules, or rewrite the rules, on opinion witnesses: 701, 702 and 703. I got stuck with being chair of that sub-committee. We had as our reporter, who was extraordinarily able and still does a lot of work for the

committees, Dan Capra of Fordham. Dan and I worked on that thing, and the “reward” that I got was that when Fern then became the head of the Federal Judicial Center I got appointed as the chair of the committee. Originally you were not supposed to serve on a committee for more than six years. That was what Chief Justice Rehnquist set up because otherwise there would be too much continuity and no changes. On a great many of the committees the people were on forever, and you run out of fresh ideas when you have that. It is not healthy. So he adopted that policy. Well, I ended up with more than seven years simply because of the fact that, having served my time, that is when I then became chair, and it was made an exception to that rule.

So I essentially served on the committee a total of ten years, and it was one of the most rewarding things that I have ever done, because the committee consisted of really terrific people. How the Chief Justice went about selecting people I do not know, but not only the judicial members but also the non-judicial members were truly outstanding people. So it was really a very rewarding and constructive task to do that.

I think that both the changes and the refusal to make changes in every instance were well thought through, constructive, and I think that the rules have been better for that. Interestingly, if you think about it, the

Committee on the Rules of Evidence has a very different function than the Committees on the Civil Rules and the Criminal Rules. Why? Because, if you have a question on the Civil Rules or the Criminal Rules, you have always got the luxury of being able to go back and look at the books and find out what the rules are. Not so when it comes to the Rules of Evidence. You have got to do that on the firing line. One of the reasons that we were, for example, slower to change was the concern that lawyers after all are used to dealing with the rules that they are familiar with, and you do not want to introduce change for the sake of change. So you have a tension essentially between the need for reform, which exists in a lot of places, and the desire to avoid creating special problems for lawyers in having not only to learn rules but also--if you think about it, whenever you change the language in a legal document, there is always a premise that there is a reason for the change, that a change in language intends to carry with it a change in meaning. Whether that is true or not, that is how a lawyer is trained.

**CTF:** That is the problem of trying to minimize legalese. Because you are not sure what you are doing.

**MIS:** Right. For example, the style changes that Bryan Garner has authored are always very treacherous because lawyers, being ingenious and doing the

job that they are intending to do for their clients, will always come up with the premise that this language would not have been changed if it had not been intended to work a change, a substantive change. So in that double sense the work of the Committee on the Rules of Evidence is different from the corresponding function in the other Rules Committees, but I loved that part of the job.

**CTF:** Although on the other Rules Committees, having been very involved over the years with the Circuit Court of Appeals Rules, one of my principles that guides me, Milt, is that if somebody comes in with some off-the-wall reading of a rule, we are not going to write a new rule just to deal with the off-the-wall interpretation. Otherwise the rule becomes longer and more convoluted, and you don't know what problems you created by the new language that you just inserted. You have to take the reasonable person's approach to the rule.

**MIS:** To make an analogy that is no longer applicable, it is sort of like fixing a leak on an inner tube. You put a patch on, and that permits the air to escape over here, so you have to put on another patch. And it is a never ending process.

**CTF:** What makes you tick? What motivates you?

**MIS:**

I don't know how to say exactly what motivates me. I acknowledge freely that I am a person who is compulsive in the sense that, when confronted with a problem, I deal with my responsibility to analyze it and deal with it. Because the nature of this job is that you are constantly presented with problems, and they are to such a large extent independent, or can be looked at in a way that is independent, of the problems that you have already solved. What I think is motivating all of the time is the desire to bring fresh thought to whatever problem I am confronting.

I can tell you what does not motivate me, and that is money. As you know, when you become a senior judge, leaving aside how unfairly we have been dealt with by a hostile Congress, which I have never understood, the fact remains that, when I took the job, I suffered a drop to a half or probably even closer to a third of what I was making in the practice. Today it would be maybe a seventh of what I could be earning in practice if I were not superannuated--you know, too long in the tooth to really play a role in some law firm. But the one thing I can assure you is that working for nothing may perhaps be a fair reflection of the value of the services being rendered, but it certainly does not prove the Milton Friedman theory that everything is measured, or the Dick Posner theory that everything is done, on a cost- benefit analysis. Simply not so. All you have to do to think about that is to look at our senior judges and what they contribute to the

total system, which I think is something like fifteen percent of all the decisions that are made at the district court level, and everybody in that sense is working literally for nothing because we have the same lifetime income if we quit.

**CTF:** Talking of law firms, you worked at a small law firm that produced--has some other firm produced as many federal judges over time as Goldberg, Devoe & Shadur?

**MIS:** There has never been another law firm that has produced federal judges at every level of the federal judiciary, and that is irrespective of size. When Ron Barliant was made a bankruptcy judge I called him up and said, "Ron, you just filled an inside straight," because we already had, you see, a Supreme Court Justice, a Court of Appeals Judge, District Court Judges, Magistrate Judges, and so a Bankruptcy Judge was the last.

**CTF:** Who was the Court of Appeals Judge?

**MIS:** Abner Mikva.

**CTF:** Oh, that's right, of course. Arthur Goldberg was on the Supreme Court, and on the magistrate level?

**MIS:** Gerry Brown.

**CTF:** Oh, that's right.

**MIS:** Elaine Bucklo was before that, before she became a District Judge. It was a firm that prided itself on never becoming larger than 20 lawyers, because of a concern that by getting larger or accepting a merger or being acquired upstream it would tend to lose the interpersonal relationships.

I continued to be Arthur Goldberg's lawyer throughout his life. One time when I went to visit him on a personal problem, after he had gone off the Supreme Court and off the U.N. Ambassadorship and he was practicing with Paul Weiss and I said, "Arthur, remember when you told me we should never get to be more than six lawyers?" And he said, "Yes." I said, "What are you doing with a hundred partners?" He said, "I am damned if I know." Not long after that he moved back to Washington and sort of resumed his independence.

But I have tried to be an evangelist with my law clerks to at least consider the possibility of smaller firms, although it is very hard these days--first for a smaller firm of quality to maintain its independent

existence, but also there is no clearinghouse. Small firms tend to hire only when they are a foot under water, in the hope that maybe they will only be six inches under water. They do not hire in anticipation. We were, I think, by far the smallest firm that used to go out to Cambridge and New Haven to think about adding maybe one person in a year and to do that with the expectation that person would start with you and spend his or her entire practicing life with you, which was then viewed as how the thing functioned. The idea of portability, and the portability depending on how much of a book of business you could command, I think is one of the many changes in the practice that is for the worse and not for the better.

**CTF:** What are other changes that you have seen in your sixty-plus years in the law--good or bad?

**MIS:** Some years back, when *Litigation* magazine invited several of us to write articles about what we thought were the major changes in the 20 years of its existence, when it was observing its 20th anniversary, I wrote a piece called something like "The Growth of the Hardball Litigator." (Milton Shadur, *Hardball Litigators*, 21 *Litig.* No. 1. , Fall 1993, at 21.) The fact is that when I started, not on just the bench but in the years before I came to the bench, one of the things that you could count on when you dealt with most lawyers was that a lawyer would give you his or her word, and that

was in the bank. A very common way of talking about somebody would have been, "Did you hear what so-and-so did?" Then that became somehow, in kind of a subtle way, the folk hero, the model that younger lawyers were seeking to emulate, really the existence of "get away with as much as you can." I think that has been the most unfortunate aspect of--well, I should not say the most unfortunate. I hate to sound like the good old days, but you see, the idea that peoples' advancement in law firms would be dependent on their ability to command business I think has been a terrible change. It creates a difference in attitudes.

As I told you, when I first came with the law firm that I did, they did not think of their clients as "their" clients, and they were not concerned that I was going to steal their clients. I mean I got assigned to the clients who were the most important to the partners, and they did it in confidence that I was going to stay with them for my practicing life, and that is the way it worked.

It was a combination of that and I think that the money aspect has gotten totally out of control, in some funny ways. It used to be that a law firm--it sounds odd--when lawyers were paid less, when they were fledgling lawyers, it used to be that the billing lawyer in a law firm would take a look at the time that had been devoted to something and write things

off and say, "You know, that is training time. We really cannot bill the client in good conscience for that." Today, paying such big ticket numbers, what happens is that the bills are automatically spit out by the computer. Nobody really takes a hard look at them, although clients are beginning to now.

Law firms have really--it is kind of a hackneyed term to talk about the law as being a business rather than a profession, but it is certainly true that is a regrettable aspect of the way that lawyer-client relationships have developed. There is no longer the sense of loyalty of client to lawyer or lawyer to client. Clients, for one reason or another, some very legitimate, will engage in a beauty contest so they will not feel they are linked to a law firm, even though the law firm may have rendered enormously valuable service over time. It tends to be, "What have you done for me lately?" and "Can I do better economically someplace else?" And that is true on both sides of the relationship.

**CTF:** What are the changes that you have seen? I mean, we know we have bankruptcy judges, we have magistrate judges--those were not around before. There were commissioners. Those are a few of the changes that you have seen. But what are the changes that you have seen through the judiciary? We talked about jurisdiction, that is another one.

**MIS:** I don't know. It is hard to say. I am not sure that the popular notion that we are a more litigious society today is accurate. A major change, of course, that we have seen--simply in the way that litigation is handled--is the dramatic reduction in the number of trials that we have. Some years back, for the Circuit Conference I was on a panel called the "Vanishing Trial" or "Vanishing Jury," I am not sure which. And I had occasion to look at the preceding year in our district. Our district at that point--although we had something then that we no longer have, which is a large stable of mortgage foreclosures based on diversity--had about a 10,000 case load, which has dropped off close to 20% now. But in the preceding year the total number of trials--civil trials--had been something like 123 cases. Now if you think about that, we have the equivalent, including the senior judges--if you count the calendars of senior judges who account for maybe five or six calendars in total, with this judge staying with a half calendar, my staying with a full calendar, and so on--of about 26 calendars. That means that you have fewer than five civil trials per year per judicial calendar. That is crazy! And of course a large part of that is a product of the Supreme Court trilogy that goes back to 1986 that made summary judgment much more readily available.

Typically, when lawyers come in, I never set schedules at the beginning. I violate Rule 16 every day. You are supposed to set it at the

beginning? Come on! I have never seen one of those orders that did not get vacated. I have periodic statuses until both sides are comfortable as to when they can complete their discovery. At that point, when I have set a date for closing discovery, I always set a contemporaneous status hearing. I say, "Have you done everything?" That is the first question. Often the answer is "No." So I put it over to another one. But if they say, "Yes," I will ask, "Okay, where are we going?" Too often the defendants will say, "Well, we are going to move for summary judgment." And I will turn to the plaintiff's lawyer and I will say, "What do you think are the genuine issues of material fact?" If the person gives a plausible one, I will turn to the defense lawyer and say, "You know, look at this. If you are wrong, we are going to be back to square one. You will have wasted a lot of resources. Why don't we simply go to a trial?" It is less work on the defense side to get ready for trial, because it is the plaintiff who has the burden of preparing the final pretrial order. I never require trial briefs. I actually wrote an article, to talk about cost-benefit--it was published in *Litigation* magazine several years ago--in which I analyzed what the odds had to be of being successful to be worthwhile economically. (Milton Shadur, *Trials or Tribulations {Rule 56 Style}?*, 29 Litig. No. 2. , Winter 2003, at 5.) And it came out that many fewer cases ought to be pursuing the summary judgment route than actually pursue it.

But that has become the substitute for trial, as you know. And unfortunately a lot of times what that produces--when you see this in the opinions that come from your court--what that produces is affirmances in situations in which there are, if you approach the things in real world terms, really genuine factual issues. You know? And so what will happen is summary judgment will be granted, and it will be upheld.

**CTF:** Of course, that is a bit of pendulum that has swung both ways. And I think you are right. It has swung so far over to one side now that we don't have many trials.

Is there anything else that you would like to add?

**MIS:** No! You have exhausted me, and I am sure I have exhausted you.

**CTF:** Thank you very much, Milt.

**MIS:** It has been a pleasure.