

Tape 3

Recording of Senior Circuit Judge Luther M. Swygert as interviewed by Ray Solomon, Director of the Court History Project and Collins Fitzpatrick, Circuit Executive on Thursday, March 21, 1985 and Friday, March 22, 1985.

LS: These veterans were represented by lawyers who became experts in these cases. One was Floyd Jellison who used to be Judge Slick's law partner, he would play on the jurys sympathy and the judge would let him get away with it. I was defending so I couldn't do anything about it. He would fight the First World War over in every case.

CF: You could smell the mustard gas.

LS: Yes, the whole thing. Well Judge Baltzell from the Southern District came and tried a couple of these cases and Jellison tried to pull the same thing and Judge Baltzell said "Mr. Jellison, you can stop right now, we are not going to fight the World War One over again. Let's get down to business." Clarence Benaman of Muncie did the same thing, he would play on the juries patriotism. The plaintiffs all had same kind of complaint mostly . . . it was usually some kind of back trouble. Half of them were malingereres, you could tell that but how could you prove it. The veteran hospital over at Hines, would have a file two-feet thick with reports and they would have these expert doctors. I got well acquainted with the anatomy, the spinal column, and ruptured disks. Once in a great while we would get a jury

verdict but the government usually lost. Then we would bring it up to the Court of Appeals and that is where I got acquainted with Ken Carrick. I would come here and argue these cases and also would get the record here and the briefs. I would write the briefs in conjunction with the Department of Justice.

RS: You would come out and argue the case with the Department of Justice?

LS: Flemming would usually argue the case. He didn't write the briefs or try the case. They usually sent somebody from the Department out to help him try the case. Slick was a very good judge, a very honorable judge but he was very tolerant of lawyers.

CF: Was he tolerant of the government lawyers too?

LS: Not so much, no, that's the trouble. Anyway Benaman came up to Fort Wayne, he always had his wife, Mary, with him. I couldn't understand that. I think he had a drinking problem. She wasn't a lawyer but she would sit there at the table with him. I was a young lawyer representing the Department of Justice. Benidum would try veteran's case at Fort Wayne. At one trial he says, "Judge you know it is awfully nice to come to Fort Wayne. I just love to come up from Muncie and try cases in front of your honor. You are so courteous and so kind, that's what makes me feel so at home and this young prosecutor is so nice. Even this young man from Washington, he is pretty nice too. Do you know after this case is over with, next

summer, in the strawberry season, I know it probably won't happen but I would just love to have you, and the ladies and gentlemen of the jury, these good people here and Judge Slick and this young man, the prosecutor, Mr. Swygert, and the young man from Washington, all come down to our house and I'll have Mary make a strawberry shortcake and we'll have a nice afternoon together." My helper from Washington said to me: "object! object!" I responded: "I can't object, I'll get my head knocked off if I do."

RS: The guy from Washington was lucky to have someone local protecting him?

LS: I guess so.

RS: Would you regularly come up to Chicago in those days?

LS: Oh sure. I came up here in 1935 and was here from 1935 on.

CF: Didn't you come up here one time on a week-end for an emergency motion?

LS: Oh that was Evans. That was when I was frightened of Evans, I had seen him on the bench so much. He was very curt, impatient, austere looking and acting. Judge Slick was away and Evans appointed himself as a substitute for motions. So I came to Chicago, across the street, where the old courthouse was. Evans was on the seventh floor. I got there a little ahead of time and a man with his ex parte motion was knocking at the door.

I got to serve the other side for a continuance on appeal. You had to file a lot of things on time with

appeals, like Bill of Exceptions. I had this motion. I walked around that rotunda in the old courthouse several times to get courage to go in and see Judge Evans. I went in and Miss Green, his secretary was there and so was Ms. Brenwasser, his law clerk and they both greeted me. Then they said that the judge was in his library reading. I was half scared to death. Evans was sitting with his coat off. He was sitting there reading a law book. He greeted me, sat me down and why he couldn't let me go I don't know. That is my history with Evans. When I became a judge, I would always come in and visit him and he would keep me there for two or three hours telling me stories. He was very affable off the bench.

RS: I just know him through the letters. He seems rather warm in the letters. I have heard the stories of how he was on the bench.

LS: He was a terror on the bench, in a way.

CF: Were there some cases as a prosecutor that you couldn't win before Slick?

LS: Mostly, women defendants.

CF: He wouldn't convict women?

LS: No. Also rationing cases during the Second World War. We had a terrible record. Of course, the jury was against us too. Judge Slick was against the government. He was anti-government. If he ruled against the government, the government couldn't appeal. I was not in favor of that although I shouldn't say anything bad about Slick in a way

because he was so kind to me. We had a very good relationship. Although he battled me and I battled him. I didn't battle too much, I guess.

CF: There was a story in the Fort Wayne courthouse about how prosecutor, defense counsel, and the judge could listen to the jury deliberations?

LS: That was common practice all over Indiana. I don't know about the judge but I know that lawyers were usually able to listen in at the door to hear what was going on.

CF: This wasn't at a door. This was in the bathroom. I thought you were the one that told me the story that there were three urinals in the room directly below the jury room and you could go in there and listen. I think it may have been one of the times when we went down on a three-judge court when I was still your law clerk?

LS: I don't remember that. I remember when lawyers would go around and try to listen to what was going on. They never got inside of course.

RS: Baltzell was a very good judge, wasn't he?

LS: Yes he was but he was much sterner. A fellow by the name of John Sawyer, who was with the IRS--Alcohol Tax Unit--he told me a story about Baltzell who came to Hammond to try alcohol cases, illegal stills, this was of course after prohibition. Liquor was . . .

CF: Legal, but uncle wanted his taxes.

LS: Yes. Legal but you couldn't run a still. We had a lot of those cases. Anyway, Baltzell would give them very severe

sentences. He had a peculiar kind of demeanor on his face, it was a smile but not a real smile. It was kind of a forced smile. Even occasionally when he would make rulings and sentencing, he would have this kind of sardonic type of smile. We were trying this case up at Hammond and on the way back from lunch (John Sawyer was my witness. I was the prosecutor.) he says "you know, we didn't have that much trouble with Baltzell because he was very much pro-government. He says you know what they call Baltzell down at Indianapolis when he hands out these very stiff sentences?" I said "No. What do they call him? He said "Smiling death."

CF: Where was Slick from?

LS: South Bend.

CF: Did he tend to hold court most of the time in South Bend?

LS: No he travelled to Fort Wayne, South Bend and Hammond.

CF: And Lafayette occasionally?

LS: No.

RS: He and Baltzell didn't get along, is that right?

LS: They got along. Talking about Anderson, Slick told me a story that when he was appointed, Anderson was about to come up here, that was before Baltzell. He came a little later as I recall it. Slick told me of coming down to South Bend to see Anderson as the senior judge, we didn't call them chief judges at that time. He met Anderson when Slick was about fifty or fifty-five years older. He said "well young man it was nice to have you a member of the

federal judiciary." He passed a few pleasantries and Anderson told Slick "you know, I don't want to give you any advice and I don't want you to think that I am trying to tell you how to run your court but I have been on the bench a long-time and I'll tell you judge, don't let these lawyers get away with anything. Don't give them any mercy! Whip them! Whip them!"

RS: Slick didn't tell you that as advice?

LS: No, Slick never whipped anybody. He just got mad, as he did sometimes, flare-up. He was otherwise a very quiet, calm and kind person.

CF: He was a Republican appointee?

LS: Yes. They were all Coolidge appointments, i.e. Baltzell, Anderson. I don't know who appointed Anderson. Maybe it was McKinley.

RS: No I think it was Taft.

CF: What about the story about the judge who would ask on the first day who wants to plead guilty?

LS: Well that's an Anderson story. Slick told me that too. Slick was a lawyer representing a liquor violator and Anderson would not go outside of Indianapolis although he had posts of duty in New Albany, Terre Haute and Hammond and Fort Wayne.

CF: Not South Bend at that time?

LS: No. He wouldn't come to these places very often. Just one day, maybe one day at Hammond, one day at Terre Haute and one day at Fort Wayne, just kind of like a token and

everybody would have to go to Indianapolis. He would have all of these defendants gather on arraignment day for sentencing or setting a case for trial if you pleaded not guilty. He had one set sentence for liquor violators, no matter how aggravated or anything else, six months. All he would do was have the clerk read the indictment and then he would call the defendant up front to the bench and he would say: "Mr. Clerk, read the indictment. Then he would say to the defendant, are you John Jones? You can plead either guilty or not guilty." He wouldn't tell about his rights to a lawyer, to a jury trial or anything. Then he would say "guilty, six months."

Judge Slick told me this story: before the time he was appointed a judge, he was representing a defendant. He was in a room that was full of defendants and lawyers, all defendants mostly liquor violators. This man from Kokomo came up in front of him. Judge Anderson says read the indictment. So the clerk reads the indictment and the judge says to the defendant, "Are you going to plead guilty or not guilty." This man didn't have a lawyer. So the defendant hesitated and Anderson says "What's the matter?" The defendant replied "Well judge, I don't know. In one way I guess I am guilty and in another way I am not." Anderson says: "Well--one way is enough, six months."

RS: That's a model for Rule 11!

CF: Today's date is March 22, 1985 and it is Collins Fitzpatrick and Ray Solomon again interviewing Senior Circuit Judge Luther M. Swygert. Judge we ended yesterday talking a little bit about your days as a prosecutor. Do you remember some of the cases that stand-out in your mind?

LS: There are a few high-lighted cases, one was a prosecution of a bank robber who was tried for murder in the federal court because he and his two co-defendants had robbed a bank at Goodland, Indiana and then escaped to Baltimore, Maryland where they were hiding out. A State Policeman by the name of Moreland came upon them. In an ambush they hid behind a little church near Monticello, Indiana, shot Moreland and killed him. They were captured many months later. Two of the men were killed. A man by the name of Dalhover, was captured by the FBI in a dramatic shoot-out in Bangor, Maine. Dalhover was brought back and was prosecuted for murder under the federal statute arising out of the bank robbery as the bank was federally insured and that gave the federal government jurisdiction for the crime. Judge Slick appointed two fine lawyers from Hammond. One was a man by the name of Tim Galvin and the other was a man by the name of Tinkham. They were leaders of the bar too. They entered a plea of guilty for him. A jury had to be impaneled to decide whether or not he could receive capital punishment. Mr. Fleming and Alex Campbell, the other assistant of mine, tried the case at Hammond. Of course, we had to try the entire case even

though he had entered a plea of guilty because the facts had to be brought out in order to have the jury have a background for deciding if he should be given capital punishment or order him to a life sentence. That was a very dramatic case. Mr. Fleming, the other assistant, and I tried it. The jury assessed the death penalty. They took an appeal here to the Court of Appeals and it was a two-to-one decision. Major dissented and then it went to the Supreme Court. The Supreme Court denied certiorari and then he was brought back and was put to death at Michigan City. There is a couple of incidents that arose out of it. One is pretty gruesome, the other has some humorous aspects. On the night of the execution at Michigan City, Judge Slick was at Hammond and he got a call from a lawyer who had just gotten into the case, a rather flamboyant and not well regarded lawyer. He said "he was in Washington with Dalhover's mother and was asking clemency from the president and was turned down. He wanted to file a last minute petition for habeas corpus and that we should be on the alert for it. The execution was set for twelve midnight." Judge Slick waited in his chambers and I waited in the United States attorney's office for this document to come in. It finally did arrive about nine o'clock and Judge Slick looked it over and denied the writ and that cleared the way for the execution at midnight, one minute after midnight. The lawyer in communicating with Judge Slick--the practice in

those days in order to take an appeal--had to take what was called an exception to the adverse ruling in order to preserve your rights to take an appeal. The lawyer, called Judge Slick about this petition and said "judge, I hope you grant this petition of course but if you should deny it, will you please give me an exception so that I could preserve the record." You understand the implications of course.

CF: There wasn't going to be any appeal.

LS: In any event, it shows the caliber of the lawyer, I think. The other is more gruesome. Dalhover was in Michigan City and the United States Marshal was supposed to carry out the mandate of the death sentence and at that time and still does have the electric chair for purposes of executing capital punishment. This was hearsay, of course, but I was so told.

CF: Was he being executed by the state or the feds?

LS: By the feds, but it was being done at the Michigan City Federal Penitentiary because the federal government didn't have any means.

CF: So they moved him back from Milan, Michigan?

LS: Yes. I'll tell you one story. They had a hanging at the court in Indianapolis under the same circumstances and Baltzell was the judge at that time. I guess that's the reason why he was called the "hanging judge." Anyway, it ties in. Anyway Al Hosinski was the United States Marshal at that time and he was suppose to pull the lever to

produce the electric shock. Dalhover was strapped in and blindfolded and witnesses were there and he was given the right to say anything at the last minute. Silence descended and Hosinski, according to my information was to pull the lever. He got cold feet and he couldn't do it. This was a very dramatic incident and Dalhover waited for the electricity to flow through his body and everybody waiting tensely and Hosinski couldn't pull the lever so the warden went over pulled the lever himself and that ended Dalhover's life.

RS: Was Judge Major's dissent on the basis of not believing in capital punishment?

LS: No, we brought in a lot of extraneous background of Dalhover and he felt that was prejudicial.

CF: Evidence of bad acts?

LS: Yes.

RS: He wasn't opposed to capital punishment?

LS: No. That wasn't in the picture. The government had overplayed its hand and prejudiced the defendant in this defense.

RS: When they had the hanging in Indianapolis was that because Indiana still allowed hanging?

LS: Apparently, but this was only by hearsay. There was somebody who had killed a government agent. I think there were two of them. As I understand it, they built a special scaffold in front of the Indianapolis courthouse and these two men were hanged. That was under the

jurisdiction of Judge Baltzell. Now it comes true why Sawyer said we called him the "hanging judge".

CF: Didn't Dillinger escape from the Crown Point Jail, but that was for a state crime?

LS: He had robbed some federally insured banks so the federal government was in on it too. That's the reason that they tracked him down at the Biograph.

CF: I am not sure of the timing, was that when you were a prosecutor?

LS: Yes. When I was a deputy prosecutor in Lake County. I was the deputy under a man by the name of Robert Elson. The news photograph you see a lot of times with Dillinger with a prosecutor and a sheriff with their arms around Dillinger. You have seen this picture?

CF: Yes. That was right before he escaped?

LS: Yes. He escaped once before out of prison at Crown Point with a wooden gun. They picked him up in Arizona. Sheriff Holly and the prosecutor Elson went out to Arizona. They wanted a lot of publicity of course. They brought him back to Crown Point. They got him back there about eight o'clock at night and all the press was there. They said "let's take your picture." They put Dillinger in the middle and Holly and the prosecutor put their arms around Dillinger and the photographers took the flash photographs that went out all over the counties. The picture is still around. I was shy of the press from then on for many years. A good lesson.

CF: Were the citizens upset when they saw that?

LS: I don't recall it. It seemed to me it had sort of an after-life. It ruined the prosecutor.

CF: It did?

LS: Oh sure.

RS: What other type of cases did you try?

LS: Just before I became a judge, I tried a lot of cases before Judge Slick. I tried a lot of cases before Judge Duffy, the Bund cases then had gotten naturalized here and then formed these German Bund secret societies supporting the Nazis. The FBI was investigating these groups and if they had enough evidence, the government brought a suit to denaturalize them and eventually tried to deport them. I don't know if they were deported or not. We were fairly successful in those cases.

RS: I think when we talked with Judge Campbell he had been talking about a criminal prosecution.

CF: Espionage.

RS: You didn't have any of those. You just had deportation.

LS: I had one case I remember in Fort Wayne when I was a prosecutor. I had a picture of the Bund group in a home and this man that I was prosecuting to be denaturalize, he denied his relationship. On cross-examination I led him into this emphatic denial and he denied that he had any relationship with the Bund. Then I reached in my brief-case and pulled out this photograph that the FBI had gotten surreptitiously. In any event, it was taken by

some friend or a member of the group and there were about eight of these German nationals in a livingroom with a great big picture of Hitler with the swastika in the background and that ended the case.

RS: One other thing I was going to ask you about, about the time you became assistant prosecutor, they introduced the new federal rules?

LS: No, that was after 1938.

RS: I just wondered how difficult you found it to switch over to the new rules?

LS: I didn't have much difficulty because I was at an age when the previous rules hadn't yet been ground into me. The older lawyers, of course, had a lot of trouble. I had a lot of trouble when I was a district judge in effecting them. There was a lot of resistance by the older lawyers because they had this so-called tool kit of skills under the old practice and they scoffed at the new rules. I had at many times set pretrials for hearings and they would come scowling and angry or they would send some minor associate. Usually they were not prepared and they would have to look at the file. They thought it was a terrible waste of time. I had to contend with a lot of resistance.

RS: That was also true with the discovery?

LS: Yes. They thought that they were giving the case away.

RS: So they wouldn't want to reveal anything?

LS: Yes, they were very resistfull.

RS: The criminal rules came in a little later from when you were a prosecutor didn't they?

LS: Yes. Several years later.

RS: For instance, in the case with the Bund photograph, you didn't have to make it known to the defense?

LS: No, they had no idea. It was a complete surprise to the defense counsel.

RS: I was just curious about that.

LS: It was more of a game, a lot of surprises.

CF: Of course, you took a risk, didn't you because if he hadn't taken the stand you couldn't have introduced them?

LS: I don't know. I am not sure. We probably could have, by identity but it would be more effective on cross-examination.

CF: Oh yes, there is no doubt getting them up there and lying.

RS: The naturalization cases were mostly bench trials?

LS: Yes. I think so, I am not sure. I think they were juries. I believe they were now that I think about it.

CF: Did you have any organized crime cases?

LS: Not as such. We had the bank robbers. We also had alcohol tax groups. We had a big conspiracy case out at Hammond that Mr. Flemming and Alex Campbell and I tried in which they were a group of conspirators that had three or four big stills in Munster, Gary and one over in Calumet City that gave us some federal jurisdiction on conspiracy. In those days, this was before the wiretapping statute. We had all of these places tapped

and all the people involved were tapped and we had a complete record. They would say: "We are just sending a load of booze to such and such a place" and by that means the agents were able to the truck.

CF: There were at that time ATF agents (Alcohol, Tobacco and Firearms), how effective were the ATF agents as opposed to the FBI? Or did you notice any difference?

LS: I don't think I noticed much difference. The FBI was very effective of course, we didn't have many agents.

Surprisingly when I came as a prosecutor in 1934, we had one FBI agent in northern Indiana and he was stationed here in Chicago. He would come to Indiana to make some investigations. Then they had a resident agent at South Bend, Paul Devereaux. He was the first resident agent in Northern Indiana and he was the only one at that time.

RS: There was a U.S. Marshal's office in Indiana?

LS: In northern Indiana, yes. There were only about three marshals.

CF: How much of a problem were the bank robbery gangs in northern Indiana?

LS: Well the Dillinger and the Dalhover gangs, Brady gang. There were a lot of bank robberies but just single. There were only two gangs that I know of. I think there was one

over at South Bend as I recall. Yes, there was. That one, I gave some pretty long sentences. One I remember was thirty years, another twenty five years.

CF: What other kind of cases did you have for example for the government? What kind of civil cases did you have?

LS: Well during the war, we had a lot of rationing and also there was a lot of land condemnation, in Northern Indiana, Westville. There was a lot of acreage taken and still owned by the government off of six. Then there were some condemnations around the Gary Steel Mill. The government put up some additional steel facilities. There were a number of condemnations. We had a variety of things i.e. tax cases.

CF: Tax evaders?

LS: Some tax evaders but mostly refunds. At that point, we didn't have too many tax evader cases. I know why we didn't have them because you had to file your income tax returns in the Southern District of Indiana, at Indianapolis. Judge Steckler and Judge Boswell, had all the prosecutions for tax evaders. Anybody in the Northern District of Indiana who was charged with tax evasion was prosecuted in Indianapolis.

RS: Was there much interference with the Justice Department and your office?

LS: At what stage? As a prosecutor?

RS: As a prosecutor.

LS: I had a lot of contact, of course. In important cases, we would consult and they would send out people. In fact, Justice Clark came and helped prosecute a famous anti-trust case at South Bend against General Motors, Chrysler, and Ford. Judge Lindley tried the case.

CF: Was that they because they wanted Studebaker jurors?

LS: No, I think there was a reason though. Associate Investments was an independent auto financing company. These were criminal prosecutions involving the tie up between Ford who for instance, had its own separate company which financed new car dealers. The charge was that you bought a Ford--the dealer would say "you can get financing" maybe he said it a little stronger than that.

CF: He made it a tie in itself?

LS: Yes. In fact, there was a man by the name of Kaiser. I think he was with General Motors. There were other prominent defendants in those cases. Clark tried it. Newton Baker, the former Secretary of State, also was in the case. I was a Asst. U.S. Attorney. I took very little part in the case. I did do some work. I came to Chicago to do the research.

RS: How did you rule?

LS: They were all found guilty. Later on I would try cases in the civil side against General Motors, and Ford by car dealers who said they had been coerced in their financing. I remember the head of General Motors, Alfred

Sloan, came to Fort Wayne and testified and I was very impressed by him. He had great presence. Sloan as I recall his testimony had started a little company in New Jersey. Durant found him. The famous Durant who put together General Motors. He bought Sloan in and then Sloan became identified with General Motors. At that time, Sloan was extremely wealthy. They asked him how much he owned on cross-examination and he was very candid about it.

CF: When did you first know that most likely you were going to be put on the bench?

LS: Fleming resigned as United States Attorney in 1941 and Campbell became the United States Attorney and I became Campbell's assistant and a man from South Bend became the other assistant. Somewhere in that era. Fleming began to say "I think that I would like to see you as a judge. I have some plans for you." That was about the time that developed. Then Judge Slick was getting tired I guess. He had been on the bench since 1925. I say this in great respect and perhaps unfairly to him. I don't know. He was hoping to stay on for Roosevelt, a change of administration but that didn't happen. I was trying a case before him as a prosecutor and with Tim Galvin. He is at Hammond. A very prominent lawyer. Do you know him?

CF: I know Frank better.

LS: Galvin was at Notre Dame in 1916. He is about ten years older than I am. Galvin was trying this case. We were

opponents. When we got through with the case Slick said: "I would like to see you gentlemen, here at the bench. I am thinking of retiring. I don't know what can be done. You two people, I would like to see one or either or both of you, I can't have both of you as my successor. If republicans were in power, I would like to see Mr. Tim Galvin here, my successor and of course, if that doesn't come about I would like to see you Luther as my successor." I had a lot of cases in front of him and there were times I didn't agree with his decisions. I took appeals from them. We were quite friendly. It dated way back because he was a good friend of my uncle in South Bend. There was a lot of background. When I got out of Notre Dame, I went to see Judge Slick and he gave me a letter of introduction to Ernie Force over at Gary. I had an idea that I might like to practice law in Gary.

CF: When did you start thinking of becoming a judge?

LS: I never thought about it. In fact, I made arrangements to go to a very good firm in Hammond. They represented the South Shore Railroad, the Northern Indiana Public Service Company. When the break-up of the Indiana utility came about Northern Indiana was split-off as a separate utility. A lawyer down in Hammond set-up an office, John Lawyer was his name. A very fine lawyer. A University of Chicago Law School graduate by the way. His brother, Joe an me had that business and that was about the best business in northern Indiana. That also came about

through Mr. Fleming. Then he began to think of other plans for me. I was of course, very flattered. I had some misgivings if I wanted it or not, not that I couldn't handle it.

CF: What about elective office? You were active in politics. Did you ever think of running?

LS: Only once, I gave that up. It was tempting but I turned it down and I am very happy that I did. There was a big movement when I was a deputy prosecutor about 1936, 1937 or maybe 1938 for the democratic organization for me to run for prosecutor in Lake County. I had no money. I was completely broke all the time, on the edge. They told me that they would get me the money. I felt that I knew where some of the money might come from and I just didn't want to put myself under obligation. I am talking like a self-righteous guy, but it is the truth.

CF: Where did you think the money would come from?

LS: Some of it would come from, I don't know if it would come directly, but I had a feeling that it would come from gambling interest.

RS: You were saying yesterday that you had been friendly or part of the party that you had been closely working with, the Vannuys group at that time. Senator Menton lost?

LS: He was on the other side. It was just friendliness. I had no power or patronage. I was just a district chairman. Right after the election in 1932, I had people coming to my office a half-a-block long for jobs. That's

all I did was to interview and they said they had been Democrats all of their lives. That was not true, but they claimed they were. You never saw so many people who had said they had been Democrats and worked hard for the party. There were a few. Vannuys gave me the opportunity to appoint people for a few federal jobs.

CF: What about the postmasters?

LS: I didn't have much to do about that. I think those were handled by the general postmaster himself, Mr. Farley. There were just a handful of federal appointments. I had to consult others. They were channeled through me as district chairman. State patronage, the McNutt organization froze me out.

RS: There was a democratic governor at that time. Leslie?

LS: That was before.

RS: Townsend?

LS: Townsend followed McNutt.

RS: Didn't McNutt challenge Roosevelt?

LS: Well he wanted to be vice president. Roosevelt chose Henry Wallace. He did appoint McNutt Commissioner of the Philippines.

RS: Minton then established a close relationship with Roosevelt.

LS: Very close. I don't know about Minton and Roosevelt. There's a story, I guess I can tell you. It links up with something. The story was I think I read it in Time at the time when Black was appointed that Roosevelt was debating

between Black and Minton. The story was as I recall it in the Time magazine, Roosevelt had Black and Minton under consideration and he sort of shuffled the cards with peoples names on his desk and Black's name came up. Minton lost out and so he became Roosevelt's assistant for a while in 1940 when he lost the senate seat. Then there was a vacancy here. I don't remember who took that vacancy.

RS: Treanor.

LS: Then Minton came up here. I now go one stop farther.

Judge Evans told me that--he was very open and frank and intimate with me--he told me that Minton was very unhappy. He thought that he had just missed out on the Supreme Court and was very disappointed. He was not in very good health. He would go back and forth and ride the train every weekend. He would go to New Albany on Friday and return on Monday or Sunday night. It was a very trying trip. Anyway, he was apparently not very happy but then came Truman. Roosevelt died and Truman became president and then somebody, I forgotten, but anyway there was a vacancy on the Supreme Court. The story is that Minton went to Washington and got hold of Truman and said "I want to be appointed."

RS: I had heard something like that.

LS: This I know too that Minton was a very close friend of Lindley. Lindley was a republican. He came from Danville and spent a lot of time here. He didn't have much work at

Danville. He was very fast and a good judge. Walter Lindley, I tried a few cases in front of him. He tried this conspiracy case over at South Bend. He was a fine judge. He was very quick. A little curt as far as treating lawyers but he ruled very fast on everything. Lindley and Minton got to be very close friends. When Minton went to the Supreme Court, in fact, there should have been a vacancy in Indiana. In any event, Minton talked to Truman and said "I want Walter Lindley to follow me." Had you heard that?

RS: In fact, there had been moves by the Seventh Circuit judges going back to the twenties and thirties to try to get Judge Lindley promoted. I saw some correspondence I guess around 1948 through Judge Evans papers where they seemed to be writing Washington saying "he has been a court of appeals judge for the past decade or more."

LS: I think Minton had something to do with that. Of course, that left Indiana with only one judge until I became a judge. Then I became the second judge. Judge Hastings was there first.

RS: Judge Parkinson was with Hastings for awhile.

LS: Oh yes, I am wrong.

RS: They didn't replace him until after you came. Judge Slick continued to sit after retirement?

LS: No, he resigned.

CF: There weren't senior judges at that time?

LS: No. They could retire but I don't know if they could sit?

RS: The circuit judges, they did, I remember Judge Page and Judge Alschuler, after they took retirement continued to sit. Maybe there were different rules for the district judges.

LS: In any event, he didn't retire, he just resigned.

RS: So you were the only judge in northern Indiana?

LS: Yes.

RS: What was the organization of the court in that time? Did you appoint a clerk?

LS: I will tell you a story about my appointment which is sort of interesting. Frank McHale and some others in Indiana who were the old McNutt crowd were then for me at that time, of course, there was never any real enmity but just a question of power. Who was going to exert the power when I was district chairman? Of course, I had long got out of politics because the Hatch Act came along in 1937 so I was completely out of politics. Any way, when Vannuys sent my name over to the president, I noticed from Justice Clark's statements to me and I knew it at the time, of course, that he was in the Department of Justice under Bittle. He represented the head of the anti-trust. He was very close to Alex Campbell. In fact, Campbell named his son Tom in honor of Justice Clark. Clark was in on the effort for me to be named. Slick decided to resign. It was not public knowledge. He resigned and Vannuys almost the next day, sent my name in and that presented a lot of problems. There were a lot of people

that wanted Slick's job. Some close political friends of mine in Indiana. A very prominent lawyer in Peru, by the name of Harvey Cole, wanted it and a lawyer in South Bend, wanted it. A prominent democratic chairman. Of course, a lot of people but that never got started because the next day I was nominated and Clark being in on it through his friendship with Mr. Fleming, and Alex and me, got the papers and took them over to the senate judiciary and had them processed. I didn't even have a hearing.

CF: There was no hearing in your district judge nomination?

LS: No. I was nominated within about three days after Slick and in four or five days I already had my confirmation.

RS: At that time, there was no judges school?

LS: No. The only reason that I had some qualifications was that I had been an assistant United States attorney for nine years. That was the only qualification I had.

RS: Judge Slick did he try and give you some guidance or help.?

LS: No.

RS: He just turned over the office?

LS: Yes.

CF: An interesting point which I am sure the judge remembers, but Judge Steckler has told me that he was always very grateful when he came on down in Indianapolis, Judge Swygert invited him for about a week to sit on the bench with him and he had found that that was very helpful. This was a very longtime ago, way before they had any judges school or anything else of that nature.

LS: Yes. Well of course, he was young. He was only thirty-six years old. He had been a public counselor for the utility company. He was a democrat, of course and had more background with the McNutt group than I. In any event, he was uneasy about assuming at that young age a district judge appointment. I can understand it because I had the same feeling when I came on. It was sort of feeling of inadequacy of course and worry. I remember that Bill Steckler came to Hammond. I put him up at the Hammond hotel and he stayed for a few days. As you said, I invited him to sit with me on the bench for a few days to get use to it. That for me, myself, was a traumatic event. I could tell, his whole demeanor was different and when he left I took him over and put him on a train and he had a different attitude.

RS: Did you have to reorganize the clerk's office or appoint a clerk?

LS: No, I kept the clerk for a long-time, Margaret Long. In fact, I even kept Judge Slick's secretary for awhile but I eventually moved everybody out. I didn't want to make a dramatic change.

RS: The clerk's office was in South Bend?

LS: Yes, South Bend. Did you know Lacky?

CF: No, but I remember the name.

LS: He followed Mrs. Long.

CF: What were the patronage jobs of a district judge?

- LS: Clerk, bankruptcy referees, United States commissioners, now they are called magistrates and that's about all.
- RS: Would commissioners serve for any particular case?
- LS: No. In the war period they had commissioners to handle farm composition bankruptcy cases called Frazer-Lempke Act bankruptcy. It was a special legislation for the relief of farmers. Maybe it will come about again. In any event, there were a lot of farm foreclosures in the depression. Frazer was the senator from South Dakota and Lempke, I think was from Missouri. The Frazer-Lempke Act permitted farmers who had a lot of debts and particularly a mortgage and when they were about to foreclose on him, he could go into bankruptcy and keep his farm and he could make some kind of an arrangement to pay his debts or pay them off gradually so he could save his farm. These commissioners were appointed in different counties. Maybe there were ten in northern Indiana. I didn't appoint any of those because Judge Slick had appointed them.
- RS: In the early years, did you have many bankruptcy referees to appoint?
- LS: No. They had one in South Bend, one in Fort Wayne and one in Hammond, and these were the regular bankruptcy referees. The commissioners were the something. We also had a commissioner at Lafayette.
- CF: When you made those appointments, there weren't Merit Screening Committees or anything of that nature? How would you decide?

LS: For example, at Hammond Judge Slick had appointed a bankruptcy referee by the name of Draper. I kept him for a long-time. Henry Sackett followed me as a deputy prosecutor. Mr. Sackett was from Gary. By the way, he is also a University of Chicago Law School graduate too. He went to Nuremberg. He was with the Jackson and Nuremberg trial and he also went to Tokyo. This is just incidental. He came back and Draper \_\_\_\_\_. I appointed Henry Sackett as a bankruptcy referee I had a lot of confidence in him. He had been United States Attorney and he had all this background.

RS: Were those full time positions?

LS: No. I had a lawyer in whom I had a lot of confidence in as well as Fort Wayne. Bob Rodibaugh was one of my appointments. Russell Nehrig was also one of my appointments.

CF: What were their backgrounds?

LS: I don't know how I got Bob. I think at the recommendation of a lawyer at South Bend. Tony Kunrich, the probation officer at South Bend. In any event, this lawyer that I am talking about, Daran introduced him to me. Daran wanted to be a judge. He was democratic county chairman and he knew Tony Kunrich. He had a lot of confidence in him and he recommended him to me. I had a great relationship with him. Tony was an honorable, efficient probation officer.

RS: Were there also special appointments at times for special masters in a case?

LS: Yes, one in awhile. At least in my time, patronage was minimal from a standpoint of receiver-ships and special masters.

RS: It was really only in the major cities?

LS: I didn't pay much attention to the political aspects in those kind of appointments. I would rather talk to qualified lawyers.

CF: Did you appoint any Republicans?

LS: Yes. Walter McLain, as a trustee in a big bankruptcy case.

RS: What were the most difficult aspects after the initial uneasiness of taking over the judgeship? What were the most difficult tasks?

LS: Nothing in particular I guess. I adjusted fairly good, I think.

RS: Did you find the sentencing the most difficult part of the job?

LS: Always, I never got out of that attitude. It was difficult, of course but I had one good faculty I think. I can't say this 100%, I would sometimes have ten, twelve or maybe fifteen people that I would sentence in one day and that of course would be very exhausting. At the end of the day I spent a very trying day but as soon as it was over, I didn't try and go back and I think that is a good

trait in a judge. Once you make a decision, don't look back.

CF: Were you tired at all of being a district judge when you came to the court of appeals?

LS: Well I debated it, I thought that a district judge was more important and I still think so. There were rumors way back by coming up here and particularly when Parkinson came on. I wasn't anxious to come to the Court of Appeals but in 1961, I had eighteen years on the district court and at that time I figured there would probably never be another opportunity. I never sought the court of appeals appointment. The Kennedy administration considered me and I did not turn it down.

CF: How did they pick you?

LS: I don't know.

CF: Well, there is one reason that I can think of? You are a logical candidate being a democratic federal judge?

LS: Yes, I think that was part of it. I had no idea how I was picked by the Kennedy administration except at some point Mr. Fleming again was very instrumental and did a lot of spade-work for me because I didn't have all the support on the senatorial side that I might have had.

RS: Was Fleming close to Hart?

LS: No.

CF: You mention one of your cases that gave you a lot of grief over the years. Not the case itself as much as one of the particular attorneys i.e. the Woodmar (?) case.

LS: Yes.

CF: Maybe you could explain a little about that?

LS: It would take several tapes to put all of that together or maybe even another week but the Woodmar case is one that I inherited from Judge Slick. I don't know how much background I have to go into?

CF: Well it was a bankruptcy case.

LS: It was a bankruptcy case which first started as a Chapter XI case. Reorganization of a company called Woodmar Land Developing Company in Hammond. At that point, during the post-depression all of this land had been developed in the sense of utilities, streets, sidewalks, lights. All of this was being financed through bonds that had been issued by the City of Hammond under the law called the Barrett Law. These bonds were sold in staggered amounts. The collateral was these lots that had been subdivided in this development. Of course, either Woodmar defaulted or the people who bought lots before the Depression, everything was in default. There was just a lot of acreage with streets, lights, sidewalks and no buildings, that is very few, and this precipitated a lot of foreclosures by bondholders. It was a real complicated procedure because each street had its own set of bonds and sidewalks and individual lots and it was such a complex situation it became completely unmanageable. A lawyer in Hammond decided to put it into bankruptcy, that is the Woodmar part, the land that was owned by Woodmar. The lots in

default owned by individuals were kept in the state courts. In any event, referee in bankruptcy would report to me every so often about the sale of those certain lots. It became a better market and as a result there was a large amount of money finally built up as a result which belonged to these bondholders but it was such a complicated situation that it was very difficult to say to whom. I would get reports from the referee and I would okay these sales and so forth. At that point there was no controversy. Then came a time when this Woodmar Company which was bankrupt, was represented by Mr. Owen Crumpacker and his father. They were the original lawyers and developers. They began to assert an interest in this bankruptcy and particularly so because of the large pot of a half a million dollars that had been built up from the sale of these lots. Then there was some interim requests for attorneys fees. I heard that. In the meantime in the state courts there were some various activities at Valparaiso in the county court in which this lawyer who filed the federal bankruptcy case and other lawyers had confessed to making some misrepresentations in the state courts and they were prosecuted. One went to jail and the others were disbarred. In any event, I heard these petitions for interim allowances and cut them way down and removed the trustee and put in a new trustee and removed this lawyer who had originally started this bankruptcy and denied him fees and then put it into a straight

bankruptcy. I appointed a new trustee about 1956. In 1951 was when I became active in the case as a judge and took it over from the trustee that is from the referee in bankruptcy about 1948/49 or something like that. This one decision of the removal of the trustee and the lawyer and cutting down attorneys fees to the various other lawyers and then the case went on for a while. I threw it into the state bankruptcy in 1956. This was another series of events in 1956.

CF: I can remember that there was a case decided by one of the Central Illinois judges?

LS: A Judge over at Peoria?

CF: Right. The case lambasted Mr. Crumpacker for actions taken in the case and it was in affirmance of your decision. After that, Mr. Crumpacker hounded you incessantly. Is that pretty accurate?

LS: I would think so.

LS: Judge Mercer.

CF: Were there other appeals in that case?

LS: Lots of them.

CF: Were you ever reversed?

LS: Yes, the one in 1956. That's when I decided--Mr. Crumbacker made some accusations (which he at a hearing in 1961) I had those hearings transcribed showing he admitted that--the problem was that he claimed that I should have recused myself. The fact was that I had an appearance on behalf of a man by the name of Gardner who had come from

South Bend. I was just as local counsel. When I became a judge I withdrew from all of those cases and it was only peripherally that I had anything to do with the federal litigation but Mr. Crumbacker made these may I say very unfair, absurd charges.

CF: You had disclosed that to the parties?

LS: Yes.

CF: Early on in the litigation and he said no problem for you to even sit and that was only after your adverse rulings that you were lambasted?

LS: That's right.

CF: What was the nature of his harassment?

LS: Well he claimed that I was disinterested and that I had an interest in this lawsuit and that I should have disqualified myself.

Tape 4

Continuation of recording of Senior Circuit Judge Luther M. Swygert as interviewed by Ray Solomon, Director of the Court History Project and Collins Fitzpatrick, Circuit Executive on Friday, March 22, 1985.

CF: I was saying that later on Mr. Crumpacker would attack judges by filing suits against those judges who ruled adverse to his interest. Did he ever file any suits against you?

LS: Later on I was named in certain litigation. I don't think he ever sued me directly but he might have in one suit.

CF: Did he make the allegations to the press or were they picked up?

LS: I am sure he made them. I don't have a copy of it. I think Judge Pell might have. He sent this very lengthy document which was against me and Judge Tehan because I had decided that regardless of whether or not the fact that I didn't think I was disqualified and that I disclosed whatever small, peripheral connection I had with this Woodmar situation. I repeat, not in the federal end of it, but in the state. I withdrew and I never had any activity at all with the state cases except as a local counsel and then just prior to my becoming a United States judge I withdrew everything, I didn't have any connection with legal work. In any event, I certainly wasn't going to get any fees from this work. He continued to say that

Woodmar even though it was bankrupt he had this money to his stockholders coming. He wanted to get the five hundred thousand dollar amount for the stockholders even though it was bankrupt.

CF: Did he object to Judge Tehan sitting in the case initially?

LS: No, he did not. That was a matter of Judge Duffy's decision. That was an administrative matter.

CF: You got out of dealing with one difficult litigant by dealing with another up in Milwaukee?

LS: Yes, Margoles, that's right. To say the least. He filed this document and it went all over. He sent it to the bankruptcy committee in Washington and to the Administrative Office. He also sent it to the American Bar Association delegates and to the Indiana delegates of the state bar. It had wide circulation.

RS: He never formally tried to get a motion for impeachment?

LS: No, but he testified about a day against me at the confirmation hearing in Washington.

CF: It was interesting because at Judge Eschbach's confirmation hearing for the court of appeals, Mr. Crumpacker was again going to testify and Judge Swygert provided Judge Eschbach with the testimony that Mr. Crumpacker had given back in 1961. Judge Eschbach gave it to the committee.

RS: Was he the only one that ever complained?

LS: There was a man by the name of Ben Wham, a lawyer in Chicago. A brother of Judge Fred Wham whom Mr. Crumpacker

had hired as co-counsel and Wham testified against me but it was very pitiful. He didn't know anything about me. He just said what he had heard from Mr. Crumpacker.

RS: You mentioned Judge Tehan coming to Hammond. How often did you get transferred by a senior judge?

LS: I had been up there several times. It was a matter of reciprocation. When Duffy appointed Tehan he said, "I know this is a complicated case and it is going to take a lot of time for Judge Tehan and I expect you to relieve Judge Tehan of his work." I said, "well of course." I had been assigned to Milwaukee on a couple of other cases. The Kohler strike, there was a case that involved shipment of clay from England. The ship couldn't get in at Kohler so they tried to get in at Milwaukee but the city employees and the union wouldn't let them in. Kohler brought a suit against the city and I heard that. That was before the Margoles case.

CF: What was the outcome of that case?

LS: I found against the city as I recall.

RS: Why did you get this assignment? Were the Milwaukee judges disqualified?

LS: I have no idea. I may have known at the time but I don't remember now.

CF: The only judge up there at that time was Judge Tehan?

LS: Right.

CF: Wasn't Judge Grubb up there too?

LS: Yes, I think Grubb was up there too.

CF: Tehan being a former state senator probably had connections with municipal unions?

LS: I think so. He was also state chairman.

CF: State Democratic chairman?

LS: Yes.

RS: You didn't go to Indianapolis to help?

LS: Yes. I shouldn't forget that. I sat in Judge Baltzell's court in a very important labor case involving Local Union Six. This was a typesetter case. They had a long strike in 1948. It involved all the local papers, New York and Chicago papers. I don't know but they did something in the way of getting their papers printed. It was very difficult. The Labor Board filed a suit to enjoin them. I heard that case in Indianapolis. I was there twice. The first round was about a couple of weeks and the other was about three weeks on contempt.

RS: Did you find the unions in contempt?

LS: I found against the union. I had forgotten about the contempt. I don't know what happened to that. At least, it was a subsequent litigation. I went twice to Indianapolis. That is when I got acquainted by the way with a very outstanding reporter by the name of Anthony Lewis. He covered that story for the New York Times. I found him a very interesting person. He knew something about law. He had received a scholarship at Harvard. He was the Supreme Court reporter later on. He was a little different cut of the ordinary court reporter who wants to

get some kind of an inside scoop and be cynical about everything. He didn't have a cynical attitude about the courts or lawyers. I don't say all reporters but many think there is something that they don't know but that they ought to know. A lot of them have that attitude.

RS: Do you remember what your attitudes were regarding the unions before you were on the bench? Your part of Indiana was politically involved with unions?

LS: I never had any union contacts really although I knew union organizers because they were all in politics in those days.

RS: That is what I was wondering about?

LS: Yes, of course.

RS: The union must have been important?

LS: Oh sure.

RS: The UAW must have been around South Bend?

LS: I was very close to some of the union people and knew them quite well.

CF: Going back to the Margoles case maybe you can give some of the history of that?

LS: Doctor Margoles was a MD. He ran a clinic and the allegations were that he--that really wasn't the problem--but there was an allegation that some of his practice was not above criticism--that he did some abortion work and that sort of thing. In any event, he filed an income tax return in which he failed to disclose some of his income. The government prosecuted him for

evasion and he came up before Judge Tehan. He pleaded guilty. Judge Tehan gave him an eighteen month sentence. He gave him an opportunity to appeal. Doctor Margolis decided that he wanted to avoid that sentence if he could so later on he was prosecuted for obstruction of justice and that is where I came in. I tried that case. The background of that second charge--

CF: Wasn't there a jury tampering charge?

LS: Yes, that was later on. That was third episode. The first was a tax evasion in which he got eighteen months from Judge Tehan. Doctor Margolis apparently thought that there was some way that he could get around this situation and he began to make inquiries according to the evidence as I recall it. There was some type of a hanger-on, a democratic wheel-horse of sorts who seemed to say that he knew everybody so Doctor Margolis got a hold of this man and asked him if he knew how he could get in touch and talk with Judge Tehan and this man said, "yes." This person then went to a man who was more prominent in politics. He was a good friend of Bob Tehan the judges son who is now a very prominent lawyer in Milwaukee. They made overtures about money and so persons talked to Judge Tehan's son and the son told his dad about what he heard and so forth. Judge Tehan got a hold of the FBI. The FBI put a tap on Doctor Margolis telephone and this other man, who was the original contact, and the plot developed. Doctor Margolis said, "He was going to offer Judge Tehan a

bribe." This go between or informer kept it going. In any event he played the game along so there was an arrangement whereby Doctor Margolis would take ten thousand dollars in bonds to Washington Park in Milwaukee and there supposedly would be somebody representing the judge. Of course the FBI was in on all of this. Doctor Margolis did go to the park with these bonds in the glove compartment and was arrested. I also tried the case and Charles Bellows a very fine trial lawyer here in Chicago tried the defense. He made a fine effort to defend Doctor Margolis.

CF: What was the defense?

LS: I just don't know. It was a hard defense because Judge Tehan testified and they had these tapes. I am not sure, it was some denial. In any event, I went to Milwaukee from Hammond when the case was about ready to be decided. I went to Milwaukee on Sunday and registered at the Pfister Hotel and I got a call from Judge Grubb. Judge Grubb said, "I certainly don't want to have anything to do with this case you are trying but he said he got a call from one of the jurors indicating that the juror received a letter that he couldn't understand. It had a magazine article in it about the Internal Revenue informers and at the top it said something about 'rats.' That these informers are getting money for turning in income tax evaders," and he said, "I think you ought to know about that." The next morning I called this juror in. I had a

court reporter there and had it all taken down in my chambers. Then I thought I better get the other jurors in and so in the meantime I got a hold of the United States Attorney and Mr. Bellows. All but one out of the fourteen jurors, two alternates, had gotten these letters. Some of them said that they had their spouses read them and they thought this was some kind of communist propoganda and all kinds of various answers. I don't know how much I discussed the problem with the lawyers. I didn't think Doctor Margolis had anything to do with it because he was in enough trouble already. We then worked out a resolution which was sustained by this court on appeal. I brought the jurors into the courtroom individually and questioned them if this in anyway influenced them and they said no. I then explained that this shouldn't in any way prejudice them against the defendant or the government and they should ignore it and asked if they could go ahead and try the case without being influenced by these letters that they received. They should then go ahead and try the case. The case was submitted and Doctor Margolis was found guilty. Judge Tehan gave him eighteen months tax evasion and I gave him six years for the obstruction of justice. In any event, when I was going back to Hammond and Paul Titus, my law clerk at that time and I talked it over. I said that when I get back to Hammond I am going to call the postal inspectors and have them see what they might find out about those letters as that disturbed me

very much. When I got back to Hammond, I called the FBI agent in Milwaukee and the postal inspectors told him what happened. I said, "I think that you ought to investigate this." The investigation proceeded. They got a hold some way of Doctor Margolis's typewriter and, sure enough, the words on the article had been written on his typewriter. They confronted his secretary and she said, "Sure I wrote those letters and put them in an envelope and sent them to the jurors." They wanted to know the reason why the one juror didn't get the envelope and it was because his name wasn't reported in the newspaper. All the other jurors names were listed along with their addresses in the Milwaukee Journal. In any event, Margolis was prosecuted again. I didn't try that case. Judge Grubb did and he made the sentence concurrent with the other sentence. In any event, Doctor Margolis went to prison. He then began to make all kind of charges i.e. like Mr. Crumpacker did against Judge Tehan, and myself and so forth.

CF: He later got a pardon from President Nixon shortly before he left office.

LS: He has been in trouble since. I think he was indicted.

CF: Has he? He has had some licensing problems, I know that.

LS: Yes, that he has. They took his license away.

CF: I periodically get calls from his son who is a lawyer regarding general information questions dealing with the judicial misconduct complaint procedures. We haven't seen any judicial misconduct complaints yet.

- LS: There was some kind of connection with the Margolis case and Judge Tehan's problem with Crumpacker. Judge Tehan didn't have as much trouble with Crumpacker as I did.
- CF: Well, I can remember when I was a law clerk to Judge Kiley you got lambasted by the "Washington Merry Go Round Column." I can't remember if Pearson was still there or if it was just Anderson. It tied in both cases and it took you to task and I think it also took Tehan and Duffy to task.
- LS: Mr. Anderson seemed to say that there was some kind of understanding that I was to go to Milwaukee and try Margolis because it involved Judge Tehan and Judge Tehan was to come down to Hammond and take over Woodmar because I was involved with Crumpacker.
- CF: The implication was that a "hanging judge" was to be sent in each direction even though one was a bankruptcy case and one was a criminal case. Those must have given you a lot of grief? Not the trial as much as the aftermath.
- LS: Yes. It was a very difficult case. Although, I have had other episodes. There was one man who kept after me for years that I sentenced on a drug case that sued me once and also spent a lot of time sending night telegrams all over the country. This also included picketing at the ABA meetings here in Chicago and St. Louis.
- CF: What was the case?
- LS: He had been charged with drugs. His name was Sol Newman. He was a psychotic. He finally went to St. Elizabeth

Hospital. I decided that later on, that is several years after the first episode. He raised so much disturbance over at South Bend and was shouting out of the windows in the summer time. There was no air conditioning. The jail was very close to one of the office buildings there and everybody was hearing obscene yelling so they finally transferred him to Hammond. I appointed a very fine lawyer, Cecil Cohen, to represent him. Cohen couldn't hardly handle him. He tried his own case. He made a mess out of it before a jury. I sentenced him to three years. He went down to Lexington. He filed his own habeas corpus before Judge Ford in Lexington, Kentucky. Judge Ford turned him down but it went to the Sixth Circuit and they reversed Judge Ford because they said that I had not given him an opportunity to have a lawyer at the time he agreed to be prosecuted by presentment rather than by indictment. The case came back to me and so Mr. Walter Keckich, the Assistant United States attorney, didn't want anymore to do with him and neither did I. In any event, we appointed two psychiatrists. One was a Dr. Franklin over at Gary to examine him and they all said he was psychotic and needed to be committed. There was a certain procedure to follow and so he was finally committed to St. Elizabeth. They couldn't handle him there and finally let him out. The government dismissed the case. He then started to make all kind of accusations against Judge Ford and me. He would send these telegrams and letters all

over the country to congressmen, judges and whomever. Twice, I saw him with a sign-board on his back stating "impeach Judge Swygert" at an ABA meeting while I was walking into the Bismarck Hotel. He did the same thing at Indianapolis and St. Louis, they tell me. He finally faded out. I don't know why I didn't hire a lawyer to represent me.

RS: Were there motions for mandamus suits against you?

LS: No. I don't think I had any.

CF: What were some of the good cases that you enjoyed now that we have gone through some of the "dogs?"

LS: In which court?

CF: In the district court.

LS: Well there were a lot of interesting civil cases and some interesting criminal cases.

CF: Was there anything connected with the Korean war?

LS: We had a lot of draft dodgers. During the McCarthy period we had some cases involving failures to testify on un-American activities.

CF: Were those cases tried? Who were the people at fault?

LS: I don't remember. I do know that Professor Emerson from Yale came out and testified in one case.

RS: These were criminal contempt cases and the House of Representatives was prosecuting?

LS: That's right.

RS: Did you also have some Smith Act?

LS: No. McNair v. Minnesota of course was the prior restraint on First Amendment but there was a case involving Playboy out at Gary in which the prosecutor told the newsdealer at the South Shore station he couldn't sell Playboy anymore. A man by the name of Wexler who was then a lawyer and later became a professor at Valparaiso and is now at the American University Law School represented Playboy and I ruled in favor of Playboy. It's in the books. Playboy was one of the first prior restraint cases.

CF: Were there any desegregation cases, i.e. open housing?

LS: Not while I was in the district court.

RS: When we were talking earlier, not on the tape, you talked about the Jehovah Witnesses case?

LS: Oh yes. Those were during the Korean years.

RS: The Jehovah Witnesses were being prosecuted for what?

LS: They were prosecuted for not doing anything. They were usually classified as non-combatants. They were usually assigned hospital duties and different types of non-combatant duties. They wouldn't do anything so the government prosecuted them. I took a very hard view of those cases. There weren't too many Jehovah Witnesses but mostly Amish and Mennonites. There were a lot of them and mostly around the eastern part of Indiana: Angola, Warsaw, Goshen, Lagrange, and Elkhart, in that area. I would beg them to go to the hospital but they wouldn't do it. If they persisted, I would give them five years. A lot of the judges especially those in Chicago would give

them two years. I took the position that they would be eligible for parole in two-and-one-half years, or less. You had to serve two years in the army. I think that was the minimum. If they wanted to serve in the penitentiary, that was up to them. I didn't feel that they ought have the premium of getting out in six months. That was my theory at least.

RS: None of those were any cases of the municipalities trying to prohibit them from going door-to-door or anything?

LS: No.

RS: These were just straight draft cases?

LS: Yes. I don't think I had too many First Amendment cases outside of the Playboy case.

RS: There were some in the early days with Jehovah Witnesses, I think?

LS: With distribution, yes but I didn't have any.

CF: Indiana for a longtime had a history of segregation particularly in the southern part of the state. In fact that forms the background of the Indianapolis school desegregation case, state approved segregation. Was that true in the Northern District of Indiana?

LS: Not as much. I think particularly in Gary because a big black population was always there.

CF: Did you have any cases of civil rights violations at that time?

LS: None that I can remember. My first school case was the one out at South Holland. Then I had the Indianapolis case.

RS: When did you first have a law clerk? Was it the first year on the bench?

LS: In 1946 I had my first one.

RS: At that time you had a secretary, a law clerk and who else?

LS: Just a secretary and a law clerk, that's all.

RS: You had them for one year at a time?

LS: The first two law clerks, I had for two years. I had a person by the name of Norman Brandt, my first law clerk who was from Indiana University and the other one was from Indiana University also and his name was Hanley Hamil. By the way, I had a lot of habeas corpus cases.

CF: Out of Michigan City Penitentiary?

LS: Yes. I could tell you a little bit about that place. I appointed clerks for one year and they were mostly from Notre Dame. In 1954 I appointed a University of Chicago law graduate, Walter Roth, who is here in Chicago and then another Northwestern graduate, Jerry Levy and then back to Notre Dame until 1959. Rufus Cook was my first black law clerk. He was from the University of Chicago and Joe Morrow was from Indiana and then back to Notre Dame until 1963 when I appointed my first woman law clerk and her name was Judy Biggert. She was from Northwestern. I then went back to appointing from Notre Dame, then Yale, and the University of Chicago.

CF: And, Harvard.

LS: Yes, Harvard. I appointed three from Harvard.

CF: I was your first Harvard.

LS: That's right.

RS: What about the habeas cases?

LS: I got those right away when I was a district judge. I think that is where I ruled on the Stevenson case. Then there were a lot of others from Michigan City. I used to appoint good lawyers to represent them and they didn't like it, of course; but they had to take these cases.

RS: These were pro bono?

LS: Yes, pro bono. We used to have the judges subpoenaed to testify as to what they did in the trial. I guess there was no record. In any event, these state judges were resentful of course, especially to have a state court judge come in and defend himself on habeas. I remember Judge Emson from Shelbyville, Judge Pell's hometown. He came to South Bend. He was a good judge. He was so angry at me that he was subpoenaed to testify in this case in which he had presided over in state court. Judge Parkinson came up from Lafayette. I usually apologized and was very nice to these judges. In a sense there wasn't anything I could do about this. I was helpless. I don't quite understand the procedures at that time. I guess there were no records. There were allegations as to certain things in the state court. In any event, there was a lot of that.

RS: Were there many federal habeas cases? You didn't have any federal prisons in your district?

LS: Well later on a few. Of course, in 1955 Section 2255 came in. I think in the fifties anyway.

RS: Did you get any of the duty of fair representation cases?

LS: We had quite a number of labor injunction cases. We had those kind of cases. We had a couple in Hammond, several in Fort Wayne, and South Bend.

CF: What about class actions?

LS: There were some, not many. I can't remember what they were. There were several. I don't know when the Section 1983 cases started. It must have been in the late fifties or early sixties.

CF: During this time, what were your responsibilities as chief judge other than to hire the chief probation officer, clerk, bankruptcy referee?

LS: Well we tried to set-up a system. When Parkinson came in, that was very difficult.

RS: He was the second judge.

CF: Where did he sit?

LS: He sat from 1954 to 1957.

CF: But where? Did he sit in Lafayette?

LS: He lived in Lafayette and he wanted to stay in Lafayette.

CF: I can see why you would have problems with apportioning the district.

LS: At that particular time, there was a new location for holding court, namely Lafayette. It was through

Congressman Halleck. A congressman by the name of Wood who had preceded him a longtime ago in the twenties. His district ran from Lake County to Lafayette. Lake County was Republican until 1932. Wood then built this Post Office in Lafayette.

CF: Yes.

LS: They built this Post Office and designed the upper floor for a courthouse. It never was realized until Parkinson came along. They used it for other things, for example Agriculture, IRS, and so forth. Parkinson was appointed at the same time the district divisions were redrawn so he stayed in Lafayette. There was no business in Lafayette. I didn't know if I was the chief judge or he was because he was so difficult to get along with. It was a very unhappy situation. He said he would come to South Bend. I took Hammond and Fort Wayne. I had about two-thirds of the cases. He went to Fort Wayne a few times but that was not too good either because he would rule on some motion and the losing lawyer would try to have me reverse Parkinson. It was a very unhappy situation. He was a very unhappy and insecure person. He had some psychological problems. He was a loner. He didn't work well with people. I was very unhappy with my association with him although I remember that I got a wonderful impression from him at the start. I went to Lafayette as an Assistant United States attorney once to his state court to present a motion for the government. I

wired him telling him that I was coming from Hammond. I was coming from the station to go over to the state courthouse and there was Parkinson waiting for me. He took me over to the courthouse in his car. This I thought was quite a courteous thing for a state judge to pickup a lawyer and take him over to the courthouse. When he became my colleague, I found him very difficult, extremely so.

RS: There was no question when that second judgeship position was created that he was the one that was going to get the judgeship and Halleck had done that in order to do so.

LS: No. They were trying to get a third, both for the north and south. That was during Truman's administration. That didn't go through unfortunately. I think the Republicans had control. A man by the name of Paul Jasper would have been the judge. He was a democrat. He went on to the Supreme Court. It misfired. Then they created a judgeship in Northern Indiana under Eisenhower. Judge Grant was probably the logical one to get that job because he was chairman of the Eisenhower campaign in Indiana and he was the logical candidate for the judgeship. Mr. Halleck knew Parkinson as both were raised in Rensselaer. For one reason or another Halleck had more power than Senator Capehart.

CF: You said that Parkinson was very difficult to deal with? In what ways?

LS: Well like I was saying, unfortunately, most of the time he wouldn't even talk with people in negotiating situations. He would say things in a tentative way and he may concede a little bit and say I might do this or I may do that. Parkinson had this unhappy faculty where he would say, "You promised this, you just got through committing yourself." It is hard to deal with a person like that. He would have you tied-up. I probably should have been more assertive and said, "No I am the chief. Let's do it this way." It was the same thing with vacations. He would say, "I want to take this vacation and go away." He would never consult me.

CF: Was it between he and Cale Holder for the court of appeals and Parkinson got it?

LS: No.

CF: In the fifties?

RS: That was part of Judge Hastings. The two of them were being considered at the same time and that ended up with being an extra vacancy?

LS: No, Hastings came into being when Swaim died.

RS: Right. What happened is that Judge Hastings replaced Judge Duffy and Judge Parkinson replaced Swaim and at the same time Knoch replaced Lindley. I felt that the Indiana people were split between which one, Hastings or Parkinson, would be sent to Chicago?

LS: No, that wasn't the problem. There was a question as to whether or not Hastings or Parkinson was going to be the

chief judge. They got their commissions at the same time. Parkinson was very upset about that.

CF: Why, because he wanted to be the chief judge?

LS: He wanted to be on the Supreme Court. He felt that is where he should be, at least that was the rumor. In any event, Senator Jenner talked to me. I knew Jenner although we were very much opposed and our ideology was entirely different. He supported McCarthy. He was almost like McCarthy in many ways. He said some very damaging, libelous things against Marshall who was the Secretary of State under Truman. In any event, I knew him before he became a senator, from Indiana politics. When I was with the Department of Justice, I used to go over and visit Senator Jenner. In any event, he suggested that I come to the court of appeals. The reason that he did that was not just because of our friendship but he felt that there was more patronage on the district court than the court of appeals.

RS: Right.

LS: In any event, wanted to promote me. I think that was the reason. He did this through Herbert Brownell. Once I remember that Brownell invited me to come to Indianapolis to see him. This was in 1956. When this was going on, I said that I didn't know if I wanted to come to the court of appeals. I remember that I said to my wife at that time I don't care who goes to the court of appeals, I just want one of us to go. Then Mrs. Parkinson was the one

that started to throw some sharp knives into me. Then Halleck got into the picture and Parkinson came up here.

CF: What were the knives she threw?

LS: She said that I had some emotional problems earlier in my life. She questioned my competency et cetera.

CF: To whom? To Halleck?

LS: To Halleck and to the party.

CF: What was her background?

LS: She was very ambitious. She was more of a schemer than he was.

RS: He immediately came up here and had health and emotional problems.

LS: Yes. He had his own problems. I think he had them for a long time. He was a very good judge in Lafayette. When he did try a case, he would try to make sure, that there would be no appeal. He did the same thing when he was on the district court. This is a story that I like to tell. When he was appointed, I went to Lafayette with Judge Lindley who came over from Danville. I was the only judge at that time. He was going to be my colleague. His induction was at the county courthouse at Lafayette. There were a lot of people, lawyers, et cetera. The lawyer who was head of the bar association gave a eulogy for Parkinson and said, "Judge Parkinson had an enviable record with the Supreme Court in Indiana. He only had three appeals in eighteen years and that all three were affirmed." Lindley was on the bench with me and he leaned

over and whispered, "Luther, that record isn't going to last very long from now on." Then Parkinson and his wife took me and my wife to a place on Route 52, to a famous restaurant outside of Lafayette, to have dinner that evening. Parkinson said, "I have to make an apology." I said, "why?" He said, "I have got to tell you something, I never went to law school." I said, "What difference does that make?" He said, "I have always had a very bad feeling about that, it makes me feel inferior. I am ashamed of the fact that I didn't have a legal education." I said, "Why Lin, you shouldn't feel that way, that is to your credit. Look at Bob Jackson, on the Supreme Court, he didn't go to law school either." He said, "I know, I just don't like to think about it."

RS: When Judge Parkinson disappeared, did most people just think that he had either fallen into the lake or committed suicide or something and not that he was a victim of foul play?

LS: Well, there was that allegation but I never thought of it. I don't think anybody really felt that. They were not sure if he committed suicide or not. He was in bad shape at that time emotionally. You know the story.

RS: Right. I knew that he was taking medication.

LS: Medication! He was also drinking.

RS: Mr. Carrick at one time said that he thought he was drinking heavily.

LS: I didn't know that he drank. I understand that later on he was a sort of secret closet drinker. He was a tee-totaler as far as I knew. We would go over to the Knickbocker Hotel cocktail lounge and he would never order a drink. He would drink a soft drink. It was later that I learned that he would go to the bars around 1212--near Rush Street and Division--and this particular day he drank a lot. You know the story?

CF: No.

LS: Joe Thinnes, the Marshall, was taking Judge Knoch to the Northwestern train station from 1212. They were driving down Division in Joe's car and they saw Parkinson coming out of one of these taverns along Division and they said, "Oh my God, that's Judge Parkinson. What is he doing in there?" They thought that he never even took a drink. That's the last time anybody on the court ever saw him. He had been in Montana vacationing that summer and when he came back for some reason he couldn't make a go of it. Carrick told me that he would write an opinion and that he had a basket full of scratch papers wadded up with just maybe one sentence on the paper. Apparently, he was so distraught that he couldn't think. In any event, this particular day, it turned out that he had gone to two or three of these taverns and had been drinking double martinis wherever he had been. He came out and stumbled over to Lake Shore Drive near 1212. There he got a cab and went to the Drake and then walked underneath the

subway under Lake Shore Drive. He paid a dollar tip to the cab driver who drove him to the Drake Hotel. He lived in an apartment on Lake Shore Drive east of the Drake Hotel. He went into the Drake on Walton Street. There is that underpass that is sort of a subway with shops. He was stumbling through there and the last person who actually saw him was a man by the name of Walter Pepke who was head of the Continental Can Company. He didn't know Parkinson but he saw this man who obviously was in a very drunken condition. He was going towards the Oak Street entrance; that's the last. Apparently, he went down underneath that underpass on to the lake shore. There was a raging November storm. They found his hat in Washington Park. I have a theory on that. His coat was on the beach. His body wasn't found until next March. The hat, I think somebody picked it up on the Oak Street beach and probably wore it and then they read about the judge's disappearance in the newspaper and probably thought that he had better get rid of that hat. So he took it and laid it on the beach in Washington Park; otherwise how could it get there? Of course, that gave a little credence to the foul play. I don't know, there are two theories as to whether or not he was in a drunken condition and fell in or whether it was suicide and got into a drunken condition in order to do whatever he wanted to do. I think he was very depressed. There was every indication that he was.

RS: He was succeeded on the district court by whom?

LS: Judge Grant. He finally made it. I had exceedingly good relations with him.

CF: Did you continue to have Fort Wayne and Hammond or how did you split it up?

LS: He took South Bend and Fort Wayne and I took Hammond and Lafayette. It was about half and half.

CF: Had you known him from Notre Dame?

LS: Yes, to a degree, but I got acquainted with him later on when I was an Assistant United States attorney. He was first in the county government. He was a lawyer for the Liquor Board Commission. He became more and more active in politics and became a candidate for Congress. He beat George Beamer for Congress.

CF: Did he?

LS: Yes.

CF: That's interesting. Beamer succeeded you on the district court. In 1968, Grant was the chief judge.

LS: Yes. Grant knew my uncle. My uncle was chairman of the Liquor Board Commission. His name was John, the one that I was telling you about. It was all interconnected.

RS: We could talk now a little bit about the court of appeals and the district court judges from the period when you were on the district court and your relationship not as a colleague as such but later. What about Judge Evans?

LS: I had a very good relationship with Judge Evans. I didn't have much of a relationship with him before I became a judge except that I argued some cases before him. I had a

lot of civil cases before the court of appeals as Assistant United States Attorney. After I became a judge, I guess he recognized my shyness and my feeling of unease. He was always very helpful. I would visit him frequently. I remember many times I would get at his chambers around one or two o'clock and he would keep me there until around five o'clock. When I got back home in Hammond my wife would say, "Where were you?" I would say, "I was visiting Judge Evans." She would say, "How could you be there for four or five hours?" Anyway, he had a lot of stories to tell and I can't remember them all but I can remember one about Watson which I remember very well. He told me that there was a case involving a man by the name of Finkelstein from Terre Haute who had been a politician of sorts. He was a very strong supporter of the Senator, probably contributed to Watson's campaigns. In one way or another, he had been very much of a supporter of Senator Watson's. This man got into trouble of some kind. He was prosecuted before Judge Baltzell. Judge Baltzell gave him a very stiff sentence. Baltzell didn't like Sparks and like most federal judges they had forgotten politics after they got on the bench. In any event, Baltzell being the hard judge to start with on sentencing gave him a hard jolt. Finkelstein appealed his case. While this appeal was pending, Evans told me he got a call one day while sitting in his chambers in the corner room at 1212 looking out at Lake Michigan. The telephone

rang and he answered the telephone himself. The calling party said, "Judge Evans, this is Senator James E. Watson from Indiana." Evans said, "Yes." He said, "Judge, there is a case up in your court, it involves a man who is a friend of mine by the name of Finkelstein. I wouldn't want to interfere in any way with your judicial duties and I want you to call it as you see it. But if there is anything that you can do legally to see that this man gets a new trial or have his case reversed, it would be wonderful. He is a wonderful man." He went on to tell the background of Mr. Finkelstein. Evans said, "He was getting more disturbed all the time but he let the Senator ramble on." I don't know what Evans said at the end. In any event, he was very upset, he walked around the corridor and became quite angry about this situation. I guess that he felt that he should have cutoff Watson sooner. Pretty soon the telephone rang again, "Judge Evans, this is Senator Watson again." Evans was about to say, "Listen, I don't want you to ever call me again." He was about to criticize him when Watson said, "Now wait a minute judge, I want to tell you what happened. In the first place, this Finkelstein was in my office and he was bothering me and wanted me to do something for him. I felt that I almost had to under the circumstances because he had been so good to me. I let my good judgment get away from me. I made that call while he was here. Now listen judge, before you berate me or give me hell, I

don't give a damn what you do with that fellow. I don't care how you decide that case."

RS: Did Evans laugh when he told the story?

LS: I guess he did. It had mellowed by that time.

RS: During that period in the forties, the Court of Appeals was a fairly congenial court even though they didn't always agree?

LS: Oh yes. When I used to go there--that was before I got there--they had a television in Finnegan's office and there wasn't that much work in those days and when the Cubs and the Soxs were playing, they would watch the ball games. Swaim had a television too and the judges would go over to either place and watch the ball games.

RS: You mentioned earlier your relationship with Minton. Who was the next Indiana judge after Minton? Was it Swaim? Was he a friend of yours?

LS: Yes. We knew each other back in the political days.

RS: He was an active Democrat?

LS: Yes, he came from Sheridan, Indiana, which is near Indianapolis. He was also part of the McNutt legionnaire group.

RS: He had been on the Supreme Court of Indiana?

LS: Yes. I think so, I am not sure. Treanor had been. I don't know about Swaim.

RS: Were you particularly friendly with Treanor?

LS: I didn't know him at all. I met him a few times. He was reputed to be a very good judge.

RS: He got ill just before he came here I guess.

LS: He had a very good reputation.

CF: Did you have many dealings with the Northern Illinois judges at all?

LS: When I was a district judge, I did with Campbell. When I was in the U.S. Attorney's Office, Campbell was the U.S. Attorney in Chicago. I had some communications particularly with some of his assistants i.e. Morrie Walsh, Ed Callaghan, and then Campbell himself. Then of course when I became a judge and because of my previous acquaintance with him, he came to my induction. I did what Steckler in a way did when he came up to see me. I came in to see Campbell and asked about some things. I knew Barnes very well. I knew them all.

RS: You would see them all at the conferences?

LS: Yes, at the conferences. I would see Judge Holly, Judge Igoe, Judge LaBuy.

CF: When did the conferences start?

LS: Long before 1939. I have a picture of four or five judges and that is when Judge Slick was around. I think Chief Justice Hughes started the Circuit Conference.

CF: Well they got together even without the statute.

LS: Yes, I think so. Then of course the statute came in about the late forties. I have a story about Judge Major if you want to hear this?

CF: Yes.

LS: Judge Major, I think, had never read the statute. Somebody told him that the bar should participate. He ignored that for about two or three conferences when he was chief judge. He decided that he had better do something about it. He got a hold of me as a district judge and said that he would like to have me name a couple of lawyers. He had Duffy do the same thing and Steckler do the same thing at Indianapolis. Steckler named Kurt Pantzer. George Haight, a patent lawyer and a man by the name of Quarles from Milwaukee. We brought these men into our conference. We paid for their lunch. It was the first and only time that the judges entertained the lawyers, I guess. We had a nice session with the lawyers. There were just two from each district. Haight and I have forgotten who the other person was from Chicago. Pantzer and Haight then got their heads together and said, "We want to form an organization, a circuit bar association." That was the genesis of the Seventh Circuit Bar Association in 1950. Pantzer was really the spark plug. He drafted the by-laws. He was a fireball.

RS: Did the chief judge of the Seventh Circuit make big differences administratively?

LS: The first conference that I attended was in 1943. I was appointed in October. Anyway, we had a meeting and Slick and Haight were there together. In any event, he brought me to the conference and introduced me. I can't recall how that could have happened. In any event, we didn't

discuss much about administration, very little. Henry Chandler, at that time had just become head of the AO and he came out and usually made a very boring, dry talk about statistics.

CF: This was after the separation from the Department of Justice?

LS: Yes. The attitude toward the Administrative Office was cold to say the least among most of the old time judges. Sparks became particularly incensed if he thought anybody from Washington was telling the judges how to operate their courts. Of course, the Administrative Office wasn't telling the judges how to decide cases. The judges didn't want any contact with the AO at all even about supplies. Most of the supplies were commissioned from the Department of Justice until that time. It didn't seem right that we had to go the Department of Justice to get supplies or whatever deal as personnel matters. Chandler had a difficult time. I remember that Sparks was very rude and boarish to him. At one of these conferences after Chandler had been talking for awhile, Judge Sparks said, "Henry." Of course, Henry had been known in Chicago for a long time because he was the publisher of the ABA Journal. Judge Sparks says, "You know Henry, I am getting all of this mail from you and I don't like it. I finally had to get another wastepaper basket and one of those is reserved for all of the envelopes that you send to me. I

just put in that wastepaper basket." Poor Henry was about to die. He was very hurt.

RS: That was unusual for Judge Sparks? Wasn't he usually friendly?

LS: Yes. He was very nice to me and in fact I came up here in 1948 on an assignment and I remember even in those days he said, "In a few years, I wish you would come on this court." Major said this too. He wrote me a letter once and said that I am hoping that you would come up here. I didn't get here until 1961.

CF: Didn't you handle an emergency motion and one of the judges was in the hotel?

LS: That was Adair.

CF: Maybe you can tell that story?

LS: Well anyway, again I was all primed to meet a federal judge. He said that instead of coming to Peoria, he was going to be in Chicago on assignment from Judge Evans because Judge Slick was always taking vacations. This was also something in which, Slick would have disqualified himself anyway. Anyway, he said that "I will be at the Morrison Hotel." We made a date. I came to Chicago and had these papers and so I called at the desk and he said to come up. I went up and I didn't expect to see him in his shorts sitting there drinking a bottle of beer.

RS: The majesty of the law.

CF: What about Judge Stone?

LS: I had a very good relationship with Judge Stone of course and that was a different type of thing. I tried cases before Judge Stone. He was pro-government. Judge Slick was anti-government. Judge Stone and Judge Lindley were both very quick. When Adair became judge, he came over to South Bend and also helped. Judge Briggles did that too. My relations with Judge Stone were quite friendly. Of course, later on as a colleague, he was very nice to me although I reversed him once and I will never forget that. I was up here and he was a district judge.

CF: You were appointed up here or were you sitting by designation?

LS: I was on a case in 1948 when I was a district judge and that was a case where he was involved with Minton. That's a good story I think. It was a case involving a woman who had been naturalized in the United States and then she had expatriated to Italy and then found that she had lost her American citizenship. She attempted to get it back. She brought a suit against the government in Madison and Judge Stone ruled for her. It came up to our court and I wrote the opinion, that is by assignment, in 1948 in the court of appeals and we reversed Judge Stone. It then went to the Supreme Court. They affirmed the court of appeals. Judge Stone told me this story. Judge Stone said he was in Washington and visited Judge Minton, who was on the Supreme Court by that time. Minton said to Stone, "You know we had a case that came up from your court. It had

an Italian name, it's in the books." Stone says, "I know, I know." Minton continued the conversation and said, "We hated to reverse you and affirm the court of appeals but we felt that we just had to. This woman didn't deserve getting back her American citizenship." Stone says, "I know, but the trouble was that neither you, or the court of appeals saw her in person." Evans told me a story when he was appointed in 1916 that they didn't have much work in the Court of Appeals. He would go around the Circuit and try cases in the district court. When he first went out he would talk to the district judges. I guess they talked about cases with each other more than they do now. He said he would say to the district judge, "I am sorry that we had to reverse you in such and such a case." The district judge would say, "Yes I know, I made a bad mistake in that case. I am sorry that I did and had to put you through all that trouble." Evans said that, as time went on, he would go around and he got much better acquainted with these district judges.

Tape 5

Recording of Senior Circuit Judge Luther M. Swygert as interviewed by Ray Solomon, Director of the Court History Project and Collins Fitzpatrick, Circuit Executive on Friday, March 22, 1985.

LS: To the various district judges. Evans would say, "You know we had such and such a case of yours. We had to reverse you. I am sorry that we had to do it but we felt that we had to." The district judge would say, "I know, but I don't know what went wrong with those guys up there on your court. I think I am right when I ruled and I still think so."

RS: Did you learn early on not to take it personally when they reversed you?

LS: I never felt good about it and I still don't.

RS: I take it that after awhile you learned to just go ahead and do what you were going to do?

LS: Oh sure, you forget it. I never kept track of how many times I was reversed or affirmed. I didn't want to know the statistics. I thought that was unimportant.

RS: What were your impressions of Judge Finnegan?

LS: I didn't know him too well but I don't think he was a heavyweight. One thing he did which I didn't think was quite right. When he dissented, he would never say why.

CF: He didn't do a lot of his own work?

LS: I don't think so.

RS: I guess his brother owned a paper?

LS: I don't know too much about his background. He was a Democratic appointment. He was a machine appointment.

RS: The other judge would be Judge Major? The stories about his going down and talking to the people at the barbershop?

LS: He didn't mean that.

RS: I knew he didn't mean it literally. I get the impression sometimes from meeting some of the people that he was more intuitive than "book-learned" as they say.

LS: He had a lot of good common sense. There was no question about that. He was a very warm person. He had a peculiar sense of humor. He would come up here from Hillsboro, Illinois after a new crop of law clerks were around. He would walk around and introduce himself to the young law clerk, like Judge Hastings's for example. There were no women law clerks in those days. He would say, "Well, are you Judge Hastings's new law clerk? Where did you go to law school?" The law clerk would say where. "How long have you been here?" The law clerk would say about three months. Then Major would say, "I noticed that in the last three months Judge Hastings's opinions have improved a great deal." He would pull that all the time.

CF: That's a good line.

RS: He was very conservative politically, wasn't he?

CF: He didn't like the Labor Board.

LS: I don't think so. He was a farmer.

RS: He seemed to write a lot of pro-taxpayer and anti-IRS decisions.

LS: Evans was more of a liberal.

RS: Right.

LS: He was more of an intellect. I think Evans was one of the better intellects.

RS: Evans use to write law review articles and do some scholarship.

LS: Right. Sparks had a good mind. Lindley had a good mind and he was sharp. He had a very analytical mind.

RS: I guess Judge Marshall was his clerk.

LS: We pick his cases once in awhile, I mean the court of appeals, and cite them.

CF: When you were chief judge in northern Indiana, you also sat on the Judicial Conference, didn't you?

LS: Only one time and that was in 1960. Then I became a court of appeals judge and didn't sit again until I became chief judge.

CF: Just one time.

RS: So you had to be the chief judge in the circuit to be in the conference?

LS: No. They were elected.

CF: But it was rotated on a basis of seniority among the states?

LS: Yes. I think Judge Campbell was the first one.

CF: Yes, Campbell served and I think Tehan also served.

RS: Did you get involved at all in those years assigned by the Judicial Conference to committees?

LS: From the beginning, in 1945.

CF: On the U.S. Judicial Conference, were you ever on any of the committees?

LS: That's what I am talking about and that was in 1945. I was on that with Judge McAllister.

CF: What committee was that?

LS: Uniform Admissions for Attorneys.

RS: Did that kind of committee work take a lot of your time or not?

LS: Not too much. I was on a committee with Skelley Wright, Judge Tuttle, Judge Lindberg, and Albert Maris who was the Chairman of the Committee on the Revision of the Law. Everybody asked me what that was and I had a hard time telling them. Albert Maris revised the code with his committee and he kept it going. Actually, it had a lot to do with legislative proposals and procedural matters. I was on some special committees i.e. Habeas with Judge Sobeloff and Judge Phillips from Denver. Also Judge Parker, I knew him quite well. He was turned down for the Supreme Court.

RS: Right.

CF: You were on that committee on the publication plans for appellate courts.

LS: I was never on the Court Administration Committee. The Court Administration Committee met with the Maris

committee, Judge Biggs from Philadelphia and the Third Circuit, and Judge Maris went to college together and they headed these respective committees. We would always meet together so maybe that is what you are talking about. We had separate agendas but their committee would always talk with our committee. It was sort of a hodgepodge. We would always meet at the same place, usually in Colorado or some place like that.

CF: I frequently get calls from court administrators and attorneys who call about our rule in the circuit on sending cases back to another district judge for a new trial. They ask, "Can you send me the legislative history on that." My response is, "What you see is what you get." Maybe you can give us some of the legislative history on that. That was your idea.

LS: It was my idea, because I had the experience when I was U.S. Attorney, having cases remanded after a reversal, only to get the same result. At the same time the judge remembers that you prosecuted the appeal and he doesn't like that either. So you have two strikes against you, first he thinks he was right and he doesn't like to have been reversed and he doesn't like you reversing him. I thought that this was not good. I saw too much of that at the district court level and also on the court of appeals level. So when I got to be chief judge I decided to try to do something about it. I had some resistance. Judge Hastings thought it was an affront to the district judges

and, of course, Judge Robson and some of the district judges felt so too. Robson was very upset about it. Hastings talked against it. Stevens, Sprecher, Kerner and Kiley helped to push it through.

CF: Fairchild and Cummings too?

LS: Yes. Everybody recognized the problem. When I go to other districts, they tell me that they wish they had a similar rule but they can't get it through. There was one problem because in districts with only one judge, it would be necessary to have an outsider come in and retry that case. I said there aren't many of those and what's the difference if the value is having a uniform rule rather than having to assign judges from another district. We could always say that a judge should not try the case the second time around. But that's singling him out.

RS: Right. That's a bigger affront.

LS: Here, you have a uniform rule with a few exceptions.

CF: Right, and the exception is that they can retry it.

LS: Yes, but sometimes you have to make a calculation. I see it in these other circuits and it is bad. I tried to get it in other situations, but my efforts weren't successful--one of them was with summary judgments where you reverse the judge and say it's going to go back for a new trial. You get the same result usually because he doesn't like to try the case. He figures he was right in the first phase on the summary judgment. I don't say that it is deliberate, it is just unconscious. Also lawyers

are uncomfortable. I think it really puts the lawyers on the spot. They feel the slate isn't clean.

CF: The appearance of unfairness.

LS: Right, and secondly, the other situation is where preliminary injunctions are reversed. The judge grants the injunction. He is reversed. Then he tries the full case and the result is the same.

RS: Did you ever try and bring that up at the Judicial Conference?

LS: The reason for the rule is stronger when a case is reversed after a full trial.

CF: That's correct but it suffers from the same problem that we pointed out before. To apply it the court has to say Circuit Rule 18 shall apply. Of course, it is not as bad as saying it will go to a new judge but it is the same thing in effect.

RS: Did you ever try when you were on the Judicial Conference to bring it up as a national rule?

LS: No.

RS: You had enough battles here?

CF: No, he had enough battles there.

LS: That's right. I see this in other circuits and the panels that I usually sit with say that they wish that they didn't have to send it back to the same judge, but there is nothing that they could do about it.

CF: One of your other innovations that you brought along as chief judge was the random selection of the panels which I

think as a whole now have been adopted around the country. In fact, they are done on computers and maybe a little more advanced than the black bowler hat that you donated to the clerk. The black bowler hat still serves the court well. Maybe you can give some of the history of that!

LS: When I came on the court of appeals, I wasn't aware of their practice. I learned later that the chief judge made up the panels. It didn't seem to be any problem but as time went on, I could see that there could be problems. I could see that it might be abused. I was concerned about it and I decided that if I was ever the chief judge I was going to try and change the practice. I talked to Skelley Wright who said they had a problem in the D.C. Circuit. They demanded from Judge Edgearston, the chief judge, that he adopt some kind of random method of choosing panels. He was so incensed about it that he would hardly speak to the other judges after that. He thought that they impugned his integrity. I realized that it was a ticklish situation. (I wasn't too anxious to become chief judge. I didn't think I would be a very good administrator. But Hastings and Major pressed me to become chief judge.) The question was when a change should be made? I didn't want to do it right away because I felt that it reflected on Judges Castle, Hastings and Duffy. I had some sensitivity about it. I had to bide my time. The opportunity was provided during the Conspiracy Seven case. All the judges

were asking, including Hastings, "Who are you picking for the panel." I said, "I don't know, it is going to be a big case and it is going to take a long time to write an opinion." It occurred to me that this was the time to have a random selection so I called a meeting of the judges. Were you with me?

CF: No. This was before you hired me.

LS: We had this meeting in the robing room and I don't know how I brought it up, but anyway, I said, "This case is coming up and it is going to take a lot of time and whoever gets it better get ready for it and write opinions and so forth. There are two cases, one on the contempt and the other the main case. I don't want to name the judges, I would rather do it some other way and that is by random." I had Irene prepare in advance slips with the judges names on them. I put them in plain envelopes. Somebody said I don't know who, maybe it was Fairchild who said, "No, no you go ahead and do it like you have always done it." I said, "No, I don't want to." I guess everybody realized that it would be better that way because nobody wanted this case. It was such a horrendous case. I said, "I have to have something to put these envelopes in." Judge Kiley went into the bathroom and found an empty box. I said, "Roger, you draw." He shook the envelopes in the box and everybody was hoping that their name would not be drawn. There were a few "Hail Mary's" going around. The three that were drawn were

Kerner, Pell, and Cummings. Later Kerner had to recuse himself because of his indictment. We had to go through the drawing again. We adopted the same procedure and everybody again was hoping that they would not be Kerner's substitute. Fairchild's name came out of the box. From then on, I decided that we had to appoint panels by random. I had a small brim hat that I didn't wear. I decided to donate it to the court to use in the drawing. Is it still being used?

CF: It is still being used. I can tell you that the U.S. Attorney's office still doesn't believe that we draw the names out of the hat. I think there is a conspiracy theory on that.

LS: When I was chief judge I use to invite the other judges to come in and observe. Remember?

CF: Yes. I can remember one time when the drawing was for the Black Panther case. Pell said, "I don't even want to see it, I know that I will be drawn and sure enough he got it." Cummings got it too. Right?

LS: No, I got it.

RS: Yes, you got it.

CF: Right, Pell, Fairchild and Swygert got it. We thought it was going to be the same panel and then it would look like the fix was in.

RS: There wasn't resistance after that?

LS: No.

RS: The Fifth Circuit had charges in the mid-sixties about the stacking of panels in civil rights cases; that they were putting on the liberal judges. The Mississippi judges were very upset over that and vice versa?

LS: I don't know.

CF: It wasn't that. I think either Judge Wisdom or Judge Tuttle was very open about that. They basically said that if they put the Mississippi circuit judges on, they would have an en banc every time. They stacked that to reflect what they thought was the makeup of the court to avoid en bancs.

LS: That is one of the things that I wanted to avoid. As I say, I don't think that the other system was abused but it had possibilities and also the appearance itself was bad. Lawyers would say, "How did this panel get named."

RS: Right.

LS: How did I get these three judges?

CF: Didn't you once tell me that you thought that at least when you came to the court that you had gotten some dumpy cases or dogs?

LS: That was on the assignment of opinions. I got all the dogs. The more senior judges would take the easy cases and give me the hard ones.

RS: Has it always been the practice here that the panel itself determined who would write it as opposed to the chief judge assigning? I know that in the Sixth Circuit the chief judge assigns who is going to write the opinion.

- LS: That's the same thing in the First Circuit. I think that is a crazy system. I think that the chief of the panel ought to make that decision. We did have a problem because we didn't know who was getting what. Before I became chief judge, one didn't know whether he sat on more cases than some other judge. I was always wondering if I had been assigned more cases to sit on than some other judge. I felt that this should be corrected. Now, everybody sits the same number of times.
- CF: You mean until you became chief judge nothing was reported?
- LS: Yes.
- RS: Didn't the chief judge have to make an annual report to the Administrative Office about how many times the judges sat or was that just for the opinions that were outstanding?
- LS: Yes. The same thing with motions. That was a complicated system. As motion judge, if you wanted a panel, you had to write to the chief judge. Then he would assign two other judges so you were wondering why you were getting these extra assignments when you had a lot of your own motions to handle and then you got on a panel. I thought I got more of these assignments than Judge Schackenberg, but I couldn't prove it.
- CF: That was also a way of dumping your motions on somebody else at that time by asking for a response?
- LS: Sure, if a motion would come to you and it looked pretty hard, you would say to Carrick, "Let's get a response."

Then it would be transferred to the next judge. We devised a system of rotation so that the motion judge had two "buddies," one who preceded him and one would succeed him so there was always a shifting of panels. Everybody would have the same number of assignments.

CF: Somebody questioned the other day as to whether or not that system should be changed so you did it so that everybody would sit with everybody else on the motions panels. In other words, to mix it up a little bit more. The problem is that the system we have is easy to calculate for everybody. No judge is looking or almost no one is looking for the handling of motions so you have to convince the judge that it is really that judge's turn for handling motions especially if it is not their motion's week and there is a disqualification. The regular system is that you can go to everybody and they understand it and it is easy to explain.

LS: The new practice was automatic. The other thing, of course, is that we didn't have any staff law clerks until 1961 so Carrick handled all the motions. The poor guy would come in with a great big stack of motions.

CF: It was after 1961, I am sure.

LS: Was it? It was after I became chief judge and in 1969 was when Bob Gettleman came as the first staff law clerk.

CF: I came in 1971.

LS: When did Bob come in?

CF: He was gone when I came. He was Castle's law clerk, but he stayed with you. He helped handle the motions and then Maggie Frayley came and she was Sprecher's second law clerk. Then there was a void I think until 1971 when Dolores Coulter came in on Cummings' payroll and Kiley brought me in as sort of a half motions and half elbow law clerk.

LS: Until then we had no staff law clerks, the judges handled all of the continuances and everything. Carrick had been around here for so long I would ask him, "What do you say?" He would tell me what he thought of the case and how to handle the motion. He knew more about these matters than I did. Of course, if it was a legal question, he couldn't answer that very well.

CF: The chief judge used to also makeup the calendar.

LS: Yes.

CF: So literally the clerk would bring in all the briefs that were ready and rumor has it that there was a scale that they would weigh them on and set the calendar by trying to mix-up the big cases with the little cases but without really looking too much at them.

LS: They had an antiquated printed calendar with all of the names of appeals and the judges that they were being appealed from. It always fascinated me to see what judges had more appeals than the others. Duffy was upset when I discontinued the practice. It was costing the library fund an awful lot of money. The Administrative Office

wouldn't pay for it. It was a thousand dollars a year. It served no useful purpose except that Duffy used it as a sort of record to see what cases he sat on. He said, "I have been using that thing to keep track of my cases. I don't think we should get rid of it."

RS: Did you buy him a little calendar or something?