

Tape 8

Continuation of an oral interview of Senior Circuit Judge Luther M. Swygert as interviewed by Ray Solomon, Director of the Court History Project and Collins Fitzpatrick, Circuit Executive on Wednesday, June 19, 1985 and Thursday June 20, 1985.

LS: In that period the Seventh Circuit was--I don't know how it stacked up with some of the other circuits. I don't think it had the reputation that the Second Circuit had.

RS: No, I don't think probably any court had, I mean that. I don't know of any court that will ever have that sort of reputation.

LS: But, in the first place the Seventh Circuit has always had the advantage of having the important cases before it. That is one of the reasons why it has had some prominence but also I think the intellectual stature of the court was certainly equal to most of the other circuits.

RS: Another judge who joined was Judge and then Justice Minton who came in 1941, I guess. Did you know him from Indiana?

LS: Very much, very early, I got acquainted with him in 1933 or 1934, maybe 1932.

RS: But you had never been involved in any of his political, I mean, you were . . . Were you a strong supporter of him in his Senate races?

LS: Well, ah I don't know, I am trying to think where I was in 1934 when Minton was nominated, I don't think I was

against him but I was sort of on the opposite end of the, I was in the different camp than the McNutt group.

RS: You were in the McNutt group.

LS: I was in the VanNuys group.

RS: In the VanNuys group and he was in the the McNutt group.

LS: And of course I had some feelings for Pat Manion, hopefully he would get it. Manion was a candidate for Senate, and he worked hard for the democratic party and thought he deserved it, but when the Legionaire situation obtained under the Governor McNutt's regime broke; Manion lost out to Minton. Minton was very much a part of the Legionaire/McNutt group, clique.

RS: And then he came, after he lost in the Senate, went to the White House, and then he came . . .

LS: Well let me say that I became very friendly with . . . I was a candidate, I mean I was a delegate in 1934, state delegate, and I guess I still was a district chairman, I'm not sure, but in any event I took a rather neutral position, and when Minton then Senator, I didn't see too much of him, but then when he came to the Court of Appeals I was, I had a lot of contacts with him and he swore me in.

RS: Oh.

LS: He and Sparks came out from Chicago, Evans couldn't come for some reason, and he and Sparks and Campbell came out from Chicago to my swearing in, my induction in 1943, October 1943.

RS: Did he, was his health already beginning, he was already having health problems in those days.

LS: At that time, well he improved after he went to the Supreme Court, I think, he had phlebitis (?).

RS: Oh that was what it was.

LS: Yes they called it milk-leg when he was here on the Court of Appeals.

RS: Because I noticed from the correspondence that he was quite often at Walter Reed.

LS: Yes, Yes.

RS: I guess he and Justice Douglas were old friends?

LS: I don't know.

RS: Because there were a couple of times they were mentioned. There was one angry note from Evans to the other colleagues. Evidently Justice Douglas at that time was assigned, I think for a short time with the Seventh Circuit Justice, just for a brief period, and he came out to the Circuit basically to pay a call on Minton. I guess they were friendly from the Washington days and Douglas, when Minton wasn't in, didn't go by and see any of the other judges, he just went back to the hotel, and Evans wrote a very snotty note to the other judges saying that Justice Douglas was here, but declined to see the rest of us. He was really quite upset. But, you could easily see his anger and you could read the anger in the letter.

LS: Well, I think Evans himself was very--I could understand. He had a personality that would feel that way about it.

RS: Sure.

LS: But he was a very tough judge on the bench, very penetrating and not too--his questions sometimes were rather sarcastic.

RS: Well then of course Judge Major was on the bench, so I take it that, it seems like the balance of personalities worked out to have a very congenial court.

LS: Oh yes, I think, they always would go to lunch together. I don't know of any animosities, any personality problems at that time. I can't think of any. Finnegan, I think he was--I don't think he rated the stature of the others. I'm not sure Swain did either.

RS: No, what was Swain like, do you think that he was not probably as, as strong an intellect as the others, he had been an Indiana politician.

LS: Well, he was also on the Supreme Court of Indiana, he came from Sheridan, Indiana, down near Indianapolis. He was a nice person but I don't think he had the intellectual abilities that some of the other judges had.

RS: What about, Judge Duffy came on then in 1948. What was he like? I really haven't read much of his writings.

LS: Well Duffy, of course, liked patent cases to start with, he was, I don't think we ever, there was never any effort to just throw him patent cases but he got more than his share, he liked them. Duffy was a pretty emotional type of a person and he had likes and dislikes, strong likes and dislikes.

I have a favorite story about him if you have seen the books. When he wanted to emphasize something in his opinion, he would put an explanation point and once when he wrote an opinion in which he reversed me he put two explanation points.

RS: After reversal? [Laughter]

LS: No, not. [Laughter] I could dig it out [laughter] if you want to look at it some time.

CF: That is funny.

RS: I only, I got to talk with him just

LS: It is too bad that you didn't get him on because he has a lot of stories.

RS: I mean it was at the very end, and he was--

LS: You knew him pretty well didn't you? Collins.

CF: Yes, I was the one that, when I came to this court, you had me using his chambers which is where my office is now. Dolores Coulter who is a staff law clerk on Judge Cummings payroll and I would split the weekly motions. We had all these pro se papers spread out in his chambers. Generally Joe Thinnes the Marshall was to tell us when Duffy was coming. And sure enough something got screwed-up. I'm on the phone in the secretary's office and Duffy comes in with Andy his law clerk. He doesn't speak to me. I mean I am just part of the furniture, but its not a piece that belongs there. And he says to Andy, "Who is this?" I am looking across to Duffy and I am saying, "I will call you back." [Laughter] Click. Then

I went in and picked up all our papers that we had. Dolores didn't get to share in this occasion, and I was bowing and scraping as I was picking up the papers, always facing him, working my way out of the chambers, never to be seen again. [Laughter] The reason I was that way was because I was aware that Delores had sent something up in an envelope and had not put it in a franked envelope and Judge Swygert got back about a three page letter about how, if Duffy has to keep paying the postage due on envelopes, he is going to go bankrupt. It was just not right. There was a tendency to use over-kill to make his point.

LS: One case in particular, he wrote me a very severe, critical letter about why I hadn't responded to his opinion and I was about ready to call him and have a confrontation, my law clerk was urging me, because he felt that I had been--that Judge Duffy had been unfair about it and that he and I had spent hours and hours writing a dissent. Judge Duffy couldn't understanding why I was taking so much time. Did I tell you this story?

RS: No.

LS: So, I got this very, I still may have it somewhere, I got this very harsh letter and overly critical about my delay, he couldn't understand. He had gotten his opinion out right away and here I am sitting on this dissent. So, I was upset and wanted to fight back at the moment. And I had all kinds of replies in my mind as to what I was going

to say either on paper or otherwise. And something told me to wait, not to be too in a hurry about it. And I can remember I went out to Dune Acres, where I started to walk up and down on the beach and got less and less angry about it and cooled off. And then, finally, I didn't write anything, didn't contact him, in the mean time this dissent had gone out. I got a letter back from Duffy and he was not all together apologetic but he was half apologetic. He said, "apparently your dissent crossed my letter to you" and he said I am sorry but, I don't know if he said he was sorry, but he said he was glad I got the dissent out. But he was a tough customer sometimes. I am so glad I didn't do it, because you know, it would have been a very unhappy situation if I had tried to come back.

RS: Was he intellectually, a tough customer as well?

LS: Well, he had a good . . . Yes, he was intelligent. I don't know exactly if I would call him brilliant by any means but he certainly knew what was going on. He had strong opinions, very strong opinions.

RS: Did he, did he cross swords with, I mean, would he get people like Judge Major, or Swaim or people like that angry at him?

LS: I don't know, not that I know of. But he certainly, he didn't make any bones if he disagreed with what the Supreme Court did. He not only said it privately but he put it in some of his opinions that he disagreed with what the Supreme Court was doing or had done.

- CF: Did he disagree with some of the Warren Court decisions from Illinois?
- LS: I think so, I think so to some extent, although, no I don't know. I think so, I really can't categorize the cases that he criticized but I know that he wasn't discourteous but he indicated that he didn't agree with what the Supreme Court was saying.
- CF: Do you remember that a number of times I went up to Milwaukee, as your law clerk, on three-judge court matters. Every day at the Milwaukee Athletic Club Duffy would hold "court." There would be McBride. He was a Magistrate who was a former state senator, a Republican state senator. But I guess he and Duffy had struck-up a very friendly relationship when they were in the legislature, McCarty who was the bankruptcy judge and I don't know . . . ?
- LS: Judge Tehan.
- CF: Well there was always Bob Tehan who was the father of Democratic Party politics in Milwaukee County, and in fact to a great extent in the State of Wisconsin I guess because he was the only big democrat and Duffy of course was the only statewide elected Democrat.
- LS: The Irish mafia.
- CF: The Irish mafia, it was always amusing because Reynolds who was the former governor would come in there to eat and he was just sort of like . . . He was allowed at the table but he wasn't part of the inner mafia. [Laughter]

LS: [Laughter] McBride, usually he knew how to handle Duffy. So he would always call him senator. He never would call him judge. He would say, "Senator, How about it--Do you remember some incident about the Mexican War. And of course that set off Duffy and he would entertain us for the rest of the lunch. His adventures with Pancho Villa.

CF: He also told the story--he loved to tell the story about how his nomination came about. He had been a district judge in Milwaukee and Truman who he knew from his senatorial days became the President and supposedly the normal procedure was for the Attorney General to send over three names for a judgeship. And so the Attorney General comes into the President and says, I have three names for you for the Wisconsin vacancy on the Seventh Circuit. The President said, "Well, is Judge Duffy still out there in Milwaukee in the Eastern District?" The Attorney General said yes, and then Truman said, "Well, is he doing a good job?" And the Attorney General said yes. And then he said well then that is whom we should put up there. And so he didn't even look at the three names. Well, in any event, Duffy who told this story a lot was telling it one day when Justice Tom Clark was sitting with the Court of Appeals. Clark then said, "I always sent three names to the President."

LS: [Laughter] I remember that. [Laughter] oh yes, [laughter] he and Stone of course, they were all Irish, you know.

CF: Now did Stone hold court in Wausau, I mean did everybody go to Wausau?

LS: Well he came down to Madison, he brought a lot of people up to Wausau too. He also had a few cases over by assignment in the Eastern District, so he would come over there.

Any way one time Duffy had a retirement party or some kind of a recognition party--several of them. He was pretty vain, in fact, and he loved this adoration. So, anyway I was up there at one of these meetings, maybe you were along anyway we, ah, I can't think which judge was with me. We went up to this party, this banquet, the Bar put it on or something and Stone was there. And so, Stone had to make a statement, now let me see how this is. I am trying to recall now what is, I lost the punch line. But I guess Duffy had reversed Stone on the Court of Appeals and so Stone had to make a little talk for Duffy and he was rather complimentary and I was sitting with Tehan who said, "Thats not what Stone was saying about Duffy last week!" [Laughter]

RS: Did you know Geiger at all?

LS: No.

CF: What about Grubb?

LS: Well Kenneth Grubb had a pretty good head on him, intellectually. I think he was a fair judge. I don't think his political philosophy was too pronounced. I think he was fairly in the middle. I don't think he was

either too liberal or too conservative. He was a pretty hard worker when he was up there, started when he was in his prime. Well liked, I think, among the Bar. I don't think he was a hard person to try cases before. I think that he got along well with the Bar.

CF: It is a good place to have a break.

RS: Yes why don't we do that.

Continuation of an oral interview 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, June 20, 1985.

RS: Judge we were talking yesterday when we finished up about some of the judges on the Court of Appeals when you were a district court judge and we were in the middle of the 1950s. I guess we had talked a little bit about Judge Swaim, and the next judge to be appointed was Judge Schnackenberg. What are your memories of him?

LS: Well I wasn't acquainted very much with Judge Schnackenberg until I got on the Court of Appeals. I met him a few times, of course, at Judicial Conferences. But I don't know that I had any particular impressions about him until I got on the Court of Appeals in 1961. He was one of my colleagues until he died, I believe, in 1968. And so, I got quite well acquainted with him between 1961, the fall of 1961, when I came to the Court of Appeals, until the time he died. I had many impressions about Judge Schnackenberg. He had a lot of good qualities and he had some that were not particularly admirable. On the good side, I think he tried to be fair in his judicial work and in looking at cases, and also fair in his personal relationships. On the other hand he could be quite arbitrary and be quite abrupt and sometimes, I would

say, even abrasive. Well for example, he was pretty stubborn. He had a German background and maybe that, the German, that characteristic, the fact that he had that background may have brought out that characteristic. In any event he had I think good intelligence. I believe he went to the University of Chicago, but I'm not sure.

CF: He did.

LS: But, he was a court reporter for a while. He started out as a court reporter and I don't know, I think he then went to college I believe. He came from a little town, Wheatland, Indiana (?). He was born in Wheatland, Indiana (?) and his father was on the railroad. I think even Judge Schnackenberg was on the railroad for a while I believe. In any event I know his father was from the Chesapeake and Ohio. I think the C&O but I'm not sure about the railroad, but it doesn't make any difference. But in any event he was a state court judge and of course came here. Now he had problems even in the state court as I understand from some of the lawyers and some people liked him, some people didn't. Very much dislikes and likes. For example, he got into a big controversy, struggle, a bitter battle, with I think one of his former law partners, and this went into a court, this went into Illinois courts and is now a reported case. I have forgotten the background, but I think Judge Schnackenberg lost eventually in the Supreme Court of Illinois and he was quite, he never was reconciled to the fact that he

felt the court not only incorrectly decided against him but that there was some personal reasons why the court didn't go along with his, didn't agree with his position.

RS: That controversy was all before he became a judge here.

LS: Oh yes, even before he became a state court judge. I think when he severed his relationships with his law partners I think it was a problem of fees.

RS: I see.

LS: But when he was a state court judge I think he had the reputation of being kind of a hard, hard man to deal with as far as appearing before him and he was sometime very abrupt. And dictatorial, and sort of arbitrary.

RS: Do you think . . . I was going to ask when you said he was arbitrary whether there was sort of a political dimension that he was a Republican. But you don't think he was unfair?

LS: No, in those days, it seems to me the ideologies of these judges during that period was not necessarily so prominent. I thought he was conservative and he didn't always go along with me and Judge Kiley, but on the other hand, I never thought of him as being a hard line conservative and if he felt that there was something wrong in the way of a criminal case, for example, he would, I mean, if there was an unfair procedure he would be very, very quick to say that this was an unfair trial. So I never thought of him in those terms at all. But the way

he conducted himself on and off the court I think was somewhat arbitrary.

RS: Ah ha.

LS: For example, he had little cards made up which would show minutes and even seconds, I think you saw those things around Collins, and so he would have those in front of him and you would have 45 minutes or 30 minutes and he would keep very strict account of the time and when the time was up he would say to the lawyers, "Your time is up!" And the lawyer could be right in the middle of a sentence and he wouldn't let him finish a sentence. And then he had a sort of a sadistic type of practice, I thought. He would, if he was presiding, may be sometimes if he wasn't, he would say to the lawyer, "Just repeat what you said, just repeat what you said, just what did you say just then." Of course the lawyer, he was nervous to start with and of course he would go blank, he couldn't remember the exact words he said just before. The poor man, the poor lawyer would stumble around. He would say, "Just tell me just exactly what you said," and this would go on. Well I don't know what happened and finally it would drift off. Then he would say, "Where is that in the record?" And of course the lawyer wouldn't know what page, you know, "Well" he would say, "where is it, what happened to the record where that fact is or where you made that statement, where is it in the record?" And it was

sometimes very embarrassing. I was very upset sometimes the way he had handled things like that.

CF: Well sometimes your law clerks would help.

LS: Yes. [Laughter] One of my first law clerks, he would go over to help the lawyer trying to find the thing in the record. [Laughter] He would thumb through it quickly. [Laughter] And of course Schnackenberg didn't care whether it was in there. He never cared.

RS: He was just doing it?

LS: [Laughter] He was doing it, of course, and he said he never read the records. And I mean the briefs. And I don't think he did because I think there was a little rumor around that he knew a little more about the case than he claimed he did before he went to court. But he claimed that he never read the briefs and I think some of the law clerks briefed him before he went in. He told a story on, he liked to tell stories on himself and he said that one time, it was Sidley & Austin, it was one of the early partners, very well known, not Mr. Austin. But maybe it was. Well whoever it was, it was a very prominent lawyer in Chicago. And so, anyway, he was arguing a case in the Seventh Circuit Court of Appeals. This was before I got there. Schnackenberg came on in 1954. Anyway, he said, he told this story on himself, he said this lawyer appearing before me seemed to wind down, so I said, "Well Mr. So-in-so, what's your next point? Go

to your next point." And the lawyer says, "Judge there, there is no next point." [Laughter] At argument.

CF: That was George McAndrews wasn't it who helped the attorney with the record.

LS: [Laughter] Yes, George. [Laughter] Schnackenberg was very penurious and he was very tight with money. And he would, he would be unbelievable. He would tell stories on himself about how he would save pennies. And oh, he told me a couple of really choice ones. Can I tell one?

CF: Sure, tell a couple.

RS: Sure.

LS: [Laughter] Any way he said that his wife had an account I guess he did too, but he never used it, at Carsons. So he got a bill and he would always go through these bills, scrutinize them with great care as to whether or not they overcharged him or what it was for, what each charge was made for and the monthly charge he got on his charge accounts. So there was an item of \$2.85 as I recall it that he couldn't account for, he talked to Hazel, his wife and she said, "I don't remember Elmer what I bought." And he said, "Well I think its a mistake." So he called Carsons and they didn't know, they couldn't account for it, so he went over there and he waited in line at the credit department and they looked around and they couldn't satisfy him although they said it was a legitimate charge they were sure. So he didn't pay it for months. But every month this \$2.85 item showed up of course so he got

disturbed about it. So one day he says to Miss Cooper. He said Miss Cooper, his secretary, you call Mr. Martin the guy over at Carsons. And he says I want to talk to him, so the secretary called, and of course Mr. Martin's secretary said, "Well who is this?" "Well its Judge Schnackenberg and he wants to talk to Mr. Martin individually, personally." "What about?" "Well its about an account," and then I guess the Judge got on and said I want to talk to Mr. Martin personally, "Well who is it?" "This is Judge Elmer J. Schnackenberg, United States Court of Appeals." "Oh, just a minute." So Mr. Martin gets on, and so Elmer, the Judge tells him about this difficulty, this unaccountable charge, that he thought it was unfair, that it was a mistake, and that he didn't want to pay it. So Mr. Martin heard him on it and said, "Well Judge thats all right. We'll take it off. We'll take it off so you wouldn't see it anymore." And Elmer said I don't know if he paid it himself or what but he said I didn't pay it.

[Laughter]

CF: There is the story. Were you in court when Peter Fitzpatrick?

LS: Oh yes, that was a good story.

CF: Why don't you mention that one.

LS: I talked to Peter Fitzpatrick [laughter] several times about that. [Laughter] He remembers it. [Laughter] I am referring back to his habit of being arbitrary on time, cutting lawyers off. I will never forget when Mr. Peter

Fitzpatrick, a very good lawyer, no relation to Collins I guess. But anyway, he is still around. He is a pretty elderly man by now, but anyway, he was a good, a very good lawyer and so he was arguing before our Court and he was comparing his client with his adversary, with his opponent, the other side and he made a comparison between David and Goliath and David was under a certain handicap but he was ready to take on the giant. So, Mr.

Fitzpatrick developed this analogy and was ready to talk about David pulling his arm back with his sling shot and just about the time Mr. Fitzpatrick was ready to by word and by gesture pointing out that David was just ready to throw the rock, Elmer said, "Mr. Fitzpatrick your time is up!" And Mr. Fitzpatrick [laughter] was still . . .

[laughter] his hand was up ready to throw the stone

[laughter] he never got it off. [Laughter] Mr.

Fitzpatrick was, I could tell he was furious. [Laughter]

Because he could get furious too. [Laugh] You know him.

[Laughter] . . . Oh, sorry, but anyway Schnackenberg had

problems with his family too. [Laughter] I don't know

about Hazel. He had a lot of kids, a number of boys and a couple of girls and he would give them each \$500 every

Christmas and some of them, one was in South Carolina, one made a very successful career out in Los Angeles, so Hazel visited, spent most of her time with her children. And I

don't know what there relationship was but I had a feeling [laughter] it had developed into a kind of situation were

she didn't want to be around [laugh] Elmer too much.

[Laughter] I don't know if that is true maybe that is a canard. But anyway that is a fact, she didn't spend much time at home.

RS: Was he personable with the other judges or was he . . . ?

LS: Yes, well except he and Duffy didn't get along of course they were stubborn and both opinionated and they rubbed each other a little raw. And I think the genesis of this was . . . and I heard this from somebody, maybe Schnackenberg himself because I was pretty close to Schnackenberg. When he was on the state court bench, he would always arrange to do it himself, he didn't have anybody in the sense that he could do what he wanted to do as far as his calendar. And he would always go to Florida for a month in March. Take the whole month of March off. And so when he came to the Court of Appeals, they never had done that. I don't know what their schedule was or what the court calendar was like, but the month of March was not designated as a vacation month. But Judge Schanckenberg just picked up and left. I think he might have done that. But whatever, he just took off the first year he was here. He stayed down in Florida for a month and of course Duffy the Chief Judge didn't like that and Duffy was very, he didn't like judges to take vacations except in the summer. He took some vacation in the summer, not too much up at Woodridge (?). He had a home up there and it was on the lakes in Northern Wisconsin but

other than that he never took any, he kept right on the go all the time and he was even upset with me when I took a vacation once in June and went to Copenhagen and the Scandinavian countries even though I had all my cases written. He was not happy at all that I took off during that period. But anyway he took offense at Schnackenberg's insistence of going to Florida for that, and so I think that started it off between them so there was never--you could tell there was a little back-biting between them. When you talked to Schnackenberg about Duffy, he would say things that were not too kind about Duffy and vice versa. Other than that I don't know of anybody else. Ah, when one of the present judges came on, at first he would go over the other judges drafts and he would pick out, little, what you would call fly specks. So this particular judge did it to Schnackenberg. He had a whole page of fly specks and this went on a couple of times. And finally Schnackenberg called him down [laughter] and said, "Listen, you write your opinions, [laughter] I'll write mine. [Laughter] I don't care about your telling me how I should write mine [laughter] or how this punctuation should be handled." [Laughter]

RS: Did Schnackenberg do a lot of his own work or did he rely a lot on his clerks?

LS: Oh, he relied on his, no, I think he wrote, he scribbled long hand, maybe he did it on the typewriter. I'm not sure. Well he was a typist, no, I think he might have

used some of his court reporting skills. They may have done some drafting, but I think he primarily wrote his own opinions. I was next to him on the 27th floor, and when he would get motions, he didn't particularly rely on his law clerks on those sort of things I guess. In any event he would come down to see me if there was something he wanted some advice about. Of course, I had my own times to handle motions, but he would bother me a lot, by saying, "Well now, I got a motion Luther, and what do you think about this?" And I would say, "Well, I am developing into a third law clerk for Schnackenberg" [laughter]. Ah, but he was pretty hard boiled.

RS: Actually before we go on maybe to Judges Hastings and Parkinson, I am curious about--you sort of brought it up and you tied it into something you talked about yesterday too. I think it was Judge Sprecher who used to talk about there was an article written sometime in the 60's about the Seventh Circuit in the past or something and there is that sort of joke that they make about certain courts, that the Supreme Court when it gets the motion for cert says, where is it from? And, is there any other reason to grant cert other than the fact that we know there is a presumption that cert is granted from the Seventh Circuit. And, you were just saying that, your impression was that ideology wasn't so prevalent but I wondered. It always seemed to me that in part it was one of the things that happened when the court had been dominated in the

30's and 40's really by Roosevelt Democrats. I mean there was only one Republican on the court for a long time. And then Eisenhower made a number of appointments who, my sense of it, were not the strongest intellects necessarily that the court had ever seen. But also it appeared where the Supreme Court was beginning to move in one direction and the judges on the court were sort of, not necessarily even moving in the opposite direction, but sort of staying where they thought the law was and that they may not have been as adept at following the Court as say maybe some of the other circuits where they had, for what ever reasons stronger appointments. I just wondered whether that sort of analysis makes any sense to you?

LS: Yes it does, and I think there was, I wouldn't say that there was certainly not a liberal court. It developed in the 60's with Kiley, Kerner and myself and others that could be classified as on the liberal wing. But, for example what you say is true. We got a lot of cases, labor relations cases, review of board orders. I still think the venue is the same. You could, you had a choice, not a complete choice of where you would go. But you could take it for example if there was some party, I mean as between two circuits, there could be some choices.

RS: Right.

LS: For example, I remember a case coming up from Pittsburgh, another was from Michigan.

RS: I think their corporate headquarters was near.

LS: Yes I think so, maybe the corporate headquarters was in Chicago and the plant was in Pittsburgh say. In any event, there was a lot of these cases brought to the Seventh Circuit and why? That is by the employers because they felt that they got a better deal in the Seventh Circuit as between unions and employers. And, I think the Board, and if the Unions were intervenors, they had a friendly court. And, I would say, I don't think its, as you say it was so prominent but there was this swing and of course the Supreme Court beginning with Warren went the other way.

RS: Right.

LS: There was a divergence certainly. But I don't know that there was, I don't think that anybody had any burning ideas, reactionary ideas, too much. I didn't feel that. And the ordinary case, diversity case, or ordinary case in which policy, economic or social policy, was involved, I think there was no . . . the Court was fairly bland.

RS: Right. And I guess the big shift began with some of the criminal due process cases then, I would imagine.

LS: Well, we didn't have § 1983 cases then.

RS: Right.

LS: And we had some, but not too many habeas, and the criminal cases were not, a lot of criminal cases, but certainly not like today. And certainly no, well we didn't have any discrimination [cases].

RS: Right.

LS: School busing hadn't come in.

RS: Right.

LS: Segregation, so on.

RS: Right, right.

CF: Judge Major did not like labor board cases.

LS: Thats right.

CF: But he was a New Deal democrat.

LS: Yes, well Duffy had some of that too.

RS: Right. Major was not, I mean Major was a New Deal democrat with a difference though. I mean he really . . . there was some opposition when he was put up here by the sort of liberal part of the New Deal. I mean he was, he had been in a Democratic Congress, but was sort of a downstate Democrat and the people that supported Judge Holley (?) for instance were not all that enthusiastic about bringing Judge Major on the court, and I think he certainly was not as ardent a New Dealer in that sense as Judge Trainor (?) or some of the . . .

LS: Or Minton.

RS: Or Minton, right.

LS: Oh, Minton was not necessarily very liberal himself, in a way. He had his own feelings about certain things. I remember, I tried a case in the district court. I went to Indianapolis and tried a labor case, and it is still in the books. I wrote an opinion where the Union had used the courthouse to meet. And there was a problem there as to whether or not they could use the courthouse, the

courtroom, to conduct a meeting. That's generally the background. And I found for the Union and wrote an opinion. And I remembered that Minton talked to me and said, "You went wrong, that was totally wrong."

CF: Was it reversed?

LS: No, it never came to the Court of Appeals that I remember.

RS: It always seemed to me that Minton was not like Frankfurter but some of the same ways. The definition of what liberalism was changed on him. So that when it moved from sort of allowing administrative agencies some discretion to regulate political, economic matters, he could go along with that part of the New Deal. But when it became much more individual rights

LS: Yes, you're right about that too. And I shouldn't, I don't know how I should say this, but I was not very, I was not impressed by Minton's intellectual ability to analyze problems. And I don't think he was a major light in the spectrum.

RS: Right.

LS: And I am fortified by that by talking to each one of his law clerk's and they felt that he was a light weight.

RS: It's clear that he had, he clearly at some point had he was a Yale graduate who had done brilliantly as a law student, but I think you are right.

LS: I thought he was an Indiana grad?

RS: No, I'm pretty sure, well he might have done an LLM but I thought he

LS: I thought he was an Indiana law school grad.

RS: I can't remember, may be, he may have gotten an LLM at Yale. But he was a student of, I'm pretty sure, let me just check, I think he was a student of Taft for a while.

LS: I never thought of him as a Yalie, as being a Yale grad.

RS: He won a Bryant (?) Fellowship from the American Association of Law Schools and he spent a year at Yale. He received his LLM there. Thats right, you're right.

LS: But didn't he go to Indiana?

RS: He went to Indiana for a LLB. Your right, I'm sorry, Judge.

LS: He was a football player you know.

RS: At Indiana, I guess I do have that. I guess just in that vein then the next appointments were quite controversial which, ah, both as someone from Indiana, and as a judge, you must have been aware of the . . . because it was Judges Hastings and Parkinson.

LS: Do you want me to talk about Hastings first?

RS: Sure.

LS: Well, I was quite an admirer of Hastings in many ways. He was pretty conservative.

RS: Ah, ha.

LS: He dissented several times from me, because I had taken, for example the Supreme Court reversed, they said he was right and Judge Kiley and I said you're wrong. But it had to do with, one of the defendants in the Conspiracy Seven, the man was shackled.

CF: Bobby Seal.

LS: Bobby Seal. And that came up on some sort of interlocutory appeal as I recall it. Judge Kiley and I felt that, according to the Sixth Amendment you had a right to, maybe the Fifth, you had a right to be present at your, a defendant in a criminal case had a right to be present in the courtroom and even though he was disruptive you could handle him in the courtroom and shackle him if necessary. So that is the way I wrote the opinion I think. Maybe Judge Kiley wrote it. But in any event, Hastings was very, not mean, but his dissents were rather caustic some times. I felt he went out of his way to be caustic. Anyway, he said he disagreed, he said that if he was too disruptive he could be removed from the courtroom and the trial could proceed. So that went to the Court of Appeals, now Governor Thompson and [now] Judge Flaum took the appeal. I think Judge Flaum argued it in this Court; I don't know who argued in the Supreme Court but they reversed this court. I am only using that as one of the illustrations of the conservative bent that Hastings had. His opinions indicate too that he wanted to shorten things up. He didn't spend too much time talking about, analyzing the problem particularly, he'd have short paragraphs and fairly short opinions. But he got his work out and he was good, the big thing I think that Hastings could be noted for was that he was a good administrator. He had and ran a very tight ship. And he didn't innovate

much, in fact I was upset a couple of times. One thing that I felt that he didn't do and should have done was to fight for the maintenance, the continuation of the situs of the Court of Appeals at 1212 rather than the present Dirksen Building. I think Hastings didn't want to go along but he didn't put up any fight for it. As I recall it, he more or less felt, well if the government wanted to do it, GSA wanted to do it, they could do it. Now the Ninth Circuit and the Third Circuit they put up a fight and they saved their buildings.

CF: The Ninth Circuit did, I don't know if the Third Circuit did.

LS: Well I think they did something, they didn't get cowed by the GSA. I always felt that Bill Campbell was the one that engineered this and I accused Bill once, direct to his face, I said you got us down to the Dirksen Building and got us out of that 1212. He said, "No I didn't." But I still feel that Campbell was part of it.

RS: So you think that part of the way of selling Congress or whatever on the idea of building a new building for the district court was to say well we could save money by closing 1212.

LS: Oh, I'm sure that's what they said, and of course they could say well you only paid \$35,000 or some ridiculous sum for that building, that building of the Stevens Insurance Company. In the bankruptcy. I think it sounds

ridiculous and I might even be wrong but I think the government only paid about \$35,000.

RS: No, it was dirt cheap, I remember.

LS: Of course they sold it, for I don't know what, millions. A couple million I suppose. Well anyway, he kept good track of everything, opinions. Although, for example, nobody knew how many opinions they had. I didn't know what Schnackenberg had, I didn't know what Major had, or Kiley. He was a good administrator in the sense that he ran everything ship-shape but he didn't initiate anything. He took the court as he found it and he left it as he found it pretty much.

RS: Was there a council in those days or did he run things pretty much out of his office.

LS: Yes. He'd have an agenda, about three or four items and you would be out in twenty minutes.

RS: I see.

LS: And he would say what he thought and what ought to be done. And everybody would agree usually and that was it. But he, for example, wanted only one law clerk. Of course I guess we all only had one law clerk, but he was entitled to two secretaries he didn't want two secretaries. And Miss Bay (?) was his secretary and she worked awfully hard because she had a lot of things the other judges didn't have, the other secretaries didn't have. Marion Bay (?). But he, I think he had the respect of his law clerks, I'm sure. And he had the respect of the judges except that

they felt he, was a pretty--I think one of the reasons why he had this kind of a disciplinary attitude was because he went to West Point. He was a West Point graduate and I think that the Army, West Point influenced the rest of his life.

RS: He was a . . .

LS: Very strict disciplinarian.

RS: My impression is that he was in some sense a lawyer's lawyer, he had a sort of very disciplined and kind of mind, that he wasn't a philosopher but had a fairly good direct analysis of a problem.

LS: Well that's right, I mean he was admired particularly by the corporate lawyers and the bigger law firms and the members of the elite. And he had a good reputation of course among all the bar but I think he particularly had an "upper class lawyer" stata. This particularly was his favorite. I mean he was--he admired them and they admired him. And for example I think he wasn't much of a joiner but to show you, I think he was a Methodist in Washington, Indiana. So when he came to Chicago I think he decided that maybe it would be better for his purposes to transfer his allegiance, religious allegiance, to Presbyterian so he joined the Presbyterian church on Michigan Avenue.

RS: Thats right. That's where they had the memorial service for him.

LS: So I think this sort of illustrates his view point. I think his feeling was, I mean his sympathies were with the upper class strata.

RS: And was his appointment quite controversial, I mean not his selection per say but the whole question of who would get put out.

LS: Well I don't remember too much about the Republican maneuverings when he came. Of course he was a good friend of Capehart, they both came from Davis County. Capehart had a farm in Davis County, that's in Washington, Indiana--that was the county seat. And Hastings, his father was a lawyer and they had farm lands and his brother was a lawyer. His brother Ralph had a . . . they were all Methodist and Ralph Hastings almost single handedly organized and put into being a Methodist Home for aged, people who were retired and wanted to go to a home. It is a very well run institution in Franklin, Indiana. So they were public spirited. No question about that. They had a high sense of public duty and rectitude. And I would say that Hastings was quite strict in his personal morals and he expected everybody else to be that way.

RS: I guess he and Parkinson were appointed at the same time I think.

LS: That's exactly right.

RS: Yes.

LS: And I know a lot about that. Parkinson wanted to be Chief Judge eventually. Of course Duffy was but you could see

what was coming up. And they had at that time to retire at seventy. I think Duffy was for that at the Judicial Conference that recommended that change that you had to retire as Chief Judge at seventy. Then when Duffy got to be seventy and he was Chief Judge, he was very reluctant to have to bow out and I think that Hastings always felt and I think it was some right feeling that Duffy was always looking over his shoulder whatever he did as Chief Judge. And when I got to be Chief Judge in the same situation, I think I may have even told you Collins, that I related to him. And I said that I don't want to ever feel that I'm looking over Tom Fairchild's shoulders and I don't think I did.

RS: No.

CF: You know it's interesting to note before I forget it that one of those times we had a party in your office. Judge Kiley came to me and told me. He said you know I never thought that Swygert would be a good Chief Judge I just didn't think that he was organized enough to be a administrator.

LS: [Laughter] I didn't think so either. [Laughter] I didn't even want it. [Laughter] Hastings was a good chief judge, he was very supportive of me. He testified for me at my hearing when I was under fire when I was appointed here although he didn't know me too well. I just knew him through the Bar Association; he was quite prominent in the Bar Association too of course. And he

was very supportive of me and he was always very supportive of me except for a couple of things. He was very upset with the Kerner situation. He thought that Kerner should resign immediately. And of course nobody could force Kerner to resign to start with. And I think that most of the judges here felt that that was a matter for his decision and not to put pressure on him.

RS: But that's sort of in line with what you were saying about his rigid sense of morality and all that. He would think it would be improper to . . .

LS: Yes. Now getting back to Parkinson. I don't know why I think Capehart had something to do with it. Well I know he did. Because it was Hastings' appointment. Parkinson, I could get into his appointment. It was between him and Hastings, I think. I don't know whether they got the same date of commissions or not.

RS: I think so, September, both were the same day.

LS: In any event Parkinson wanted to come immediately up and be sworn in because he felt that if he were sworn in, he would be ahead of Hastings. Now I'm not sure but I think I had something to do with that. Because I had my own views of Parkinson at that point. One way or another, Duffy didn't swear in Parkinson as he wanted to. He swore them in both at the same time. So that there would be no question about who would be the Chief Judge.

RS: Because Hastings was older so he would qualify.

LS: Parkinson felt that if he had been sworn in first over Hastings and he came up immediately and wanted to be sworn in. Duffy turned him down and said, "I'm going to swear you both in at the same time."

RS: And Parkinson was a friend of Haleck?

LS: That's right.

RS: So that it was basically the Senator and the Congressman had to get together in order to . . . I mean I thought one was the newly created position; Parkinson got the additional judgeship. I thought I had read somewhere that there was a question of which one would get the appointment and then they created an additional position.

LS: Maybe so, I don't know who, I think Hastings took Swain's place, didn't he?

RS: Actually Hastings took Major's place because

LS: Somebody had to take Swain's post. Who took Swain's post?

CF: Hastings took Duffy's post.

RS: No, not for Chief Judge, I think.

LS: Oh, you mean Chief Judge I thought you meant . . .

RS: No, in terms of the seat we were talking about.

CF: It was Judge Major.

RS: No, Parkinson, you're right, Swaim's seat was taken by Parkinson. That's right, by Parkinson. Parkinson was appointed to the district court in a new seat.

LS: Oh, yes, of course, of course and that's where Grant came in. Oh, I know the story now. You see Judge Grant was, Bob Grant was Eisenhower's campaign manager in Indiana.

RS: Ok.

LS: They were, they became good friends, President Eisenhower, General Eisenhower. Grant was in Congress, in some way during World War II, Grant through some Committee got acquainted with General Eisenhower and so they were friendly. Personal, not intimate, but they knew each other.

CF: Grant was on the Naval Affairs Subcommittee.

LS: So, in any event, Grant became quite active in the Eisenhower campaign, primary, and then later on in the election campaign. And he thought that this newly created judgeship in Indiana . . . first they were going to have a roving judgeship, that was for awhile, but that fell through. The Republicans knocked that out. Eisenhower came in just before that bill was about to become law or would be acted upon and they threw that out and enacted a bill that would give each district, Northern and Southern district, an additional judge. Grant felt that he was entitled to it and he was, I guess, by all the rules of the game. I think Capehart and I forgot the other Senator, Republican Senator. I think it was Jenner. But, Haleck who was Speaker of the House--nobody knew why Haleck was for Parkinson. They both came from Rennselier (?), I talked to people about this and there's always a feeling that (Charlie Haleck was still alive) Parkinson and I'm not about to, I shouldn't carry, I mean talk about a rumor that's maybe just purely rumor and very unfair and

unjust. It was always, I think, some people thought for some reason Parkinson had a kind of a hold on Haleck. That was kind of the general feeling. Some influence, I'm not sure corrupt influence, but some kind of leverage with Haleck. Anyway Haleck became very active on Parkinson's behalf and was able to persuade President Eisenhower to appoint Parkinson over Grant. Grant was very, very disappointed. He told me that he went out West to the Grand Canyon.

RS: The Rocky Mountains.

LS: What is it.

CF: The Grand Canyon.

LS: No, no.

RS: The Tetons.

LS: No, no the big ones in Montana.

CF: The Grand Tetons.

LS: I'm talking about the National Park.

CF: Yellowstone.

RS: Yellowstone, no.

LS: In Montana.

CF: Glacier National Park.

LS: **Maybe** so. So, anyway he was devastated. So then Parkinson and I was the Chief Judge and Parkinson was the junior judge of Indiana until he came here. That's the end of . . . Then, of course, he was appointed here and Haleck again had the influence. Now, what happened was that Jenner wanted . . . indicated that he wanted me to be

on the Court of Appeals and that was Senator Jenner. I knew him way back. Although he was for McCarthy and of course I was the other way. But nonetheless we were personally friendly. And when I would go to Washington, I would go to see Bill Jenner and visit with him because he was the Indiana Senator. We had known each other since the 30s. He was a young Republican politician and I was a young Democrat politician and so we--He just died by the way, Jenner. So any way we, but Jenner, he wasn't so much for me I don't think, I never was under any illusion about it. I think that Jenner felt that there was more patronage in the district court and that he could maybe influence. I mean that he could if he got me on the Court of Appeals. Parkinson would stay in the district court and that there would be some political patronage that would come along with that. I mean Chief Judge, I would appoint, I appointed the Clerk in the District or the Bankruptcy judges and so on. Commissioners whatever. And also trustees, a lot of times trusteeships, there's not much of that, that was another illusion. There wasn't much of that going on in that direction but I think that that was the motive or the goal I think for Jenner, to try to push me along and up here. And I remember I went to Brownell (?) and Brownell (?) asked me to come to Indianapolis to see him. And I did--that was in 1956. But then Haleck got into the picture and then Mrs. Parkinson, and they started to be very, I mean very

critical of me and knocked me out of the box, using a colloquialism. And Parkinson came here.

CF: Well how did they do it, I mean what were the criticisms of you.

LS: Well they said that I had been sick and that I had some instability, some intensive hospitalizations, so they felt that I, that they used that, some of the, I don't think that they used anything else.

CF: To deal with your . . . his wife was big on that, wasn't she?

LS: She did the knife work.

CF: And that was, I mean that had something to do with your depression?

LS: That's right.

RS: And had he been fairly competent as a district judge or not?

LS: Yes, with all due respect to his memory and to him, that would be fair. I would say he did a good job in the Court, in the District, I mean about reputation. I think he handled the work properly as a county judge and he had respect down at Lafayette. Now he did, he was very self-conscious about, and almost had a paranoia of being reversed. And I will never forget, I tell this story frequently. I went to Lafayette to help swear him in, you've heard this story, and I went to Lafayette to help swear him in and Lindley came over from Danville, only he was over on the Court of Appeals then. And so Judge

Lindley and I, Walter Lindley and I were sitting on the bench in the county courthouse. It was a big gathering there, mostly lawyers from Lafayette, Tippecanoe County and different counties down there. And the Bar Association President gave a eulogy at this induction ceremony for Parkinson. For what a great job he'd done and how he predicted he would be a great district judge, federal district judge and so on. And he said Judge Parkinson had a great, has an enviable record as far as appeals are concerned. He said he has only had three appeals, in eighteen years he has had three appeals through the Indiana Supreme Court of the cases that he had decided and two of them were affirmed. And Lindley leaned over and we were both sitting together, each side by side on the bench, and Walter Lindley leaned over to me and he said Luther that record is going to be broken pretty soon after he gets on the federal bench. [Laughter] He's not going to have that kind of a record, [laughter] something like that. [Laughter] Not going to have that record, [laughter] that records not going to stand after he gets on the federal bench. [Laughter] But when he got on the Court of Appeals or on the District Court he would, he'd have that same feeling, he would maneuver the judges, I mean the lawyers, and get them to agree so that there would hardly be any kind of way that they could appeal his opinions. On instructions he would see to it that they didn't take the objections or if they did have an

objection he would maneuver it so that the objection was overruled or was taken care of. And he made every effort to keep from being brought up for review.

CF: Did he try to do that on the Court of Appeals?

LS: I'm not sure, I don't know too much about his problem here except that he didn't get along. He was a loner, an extreme loner. And I had a terrible, I had a lot of difficulties with him. We would talk something about vacations, how we wanted to take vacations, or how we were going to divide the work. And I would try to be, you know I would go at it in a kind of tentative basis and say well maybe this way or that way and not take an absolute stand. Well I found out that when I would take this sort of tentative view, he would take it as a commitment from me. So he'd say you agreed to that, you agreed to that. So there I am, and I would be upset and worry and stew and I didn't know how to handle the man. He was very difficult.

RS: And then, well, he was only up here for a couple of years, I guess, just two years on the Court of Appeals before he

. . .

LS: Yes. But he had problems here.

RS: Yes.

LS: Even with Judge Knoch. Judge Knoch was one of the easiest men that I knew of to get along with. Judge Knoch told me this story himself. That Parkinson had a sadistic streak in him. And he liked to go out of his way to be critical

with the district judges if he reversed them. So he took off on Judge Igoe in some case, wrote an opinion, very critical of Judge Igoe and Knoch couldn't go along on the panel. And Parkinson insisted that his version be maintained. Igoe was a Democrat, very prominent for his appointment. Knoch was a Republican so there was no partisanship there. But Knoch was a kind man to start with and never said anything. I'm sure never said hardly any kind of words that would be critical of anything or anybody. So he was not, he didn't want to go along with Parkinson. So he told--he gave an ultimatum to Parkinson. He said, "If you insist, I'm not going along with that opinion, no matter what." Which was rather unusual for Parkinson, for Knoch to take that kind of a stand and so Parkinson finally deleted it.

CF: During the early 60s there was a report that came out that was supposed to be a secret report done by Professor Blakey who later drafted the Rico statute for the Senate Judiciary Committee. In it there was a reference to the Acardo case. Are you familiar with that?

LS: Not too much, except that I was here when Judge, I think that Judge Kiley wrote the Acardo opinion, maybe just before I got here, I'm not sure, he came in July and I came in October. I wasn't on the panel but I knew about it. And I know that Judge Kiley, of course, was a very fair judge, extremely fair, but he was very independent and he felt that he wasn't, that he didn't particularly

care, he didn't, criticism didn't bother him. So he had no, even though the Acardo opinion which I think reversed the conviction of Acardo . . . I think, you may know more about this than I do Collins, maybe in a way. But in any event as I recall it he reversed the conviction of Acardo who was a Chicago monster.

CF: Mobster.

LS: Mobster and ah, (laughter) monster (laughter) and I guess head of the mob, one of the heads, of the crime mob in Chicago. Any way his conviction was reversed and then this Blakey thing was obscure to me as to just what happened. But I know that, of course, Judge Kiley being from Notre Dame and that Blakey was also from Notre Dame--In Congress this criticism had come from Robert Blakey. I think it hurt, I think it hurt Judge Kiley very much to get that, to get criticism from that direction.

CF: It was supposed to be a secret report I think and at some point it was leaked to Life Magazine. It was a case that if I remember correctly Kiley wrote, Schnackenberg was on it with him, and then Duffy dissented. What they had done is that they had wiretapped Sam Giacanna and he had said or somebody in the First Ward said that they knew Kiley and had put in the word. Kiley wasn't at the gathering some where over . . . I don't know if D'Arco was involved or not. But it was the First Ward political people who also had ties, alleged ties to the mob and one of them that was wiretapped and or picked up on the electronic

surveillance and they mentioned that somebody had talked to Kiley about the case. And there really is nothing more than that but out of that, plus the reversal, a lot was made.

RS: But the remark was made a couple of years after?

CF: It was made before.

RS: It was made before the opinion.

CF: To my knowledge.

RS: Oh, it was just the report that was after.

CF: Yes.

RS: But the government didn't make any motion or anything at the time.

CF: No, I think anybody that read it with any kind of a legal training would figure that these guys are just blowing off.

LS: Probably, probably used it to gain some sort of stature for himself.

CF: Anybody that knew Judge Kiley would know that the guy had to be blowing off. Let's see there had been a connection because Kiley had been in the political organization, came up through Nash.

LS: Through Nash, Kelly Nash. He never told me, maybe you know more about that than I do, Collins. The story was that Judge Roger Kiley was sort of the golden boy, the heir apparent for Mayor, I have forgotten after who.

CF: Kelly?

LS: No, no before Kelly.

RS: The one that Daley defeated, ah.

CF: Kennelly?

LS: No, no, thats after.

RS: Cermak?

LS: Cermak.

CF: Way back!

LS: Ah, then Kiley had this problem with his throat. He never told me alone all this, and I don't know where I got it and maybe I shouldn't, I guess I shouldn't talk about things I don't know except by rumor. Because I never wanted to talk to Judge Kiley about it even though we were very, extremely close. But the story was that he got something wrong with his throat and went to Wesley Hospital. And one of his friends, Johnny Moehart (?) a half-back at Notre Dame while Kiley was playing over at Notre Dame as an end in the early twenties. And that Johnny Moehart (?) from Gary became a (Did you ever hear this story?) became a very good surgeon and he operated on Judge Kiley, his throat, and made a mistake with his knife and cut some of the thorax cords or whatever has to do with speech. As a result Kiley practically lost all of his ability to talk, that is to make noises. He finally developed into so he could talk but it was always in a whisper. Almost a whisper.

CF: A raspy whisper.

LS: Raspy yes.

Tape 9

Continuation of an oral interview of Senior Circuit Judge Luther M. Swygert as interviewed by Ray Solomon, Director of the Court History Project and Collins Fitzpatrick, Circuit Executive on Wednesday, June 19, 1985 and Thursday June 20, 1985.

CF: We were talking about Judge Kiley.

LS: Yes, so anyway, after that disastrous turn of events. The Kelly-Nash machine, the, Democratic machine which was very powerful in those days I guess, at least that was my understanding, they switched, they had to switch gears, so they put Judge Kiley at first on the trial bench and he couldn't hack it because of his voice so they finally then put him on the Appellate Court. There he was until he came to the Court of Appeals, the Court of Appeals for the Seventh Circuit in 1961. Now, as a follow up, instead of having Judge Kiley as the Mayor, Daley came into the picture. And they, Judge Roger Kiley and Richard Daley were very, very close friends, extremely close, I'm sure Judge Kiley didn't take any part, any active part in Daley's campaigns; but I know, well you probably knew too or maybe you never saw Daley here, he would come up once in a while and they would go out to lunch. Daley picked Judge Kiley for the Court of Appeals. I'm sure, I have no reason to doubt it, that it was only through Mayor Daley that Judge Kiley was appointed to the Court of Appeals.

Even though the Democratic Senator was Douglas; in fact, Daley appointed everybody on the federal courts in that era, except Walter Cummings and Hugh Will. In fact, Cummings or Douglas told me that. He said I only had two judges in the Northern District of Illinois that I can claim any credit for, one is Hugh Will and one is Walter Cummings.

RS: Was Judge Kiley friendly with Judge Austin and the other Daley appointments?

LS: I don't know.

CF: I don't think so. I don't remember any relationship with Austin or Lynch for example.

LS: I don't either. I don't particularly either. I never thought of them in those terms at all.

RS: Right.

LS: But he had a great, he had a lot of cultural background, Kiley did, I mean interests. He liked poetry very much and he liked drama, he liked Joyce, he was very interested in great books, he and Adler and Hutchinson, and Mrs. Papkee, Walter Papkee's wife, and a man by the name of Williams, who just died recently, a couple of weeks ago, in Evanston. Williams, do you know him?

RS: The man that helped found Roosevelt University?

LS: I don't know, but he was a Democrat, he was an outsider, a Democratic politician.

RS: Oh, right, I know.

CF: Lynn Williams?

LS: Lynn Williams.

CF: The chairman in Niles Township.

RS: Right.

LS: And he, they would all get together and read the great books. Judge Kiley, became a leader at Notre Dame, he and Father Cavanaugh conducted a great books course at Notre Dame. Kiley would go to Notre Dame every couple of weeks and conduct, as a joint leader with Father Cavanaugh who was the President at Notre Dame, the great books course. But Kiley would take off in the afternoon and go to a good movie. He read a lot of books. And when he would go to Florida--you may know more about this than I do? You were with him. I mean you were with him, very close, you know some of this, he would take some books to read in Florida, and he kept up his culture very much.

CF: He also kept in touch with his political proteges. Joe Bertrand who was the City Treasurer would be frequently in the chambers.

LS: I remember that.

CF: Bertrand had been a black Notre Dame basketball star.

LS: Basketball star.

CF: I think Bertrand may have had some problems being a black at Notre Dame and got guidance initially from Kiley and Kiley got him into the political organization and put him up or suggested him to be put up.

LS: And he got it.

CF: Phil Rock was another protege.

LS: Who?

CF: Phil Rock, the Senate Majority Leader. I remember he would come to the chambers for a visit.

LS: Yes, Kiley was sort of a role model, hero.

RS: Was there much conflict, well not conflict, but you and Judge Kiley arrived at the same time and were more liberal than the rest of the court was. I take it that the change or whatever was fairly gradual as a result of this. There was not a lot of

LS: Yes, I don't think I demonstrated too much liberalism. I know I didn't in labor cases. I think I made Judge Kiley very unhappy for awhile but I was not as liberal as he thought I ought to be in labor cases.

CF: When it came to the court we rated Kerner. The law clerks rated Kerner the most liberal, followed by Kiley, followed by Swygert.

RS: So, Kiley really was much more tuned to the policies of the

LS: Warren Court, yes, I think so. And Kennedy.

RS: But he didn't face any opposition in his appointment, I mean, he was pretty much

LS: I don't think he had any.

RS: Well, do you want to talk about Judge Knoch who was appointed after Parkinson?

LS: No, no before that, Knoch was in '54.

CF: Was that when he went to the district court?

LS: Oh, I'm wrong. He went in '54 as a district judge.

RS: He succeeded Judge Lindley in '58.

LS: We haven't talked about Lindley, have we?

RS: We should talk about Judge Lindley.

LS: Well, I suppose the best person you could talk to about Lindley would be Marshall, Prentice Marshall. I didn't know Lindley, I only knew him by reputation, he wasn't on the court when I was.

But he came to Northern Indiana, I tried some cases in front of Lindley, a few. I used to go down to Danville when Judge Slick was on vacation and go down to see Judge Lindley on motions. And I talked to a lot of people who knew Lindley, like Carrick and so forth. He was a fast, fast worker and intelligent. He was really a very smart person, he had a good mind, very incisive. I think that is the most characteristic word that I can think of, an incisive type of mind. He was quick and to the point, just like a knife, a sharp knife. And his opinions I think indicate that too. They have a very, very direct kind of approach. He got his opinions out in a hurry and he made good friends. He and Minton were very friendly. At least that's my understanding and when Minton went to the Supreme Court, appointed by Truman, my understanding is and I got this from Evans, no it wouldn't be Evans, well it could have been, no, I don't know, I got it from somebody. I don't think Minton told me or Lindley, but it's a pretty verifiable story. In fact, I think its a fact that Minton talked to Truman and said "I want Lindley to follow me. He's a Republican, but I want him to be on the Court of Appeals, he has done a good job and he is a good lawyer, and a good judge, he helped our Court a lot

and he deserves to come up here." And that took away an Indiana spot.

So there for awhile until I came on, Indiana had only one, I guess from the time the court had any multiple number, Indiana always had two on the court of appeals. Then Lindley, through Minton, broke the pattern until I came in 1961. Judge Lindley was so fast. He would move. He just knew right away. He didn't have to--you could hardly get in your motion or your objection or whatever it was that you wanted him to rule on. He would rule right--right then and there. No question about it.

CF: Did he ever rule from the bench on the court of appeals?

LS: I don't know, I don't think we ever did that, no. But he would have half of his opinion written before they heard oral argument. And Carrick told me a story. Did you ever hear this story from Carrick?

RS: No.

LS: Carrick told me, you remember Carrick?

CF: Yes.

LS: Carrick told me that Judge Lindley had this round--I saw this table--did you ever see one of these round tables, desks I mean?

RS: Yes.

LS: And he had this swivel chair and he would swivel over here and then he would swing around over there and he would be dictating his opinion. He dictated his opinions. So, his secretary would run over here and he would be dictating and then he would swing around so that she would have to.

Carrick said, I don't know if she told the story, or Lindley, or somebody else, I suppose she told the story. Lindley said "Well, wait a minute, I have to go to the bathroom." So he is still dictating as he is walking in there, [laughter] of course she didn't follow him inside. [laughter] But he would get out his opinions almost overnight.

RS: And he probably had one of the largest case loads because he sat--he had the Eastern District which I guess wasn't as taxing. But then he would sit in the Second Circuit as a district judge and then

LS: Then he was on the Temporary Court of Appeals.

RS: Then he would come here for a while, he would always sit here for a number of appeals.

LS: Then he sat, well he sat in New York, in Northern Indiana, in a famous case against General Motors, an antitrust case.

RS: The DuPont and General Motors case?

LS: Well no.

RS: No?

LS: General Motors, Ford and Chrysler. It was a criminal case. I think it was a criminal case. Yes, I believe so, yes, it was. Kayser was one of the principal defendants from Ford. But I was there--attended that trial, some of it--and high powered lawyers. And they were not in awe him. [Laughter]

RS: So I guess we should get back to Knoch now.

LS: What do you want to know about Judge Knoch?

CF: Well, can you give us fifteen of his favorite stories?

LS: [Laughter] No, I wish I had a tape of the speeches he used to make. He always gave the same speech about the flag.

CF: Great country and everything else.

LS: Yes.

CF: I can remember he came into that last Circuit Conference just a month before he died and I forget who was speaking. It was Professor Areedo from the Federal Judicial Center talking on antitrust. Judge Knoch came in and, I don't know who--I think it was Bauer, said, "well, I don't have any questions, but I am sure Judge Knoch will have some questions." Knoch, who had just been wheeled into the session, said, "Well, I really don't have any questions," but then there was a smooth transition to his patriotic talk about "how great it is to be in the Judiciary and a judge in this country and an American, and . . ."

LS: The flag.

CF: And you know by the time the meeting was over we could have been selling war bonds again.

But he was always very loyal to his family.

LS: Oh, yes.

CF: Church and America.

LS: And a very kind man, he was never, I wouldn't say meek, nor was he humble, but he was very--I had a feeling that he didn't want to offend anybody--I mean he was a very sympathetic person. I was always a little unhappy because I think having been a district judge it hurt him to

reverse a district judge. He did it, but I think he went through anguish and if it was, I would have to say in all honesty and I think, if the chips were equal, the balance was equal, he would sort of defer to the district court, thats my feeling. Now I might be wrong about that and I might be doing him a disservice but that was my intuition.

CF: I think Kiley had the same view. It was very hard to get a reversal out of Knoch.

RS: And he had been a leader in DuPage County politics for . . .

LS: Oh, yes, I think so and, of course, he organized during the Depression the bank out there. Kind of saved the bank, got rather well-to-do, of course, through investments, farm land so forth.

CF: He really was one of the founders of Naperville, in effect. One of the real city fathers.

LS: Oh, yes.

CF: I noted in today's newspaper, it's the fastest growing community outside the southwest. In fact, they are talking about putting a limit on construction permits which isn't done anywhere else.

LS: I think Knoch was a very close friend of Dirksen, of course.

CF: One of his two closest buddies. There is a story that Knoch always used to tell. He would say: "Dirksen told me that I'm one of his two closest friends and I never found out whom the other one was."

- LS: I think that--he again didn't take any active, I mean, he wasn't active in the organization although I think he kept up his interest in politics until he died. And I think he had some proteges too. One I think was Bill Bauer.
- CF: I think Bill Bauer was one of his proteges, there is no doubt.
- LS: And I think he had a hand in getting Kerner here. Well, I'm trying to think how it happened. Let's see, there was a rumor Kerner was going to still be the candidate for reelection. Somebody got off, who got off to get him here? Kerner followed Schnackenburg.
- RS: Let's see, Kerner got Knoch's seat actually in '68.
- LS: Well, that's it. So Kerner--I think Knoch got off in order to get Kerner on--now I believe that's the way it was. In order to get rid of Kerner as a candidate.
- RS: So that Ogilvie could run without as much opposition.
- CF: And that's when they brought in Sam Shapiro?
- LS: Yes, Sam Shapiro was in this picture too.
- CF: Lieutenant Governor.
- LS: Yes, I am sure that Knoch had done it, that was part of the picture.
- RS: Because he could have waited until after the election, or after the '68 election and there was a Republican, but he didn't know.
- CF: For a number of years when he had his farm, we always had the court picnics out there. And he had this large building out there which was like a hall and I am sure that every Republican gathering in DuPage County or at

least 90% of them were held at that location.

[Laughter]

RS: He didn't dissent often . . .

LS: Oh no, not much, no. No--just to be real honest about it. Why shouldn't I be real honest about it? I don't think Knoch was a giant as far as his judicial abilities were concerned.

CF: I can remember when you were chief judge and you would get yourself all worked up ready to go down and talk to Judge Castle or Judge Knoch about sitting some extra times as senior judges. And you'd come back like Jack, of Jack and the Bean Stalk, with no money in your pockets. You usually had been fleeced, but in such a nice manner.

[Laughter].

LS: Yes, you couldn't get Knoch, no matter what.

He had a way of being nice to everybody. [Laughter]

He'd say no and make you feel good about it.

RS: Well, he was never a chief judge?

LS: No.

RS: So then Judge Castle was appointed just about the same time, I guess.

LS: That's right, as I recall.

RS: And, what are your thoughts or memories of Judge Castle?

LS: Well, Judge Castle is still living. He is in very poor health now. I try to keep in touch with him. I ought to call him. I haven't done it for awhile. But I have been out to see him. Collins was out there with me once--we went out to see him. I like Castle so very much.

Although, again I don't know that Castle was a legal bright, he had good sense. He was pretty conservative, but he and I--particularly I think in criminal cases, he didn't like to reverse criminal convictions if he could help it. He was more, I think, well for example in the Teamsters . . .

CF: Hoffa?

LS: Hoffa case. He and Duffy, Duffy wrote the opinion and I dissented. And Castle didn't bother him at all, Duffy did I think a very poor job. I thought so at the time and still think he did a very--I call it a snow job in the Hoffa case. I spent months working up the dissent and I still think the case was wrongly decided. That Austin didn't handle . . . In the first place, it was a case that was put together wrongly. It was not a one conspiracy case at all. Of course, I was in the minority and I suppose there was another viewpoint. Anyway getting back to Castle, he, I think, was more attuned to Duffy, or even more so, more conservative.

RS: It is interesting because he was Attorney General from 1953, Attorney General of Illinois. That's of course a time where the Warren court is beginning to make inroads or to put requirements on state criminal justice systems and there was resistance among the states and I know the Governors and the chief justices and all. And I don't know if he played any part of that?

LS: I don't know either, but I know one thing I felt that Castle had going for him, of course, he prosecuted, I mean

I don't know that he prosecuted, but he did the hatchet job on, and rightfully so on the man that, I can't think of the name . . . the attorney, I think it was the Treasurer.

CF: Orville Hodge?

LS: Hodge. Was he Treasurer?

RS: Right.

CF: Right. The gold wastebaskets.

LS: And, Castle--although he was very much a Republican creature, Republican organization in Illinois--Castle had a high standard of honesty and of correctness. And Castle had a very deep sense of rightness, in the sense of morals.

RS: What were his two years of chief judge like?

LS: Nothing. I shouldn't say that he didn't do much. He just filled the role, that's all, as I remember it. He conducted the chief judgeship correctly, of course.

CF: But there were no innovations?

LS: No innovations and he let, I think he let his law clerk, Murray Milne, do it.

Milne, kind of ran the show. That was my impression. I don't know. He may have had one or two council meetings, I'm not sure.

RS: Did he have any, did he have any conflict with the Chief Justice during the U.S. Judicial Conference. I mean with Warren or . . . ?

LS: No, he wouldn't, I don't think so.

CF: The conflicts started with Luther Swygert.

LS: Yes, that's right.

CF: And continued since then. [Laughter]

RS: But, let's see who else, we talked about Judge Kiley some.

LS: Who else? That's about it.

CF: We could talk about Otto Kerner. We talked about the trial but we didn't talk about him as a judge here.

RS: Right.

LS: Well, the only thing I know, Otto Kerner had a big asset, if you want to call it that, some people would call it a big deficit, his extreme liberalism. I don't know . . . he had a good mind. But I think he let his law clerks, and I don't know if that's so bad either, do a lot of writing, but he voted, as far as I was concerned, he voted right. On the cases, of course, the other people would say that he was wrong, depending on how they view it. But I think Otto Kerner was extremely liberal and when I had council meetings, I think Otto supported me right down the line in and around that period.

CF: Just the initial part because it was shortly after I came to the court that the indictment came down.

LS: But Hastings didn't like him for some reason. From the very start, I think Hastings felt that he was a politician and that he would carry his politics on the bench.

RS: But that sort of perception didn't interfere with Judge Hastings' relationship with Judge Kiley, I mean he didn't feel . . .

LS: No, no.

RS: He didn't feel the same way about Kiley as he did about .

. . .

LS: No, no. But I remember when Kerner was inaugurated or was inducted I should say. And we had it in the courtroom, the present courtroom, and Hastings was chief judge and he gave a talk and he more or less lectured Judge Kerner, the new judge. He said "You're going to have to forget that you were Governor." Which I thought was a rather rude remark.

CF: I think some of that may have come because he had perceived that Kerner let his law clerks get out of hand and possibly make decisions for him.

LS: Yes, I think that's right.

CF: Because there was that incident with Elliot Landau.

LS: Yes, I know. I think he had sort of a, I don't know what, some kind of a chemistry situation between the two of them, or some reason. Even when Judge Kerner came on to the court he made this remark, which I thought was unnecessary. He said you have to be a judge now, you can't be governor anymore or something like that. You have to forget that. That was very gratuitous, you know.

RS: Right, do you think that Judge Hastings had not liked the Kerner Commission Report or something like that. I always thought that some of the criticisms of the Criminal Justice system or . . .

LS: Maybe, that was probably the Civil Rights. Probably that, because Hastings was not . . . I'm sure Hastings would not have gone along on busing cases.

RS: Was that, I mean, at the time the court was quite controversial. The Kerner Commission issued the report and all.

LS: Of course he came from Southern Indiana, Southern Indiana is different than the North. For example he never would say black, he'd say colored, which was all right but . . . and Henry Parks. Hastings would always say Parks, he never would say Henry.

CF: That's true and I don't think he said Thinnes.

LS: What.

CF: I don't think he said Thinnes, he said Joe.

LS: But Parks was Parks.

CF: Well, why don't we, should we go to Sprecher.

LS: Sprecher.

CF: Talk about Judge Sprecher.

LS: Well, I had a great admiration for Judge Sprecher. He was so quiet and subdued in a way; humble, I guess that's what you would say. But he was a hard worker and he read the briefs and make voluminous notes before he'd hear the arguments, he'd have a whole sheet of fine written, small letters--he wrote in a small handwriting. And he'd have this whole sheet full of notes that he'd made for preparation of the hearing but he'd hardly ever ask any questions. He'd be very quiet on the bench. Very quiet, and he wouldn't go after lawyers, like I did, or some of the other judges [laughter]. And he never was abrasive, I never heard him say one word that you would say was abrasive. Humility I would say was his trait; that was my

feeling. He had some, I don't know, he didn't have any vanity, he had a certain kind of feeling that he was capable. He didn't feel that he was incapable. But he didn't try to demonstrate it.

RS: Had he argued a number of cases before you when he was a lawyer?

LS: I don't remember him as an attorney, I don't think I ever hardly knew him.

RS: Oh, because didn't he have a reputation, I mean, I thought . . . ?

LS: Yes, but writing briefs not arguing.

RS: Oh, not arguing, he would write the briefs.

LS: He and counsel like Arnold Shure and a lot of people like that would hire him. He was a methodical guy. He would dig around and make . . . his opinions showed that. And they were sort of . . . I would say, they weren't brilliant, but they were very methodical.

CF: He read every opinion that was printed in the advance sheets for F.2d. And that was just a horrendous assignment. But I think the law was really his only love.

LS: Oh, yes, I'm sure he had no other interest, except the Cubs. He was a great Cub fan, he knew the Cubs inside and out. He was the one that spirited the idea that the judges should go to see a baseball game out at Wrigley Field every year.

CF: Which you and Wood have carried on in memory of him.

LS: [Laughter] Yes.

CF: But he would also collect opinions, in fact, I imagine his children have it. A very valuable collection of interesting cases, you know the ones that we read every now and then and are in lyric form or poetry. You were going to mention about the opinion on the acronyms.

LS: Oh, I'll get that.

CF: Or Chief Judge Brown's one if you remember on the soaps. But he collected all those, he had just a great wealth of them.

LS: I didn't know or heard about that, if I knew it.

CF: When he died, I asked Charlene if the kids didn't want that collection, I certainly did.

LS: Yes, well, I think he was a great asset to this court and he was not, he was not liberal. I mean not conservative and he wasn't liberal either but I would say if you had to rate him somewhere he was slightly left, not too much but slightly left. Would you say that?

CF: I think that's right.

RS: But he was, I mean just from what I had read, he always seemed like, you were saying very methodical opinions--I mean he always presented the issue in the first paragraph, I mean he stated what the question was. Very clearly, very precisely.

LS: Yes.

CF: You never read ten pages and wondered what the case was about. I mean you knew right away and it was always well written.

LS: Yes, it was well done, he had a craftsmanship, there was no question about that. He didn't sparkle, but it was well done. Well structured.

Continuation of an oral interview 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, June 20, 1985.

CF: Judge we would like to ask you some questions and reminiscences about some of the district judges that you knew. What about Judge Anderson from Indianapolis.

LS: I didn't know Anderson. He had come to the Court of Appeals I think about 1905. I didn't get out of college until '27 and I don't know when he died or took retirement, but I don't think it was long

RS: Twenty-eight.

LS: Twenty-eight, so I didn't know him at all. But he was a legendary district judge in Indiana. We had only one judge in Indiana, up until 1925 or '24, I think '25. And then Judge Slick came in and then Baltzell, and then Anderson was moved to Chicago. Anderson had a good mind, I don't know really what his background was educationally or even before he became a judge. But he was a judge for a long time. I don't really know who appointed him, but that's neither here nor there. He had a reputation for being a hard boiled, hard bitten autocrat, almost a . . . he struck terror in lawyers and was very mean to them, and took very drastic verbal actions, or had verbal bouts, and made derogatory statements to lawyers. He had a very imperial attitude on the bench. I don't what his attitude

off the bench was and whether he was very social. But he generated a number of stories and anecdotes. I wish I remembered more of them, because in the thirties many lawyers that I knew had practiced before him and every one of them had a story about him. I had a few that I kept in my mind, but I wish I had more of them because there is no one, hardly anyone, around anymore of course that knew him or even remembered the stories that were told about him--the anecdotes. But he was a source of a lot of comment and some, most of them, are not very complimentary to Anderson. Anyway if you want me to try, I can tell a couple of the choice ones that I kept in my mind that I have told numerous times. Judge Slick told me that he heard this one so its authentic I'm sure. Well Slick told me two stories, two incidents about his relationship with Anderson. Slick was a lawyer in South Bend before he became a judge and he represented a defendant in a Volstead Act violation. a liquor violation. The Eighteenth Amendment legislation that enforced prohibition against liquor beverages, either manufacturing or even possession, drinking, no saloons, no taverns, no traffic of any kind of beverages, even beer except for what they called 3.2 beer and of course there was an awful lot of illegal homemade and otherwise beer and liquor, hard liquor, wines, stills and so forth.

CF: Was 3.2 beer illegal.

LS: It was legal.

CF: Is that where 3.2 came from.

LS: Yes. It had hardly any alcohol--well, 3.2 percent. You can imagine you would have to drink a half a barrel in order to get any kind [laughter] of a reaction I guess--or may be a quarter of a barrel. But anyway, he Slick told me that he represented one of these defendants that was charged with some liquor law violation in the Volstead Act. Anderson had the habit of having all the defendants come to Indianapolis, no matter where they were from. He hardly ever went outside of Indianapolis to hold Court. He'd come to Hammond maybe one or two days a year and Fort Wayne a couple of times and Evansville. They didn't have a court at South Bend or New Albany or Terre Haute. Those were the four places and he'd go a couple of days at each point but stay in Indianapolis the rest of the time. He'd try all the cases in Indianapolis and he had all of these defendants in from all over the state on arraignment day and he'd dish out, hand out, pronounce sentences at the same time. He had no probation officer of course. And all he had was just the plea of guilty and whatever the lawyer said, if he could say anything. I don't think he ever, probably never, asked a defendant to make any comments, except if he were not represented by a lawyer. So, he had one set sentence on all liquor violations, six months. No matter what the circumstances was he had a standard six month sentence. So, he had all these people in. He had a whole room full of defendants and lawyers on this one particular day and Slick was there with his client. And they all, a great majority of the people, of

the defendants there, were all charged with liquor violations. So Slick said that this particular defendant came before Judge Anderson. He would ask the clerk to read the indictment--the judge would. And he would say, guilty or not guilty and if he would plead guilty, he would say six months; if not guilty, then he would put it over for trial. Mostly, there were guilty pleas because they knew if they went to trial, and were found guilty they would get a lot more. So he got through this arraignment pretty fast because he gave them no instructions, no admonitions about whether they had a right to a trial, or a lawyer, or calling witnesses, no constitutional rights explained whatever. So Slick said this one man came up from Kokomo. "Well, are you represented by a lawyer?" "No sir." "Do you want to go ahead?" "Yes, sir, yes your Honor." So Judge Anderson said "Well, Mr. Clerk, read the indictment." The indictment was read, a liquor law violation. So Judge Anderson said, "Well are you guilty or not guilty?" And the defendant said, "Well, your honor, I really don't know. In a way, I think I probably am guilty; in another way, I don't feel I am guilty." And Anderson said, "Well one way is enough, six months!" [Laughter] Slick told me also that when he was appointed, he was about fifty years old. Slick was or maybe between 50-55 and he went down to see Judge Anderson who was still on the bench. Slick came in a year before Batzell was there--they divided the docket after the division of the Northern and the Southern

part of the state. When Slick was inducted as a judge or was about to be, he said he went to Indianapolis to see Judge Anderson, to pay a courtesy call. So he went down and he met Anderson, and Anderson said, "Well, young man." (Slick was about fifty) [laughter] He said: "You're the young, you're the new judge of Northern Indiana District." "Yes sir, yes, your honor." "Well," he said, "I don't ordinarily want to give advice to other judges coming into the the system, federal court system, but you're going to have a lot of lawyers that try to put things over on you, try to persuade you when you shouldn't be persuaded. You are going to have to watch out." But he said, "I'll tell you one thing: don't let them get away with a thing." He said: "Whip'em, whip'em, whip'em!" [Laughter] And he did. He whipped the lawyers unmercifully, unmercifully according to legend.

RS: But, then, neither Baltzell nor Slick were in that tradition either. I mean.

LS: Baltzell was pretty abrupt, pretty tough.

RS: He was tough?

LS: He had also a very hardball or a stern attitude towards liquor law violators. I think he was of Protestant faith, maybe Methodist or some strict Protestant faith and he didn't like liquor law violators. And I remember there was a liquor control administration, I guess it was called. Agent John Sawyer and we were trying a case before Baltzell. He came to Hammond to try a case, I was on vacation or something. So, Baltzell had a--he always

had kind of a smile, a perpetual smile on his face, but that didn't mean anything because he would be very hard [laughter] and say some very mean, very uncomplimentary things and tough things and yet smile. So, we were coming back from lunch and we were trying this case before Baltzell and so John Sawyer said to me, he says "Judges here,"--no, I wasn't a judge then, I was an Assistant U.S. Attorney. He said, I don't know what he called me, Luther or Mr. Swygert, he says you know what they call Baltzell down in Indianapolis, down at the bar down there. No I said. He said they call him "living death." No, I mean "smiling death," "smiling death," [laughter]. But he was a tough guy; he was hard to get acquainted with, he was friendly and yet he was distant.

CF: Did he come from Indianapolis?

LS: No. He came from Princeton, Indiana which is down very close to Evansville.

CF: But he sat generally in Indianapolis?

LS: Oh he lived in Indianapolis, he lived at the Columbia Club, the Republican Headquarters. I mean [laughter] that's where the Republicans all hung out and he lived at the Columbia Club. I think he might have been a widower. I don't think he had a permanent home in Indianapolis but he sat there all the time.

RS: So there were,--you and Judge Baltzell were the two Indiana judges until Judge Steckler was appointed? Right.

LS: Yes, exactly.

RS: Right, right.

LS: Exactly, yes. I was. He was my Indiana colleague.

RS: Right.

LS: From '43 until 1950. Exactly.

RS: I see, and then Judge Steckler, then they got another.

LS: They got the same time we got two they got one.

RS: They got Parkinson and another.

LS: They got Holder.

RS: They got Holder. I guess you had to sit sometimes, when there was only one judge, you'd have to sit sometimes, when that judge was disqualified or something would you go down to hold court in Indianapolis?

LS: A few times in Indianapolis. I tried two cases: that one I told you about this morning and then a very important case involving the strike of the typesetters, I don't know when in 1948 or '49. And Baltzell didn't want to try it. So he called up--I mean, I'll never forget Sparks called me. He was temporary chief judge or senior judge. Evans was sick or something, and so Sparks called me up and said Judge Baltzell got a little case down there in Indianapolis. [Laughter] He said he doesn't want to try it, would you try it? So I didn't ask him what it was, I said, "Sure." Then when I got down there I found out that it was about a month trial against the typesetters. They tied up, they struck against the Sun Times and the Tribune, all over the country. And they [newspaper publishers] printed a kind of a xerox, they didn't have xerox, but it was kind of a copying situation they copied. It was a very, crude way of putting out papers

because the typesetters were on strike. And I issued an injunction against the typesetters.

CF: This was after a month long trial?

LS: Yes, then they ended with a contempt citation. I had to go back and try that a couple weeks after that again. That's when I got acquainted with Tony Lewis. Tony Lewis covered it for the New York Times and he sat there all during that time and I got, became very fond of Tony Lewis. He was a pro from the start. He had a different attitude than most court reporters. Anthony, Anthony Lewis.

RS: What were the grounds for the injunction, was it secondary or what kind was it?

LS: I can't . . . I know, it's reported, I don't know, I can't remember. It came, it was an exception to the Norris LaGuardia Act.

RS: Right, right. Did you usually have much contact with the press at that time? When you were holding court in Hammond or wherever.

LS: No, no. Well I was never adverse to it but I certainly didn't seek it. But when I was the United States Attorney, or Assistant United States Attorney I would call reporters and tell them about certain cases coming up and and that sort of a thing. But after I became a judge, of course, I didn't do that. But I never, I never, I never shunned the press as Collins well knows.

RS: But they didn't regularly send a reporter over to the court.

LS: Oh, no.

RS: If there was something big going on?

LS: In Hammond, they didn't. The Gary Post-Tribune, Chicago, South Bend and Fort Wayne papers, they covered pretty regularly if there was any kind of a trial at all. They sat there and listened. They covered the trial.

RS: But so you didn't . . . there weren't things that you and the other Indiana judge would go together to the chief judge of the Seventh Circuit to ask for or something like that. I mean, it was all, you were pretty much set.

LS: Oh, it was pretty much autonomous, of course, yes. We didn't see much of one another, we didn't see each other very much. No.

RS: Did you sit much in the other districts?

LS: No, except--never sat in Chicago--sat in Milwaukee quite, several times.

RS: And then Judge Tehan or whoever would come down and sit.

LS: Well, yes, a couple of times. Yes. Particularly one case, the Woodmar case. I don't know whether Tehan ever came down. Stone came quite a bit and so did Adair. The came to the Northern District of Indiana a number of times after I was appointed because I couldn't try cases of which I had any part as an assistant U.S. attorney. So during that period there were a lot of cases that other judges had to try. And there were other instances, but Stone came to Hammond and South Bend and Fort Wayne. And Briggie came over too, Charles Briggie. I think that was all, and Tehan and Duffy came once. Oh, no, Duffy came

when I was assistant U.S. attorney and Slick was on vacation or something like that.

RS: Oh. But none of them came down as Seventh Circuit judges sat while you were there?

LS: Except on three-judge cases.

RS: Except on three-judge cases. Did you have many of the three-judge cases?

LS: Quite a few, yes, well, I don't know what, I don't know how to say that, they weren't everyday occurrences of course, or every week. But there were quite a number.

RS: Right. What kinds of cases were they?

LS: Well, cases involving; there were two, lets see. One, of course, was where a law or statute's constitutionality was questioned.

RS: Oh, the ICC?

LS: ICC cases.

RS: Did you have any tax injunction cases, well aren't those three-judge . . .

LS: Three-judge, I don't know if there were any, . . .

RS: Where there was a challenge to the tax injunction?

CF: You mean the statute that prohibits an injunction against the IRS against collecting taxes unless you have exhausted your state remedies.

LS: I don't think thats a three-judge.

RS: That's not a three-judge. I'm sorry.

LS: I think just ICC, mostly ICC and where the statute was in question.

RS: Right.

LS: Constitutionality of it.

RS: What about the other judges in the '40s and early '50s.

The other district court judges, let's see there were . . .

LS: Well, there were two in Wisconsin. Early, that period, two in Wisconsin. And two in Indiana. And Wham in East St. Louis. And Lindley at Danville, then Platt, and Wise at Danville, and there was Adair and then Shaw.

RS: Shaw was in Northern District.

LS: But there was Adair, then Mercer.

RS: Right, right. Right, Briggie and Adair were together, then Mercer and then Poos.

LS: Yes.

RS: Which of those do you have strong recollections of?

LS: Well, Briggie, I tried some cases, I mean I tried cases . . . no, I don't know if I tried any cases before Briggie. But he came over and I had some acquaintanceship with him. I sat with him. I knew Briggie pretty well. Didn't know Wham too well. I knew Adair because he came to South Bend/Fort Wayne to try a lot of cases. And Stone, those I knew better, the two: Stone and Adair.

RS: There wasn't much need other than just the meeting at the Judicial Conference and some socially, but there weren't joint problems that the judges would work on or try and . . .

LS: No, there were no committees, not at all, in anything, of any kind, that I knew of. So most of the time there were the Judicial Conferences, except when they would come to

Indiana to try cases. Or bar meetings and that sort of thing. You would see them occasionally that way.

RS: Did you socialize with the bar. Not socialize, but were there a lot of occasions where you were meeting with bars, representatives of bar and things like that? Where there a lot of dinners that you had to go to and luncheons and that when you were on the district court?

LS: Not too many.

RS: Not too many?

LS: A few, I would go to the Indiana Bar Association meetings and some of the local bar associations, South Bend, Fort Wayne, Hammond, Sometimes I spoke at meetings.

Otherwise, I just went as a guest or a part of the audience.

RS: But the Kiwanians and the Rotarians and people like that, wouldn't they ask you to come?

LS: No, not really, no. And I never joined anything. didn't have anything outside of the Optimists. I joined the Optimist Club. That was the only thing I ever joined. I had no fraternal connections.

RS: When you were on the district court, did you, were you hiring Notre Dame clerks?

LS: No, my first few clerks were Indiana, Indiana University Law School. A man by the name of Brandt was the first one and the second one was Hanley Hamel from Indiana. Then Notre Dame, and I think Notre Dame all the way through 1954. Then University of Chicago, Walter Roth and then a Northwestern man by the name of Levy, ah, Jerry Levy and

then Notre Dame again, Jim Murray and then Indiana 1959, University of Chicago '59.

RS: So you started having clerks the first year you were on the bench.

LS: No. 1947 was the first one, for two years I did not have a clerk. Slick didn't have a clerk.

LS: I didn't even know if they were authorized about that time.

RS: So you were doing the research yourself. Maybe we can talk about some of these judges you got to know, your impressions of say Judge Stone.

LS: Well, Stone was . . . I think he had some liberal leanings but he was hard on criminal cases, hard on defendants. And he had the habit of, he had very strong opinions about certain things. He didn't like . . . well for example he didn't like OPA regulations. Well, a lot of the judges didn't like that.

CF: Why?

LS: Well I guess they felt it was an intrusion, it was against their ideas of free market, or what you would call free market today, liberty.

CF: Didn't you think there was more support for World War I than there was for World War II?

LS: No. I don't know about World War I but I think generally that World War II had tremendous support.

CF: But people didn't like the OPA regulations.

LS: Well, a lot of people went along--I think it was an exception but when you got them into court, defendants into court they tended to, the jury tended to . . . you

had a harder time to get convictions and the judges were not very sympathetic. Slick was notorious about it.

CF: What would he usually sentence somebody to?

LS: I don't know what he'd sentence them to, he'd hardly get a verdict, I mean, you were lucky to get a conviction, that was the problem.

RS: He'd suppress the indictments?

LS: Well, the instructions and the way he'd handle the case before the jury. You had a hard time, the assistant United States attorneys had a hard road.

RS: Were those usually smaller cases?

LS: Well, some were, well I don't know what you would call small. For example, we had a case with a man by the name of Abrahamson. It was a car case. He sold Dodge cars and he got a hold of a lot of tires and I don't know whether from the black market and stashed them over in a warehouse in Calumet City and sold them on the black market. And I thought we had the case nailed to him. Slick gave us some instructions, gave instructions to the jury and after a very hard fought case, Jim Galvin was the defendant's lawyer and I could feel the case was slipping away from us when Slick got through with the instructions. And we got a verdict of not guilty. Broke my heart. [Laughter]

RS: I don't know whether it was equivalent to Social Security fraud or welfare fraud cases now, where some judges feel that perhaps the U.S. Attorney should not prosecute this sort of smaller case.

LS: I don't know, no I don't think that. You ask a question which I don't seem to be able to answer as to why the judges and the lawyers and the juries were not sympathetic to the prosecutions. On the other hand, I think that the feeling of the, spirit of the, country was very much in support of our . . . particularly against Germany, against Hitler, the Hitler invasion. I don't know so much about Japan but I'm sure that the feeling ended. And for example, war bonds, you had no problems selling war bonds. And we'd have war bond breakfasts to sell bonds, I organized one out at Hammond before I was a judge. And then we had the people who had liberty gardens where they could grow vegetables in little plots of ground. And we had rationing, gas rationing so that you could only drive 35-miles an hour and if you saw someone going 50-miles an hour, you thought that he was a traitor. Just a general observance . . . there was no feeling of, I think certainly far different from the feeling of Viet Nam of even the Korean War.

RS: What about the Selective Service cases. Did you prosecute some as well as try some?

LS: Not too many in the First World War. But in the Second.

RS: In the Second.

LS: But during the Korean War.

RS: Oh, in the Korean War you tried some, but not in the Second World War?

LS: Viet Nam was the time when there was so many draft cases.

RS: Right. But in at least for the second World War period you didn't have either as a prosecutor or as a judge many draft cases.

LS: No, we did have the Nazi Bund cases where the government attempted and did successfully try a lot of . . . we denaturalized the people who were Germans, who immigrated and who were naturalized. They joined the Bund and the government brought suits to cancel their naturalization.

RS: You both prosecuted some of those as well as tried them?

LS: I prosecuted a lot of them before Duffy.

CF: Before Duffy?

LS: Well, he came down to Hammond or to Fort Wayne and tried them. And I think one in South Bend maybe, for Slick. Slick took a lot of vacations.

RS: Were you successful in most of those cases?

LS: Oh I think we were pretty successful, I don't know. I believe we were successful almost all the time.

RS: Did those people get deported?

LS: Well, presumably, but you couldn't deport them then.

RS: That's what I wondered, what the government did? Did you put them in prison or . . .?

LS: Well, no, I just think . . .

CF: Well they lose there citizenship and then you start the process of deportation.

LS: Yes, that's right. I don't know, I doubt if many were actually deported. I don't know what happened to them. But there were some in South Bend, a lot in Fort Wayne,

Fort Wayne was a big German community and there was a big Bund organization there. Relatively large.

RS: You didn't have any of the treasons cases that Judge Campbell was talking about, a couple of prosecution cases?

LS: No.

RS: Did you know Judge Campbell in those days or?

LS: Oh yes, I got acquainted with him when he was a United States Attorney and I was an Assistant at Hammond and we communicated on some cases. Carl Walsh, Ed Callahan . . .

CF: Did they all work in the U. S. Attorney's office for Campbell at that time?

LS: That's right. And I think maybe for Igoe too, Igoe preceded Campbell as United States Attorney. Particularly Carl Walsh, he's got a son who is now a practicing lawyer.

CF: Why don't we skip up to Judge Beamer. Judge Beamer came on the court after you. He had the Northern Indiana after you had come to the Court of Appeals.

LS: Same time.

CF: He was an appointment to fill your vacancy.

LS: Yes. And Eschbach came in at the same time and he was the third one. There were three then, instead of two.

CF: So there was Grant, then Beamer then Eschbach.

LS: Yes. And there was some resentment because of the fact that Beamer came from South Bend and was going to sit in Hammond. I came from Hammond and the Lake County Democrats thought that they ought to have my successor

appointed from Hammond or Lake County which was a far more Democratic county.

CF: Well, who would have been the likely candidate?

LS: Henry Sackett.

CF: Had he been active in the Lake County Democratic Party?

LS: His dad was a judge and he had some supporters. He followed me as a assistant United States attorney and then he went to Nuremburg and tried some war crime cases. They had a counterpart in Japan under Jackson. And he was in both of those prosecutions. He was not as active a politician as I had been. But he was well qualified, University of Chicago graduate. And he was well known in the political circles. But he would of . . . there was a big effort for him to be my successor. But Hartke wouldn't . . . For some reason Hartke took a very adamant view that he was not going to appoint Sackett. And Beamer told the story several times. I heard him. Senator Hartke called Beamer and said, "I want to nominate, I want to suggest to the President your being a federal judge to follow Judge Swygert," and he said, "But I want to know by tomorrow morning." This is in the afternoon [laughter] and so Beamer didn't have much time to think it over, but he said yes. But then he found that he had to move to Hammond which was a very hard decision. He had just built a new home in South Bend.

CF: What was his background in South Bend?

LS: Oh, he had a good background politically. He was very active in politics and he was prosecutor, state prosecutor in South Bend. He ran for Congress against Judge Grant.

CF: What year?

LS: About '48, something like that.

CF: But he wasn't the one that knocked Grant out of the box?

LS: Oh, no, no. Grant beat him.

CF: Ok.

LS: And he always--oh, I know what, he was he was Attorney General for awhile!

CF: It wasn't '48 because Grant went out then.

LS: Oh, well, then it was before that.

CF: He went out with Dewey.

LS: The first year that Grant became a Congressman, that initial time that Grant was elected to Congress, Beamer was his opponent.

CF: That was in '38.

LS: But Beamer had been Attorney General under Governor Schicker (?)--that's sort of his background.

CF: Did Beamer move completely to Hammond?

LS: Yes. Well he sold the home he had just built. And Charlotte, his wife, she had designed it . . . it was her dream home. A beautiful home in South Bend, I was in it a few times. And he sold it and bought a house in Munster.

CF: Then of course when . . .

LS: Then he moved back.

CF: When Judge Grant took senior status, he became chief judge and he moved back to South Bend.

LS: Right. Yes, the people in Hammond liked him very much.
The lawyers.

CF: Well, he's was a very likeable person.

LS: Oh yes, he was a good lawyer, good judge, good lawyer and made a good judge and a very decent guy. I remember [laughter] he and I got into . . . I was wrong of course, completely wrong, but . . . a lot of times, assistant United States attorneys that had been named that didn't have any experience would go to South Bend and Fort Wayne and so they were, they misrepresented . . . the government didn't have very good representation, not misrepresentation, but they weren't very good representatives of the government's interest. They made so many mistakes. And they would come up against good trial lawyers and the government would lose cases it ought not to have lost. So I tried this case in South Bend [laughter] some criminal case and Beamer was the defense lawyer and the Assistant United States Attorney just made a botch of the whole thing [laughter] and Beamer won his case. He shouldn't have; the guy was guilty. So I got mad at Beamer [laughter]. Well Beamer [laughter] didn't like that of course and he shouldn't have [laughter]. But we were good friends, very good friends. He was a good friend of Paul Butler, the former--he became national chairman of the Democratic Party.

CF: Is that what helped him with Hartke?

LS: I don't know what it was. I don't know--Hartke just didn't want to appoint anybody from Lake County for some

reason. And Beamer had been very active in the Indiana Bar Association. He was a delegate, he wasn't a president at any time, but he had taken a lot of interest in Indiana Bar politics.

RS: The other . . .

CF: Phil McNagny.

LS: Well, Phil came from a very prominent legal family. I think Phil's grandfather was, had been a lawyer. His father was a very fine lawyer--Phil McNagny, Sr. I tried cases against him. When I was a judge, he tried cases before me. He was a skillful lawyer. And he had two sons, Bill who is still living and Phil. They were both lawyers. And the other day in court, a young man came in and he was a McNagny. I don't think his name was Bill but I am sure it was Bill's son. He talked like him, he didn't look like him particularly, but he talked like him. Bill was a fast talker, fastest talker I know of that I ever listened to in a lawyer. And so very articulate. But Phil was a different type--that is the judge. He was very slow paced, had more of a sanguine type of personality and he was . . . he had some faults. He, I think . . . I wouldn't say prejudiced, but he had some predilections that came out. Well, he was very hard on criminals, I don't know whether that's a fault or not. But he, he was fair. He was the United States Attorney. When they came to me when he was being investigated, I said that he's the fairest United States Attorney that I ever had practice before me. He was very, very fair.

RS: You mean not . . .

LS: Well, I mean he would lean over backwards to be . . . not just represent the defendant or I mean prosecute the defendant but to see to it that the defendant got a fair shake. He would not take any advantages whatever.

CF: He never moved to Hammond.

LS: No.

CF: He just rented an apartment.

LS: Yes.

CF: He then moved to Columbia City.

LS: Yes, and of course, Pat, his wife, his widow now, she was a lawyer. And she was the daughter of Gates, the former Governor of Indiana, Columbia City. A very prominent, also a very prominent Republican lawyer family. And still there's a lot of that family of lawyers who are very prominent in Columbia City, about twenty-five miles west of Fort Wayne. And I can't think of Gates' first name who was the Governor. But that was Judge McNagny's son-in-law, or father-in-law.

CF: I will never forget, he told me one time he was . . . he had to do something that night, he was going to play volleyball. And I said, "That's really good." I said, "My wife and I like to play volleyball with other couples" and he looked at me very strangely and said, "Women don't play this volleyball." He said, "this is power volleyball." [Laughter] He was always a very athletic looking man. Yes. And he really fought his death a long, long time.

LS: Oh, yes. He didn't want to die, of course. He didn't want any . . . he didn't want to feel . . . I think he felt it was a weakness--his affliction.

CF: He didn't want help?

LS: No.

RS: What did he have?

CF: Cancer.

LS: I think everybody at the Hammond bar liked Judge McNagny, although both Beamer and McNagny were--I called them--carpetbaggers, because they didn't come from Lake County.

CF: Judge Moody as a magistrate really rallied the Lake County bar to the need to appoint somebody from Lake County to the bench there in Hammond. And he was a logical candidate and it worked out.

LS: Yes, finally between when I left and Moody, nobody from Lake County had been appointed there. Yet it was, you know it was a kind of a slap in the face of the bar, I thought.

CF: Yes it was the largest, obviously the largest bar in the whole Northern District.

LS: Of course, McNagny's appointment was almost effortless because through the Gates' family. They had such powerful influence in the Republican party and Phil had it going downhill.

RS: He was appointed by Nixon.

CF: He was a Nixon appointee. Although you know, I mentioned to Judge Eschbach the other day that Northern Indiana, at

least since I have been around, has had a history of a lot of vacancies. Probably has had more vacant judgeship months than any other district in the circuit. Not even close.

LS: I think that's right.

CF: What about Judge Holder?

LS: Well, Holder was a different type of person. He was pretty crusty on the bench, he was a pretty nice person off the bench. Agreeable person, but on the bench he was very sharp with lawyers and in some ways he was sort of unorthodox. He cut corners in the sense that he, well he wouldn't make findings sometimes when he should and various short cuts that diminished his trials and I think he was reversed a great deal. Also he maintained a political, I don't know political, he wasn't in real politics but he maintained a close relationship with the Republican organizations. And he was, I don't know how far he got into the councils of the political organizations, but he was fairly, he was on the fringes of the party.

CF: He wanted to come to the Court of Appeals didn't he?

LS: I didn't know that. I never heard that.

CF: I thought that, maybe that's wrong. I thought that he was looking for Pell's appointment.

LS: I never heard that, I don't know, he could have been.

CF: It was interesting to note that Judge Steckler never gave up the chief judgeship until Judge Holder was out of there.

LS: That's right. That was a kind of a . . . he had known Dillin. The three of them had a more, kind of passive

understanding that Steckler would stay in until Dillin could follow. There was not much Bill Steckler humor in Indiana. He and Holder had a rough time with each other. They had to be decent to each other in a way and get along but there was no close friendship at all. It wasn't so much personal although Holder was somewhat hard, probably hard to get along with, even in a personal way, I think. Same with Steckler, but I think it all had, somewhat had, to do with the political background too. Steckler the Democrat had been a part of the Lapail, not organization, product. And who was the other United States Attorney here, the former United States Democrat committeemen from Indiana, not McHale, but something like McHale, Frank--Frank, well I will get it in a minute?

CF: Ok. Let me go back to Northern Indiana and talk about some of the appointments that you made as a chief judge. Did you appoint the clerk?

LS: Yes, well, not right away. I kept Slick's clerk on for about several years, Barbara Bonk and then she retired and then I appointed Kenneth Lackey from Hammond or from Gary who had been an official in one of the Democrat organizations or Democrat city administrations.

CF: Had he worked in the clerk's office or had he come to the job new?

LS: New. Walter Crowser, his assistant, had been a United States Attorney, had been a clerk in Hammond and he was a closer friend than I was, I mean he was a closer friend than Lackey. I didn't know Lackey very well. I mean the

Democrat organization, I think, felt that it wanted Lackey and while I didn't play politics in the sense of getting into the organizational matters, I had some pressure to appoint Lackey, instead of Crowser.

CF: What about, at some point Frank Grandys became the clerk--did you appoint him?

LS: No.

CF: He came, I mean he was very close to the Lake County political organization.

LS: Yes, well he got there through Beamer.

CF: What about the Commissioner/Magistrate Glendenning.

LS: I appointed Glendenning.

CF: What was his background?

LS: Well he had a good background. I think he went to the University of Chicago again. But not a strong, sort of not a strong lawyer at all.

CF: Well, he got caught in the switch from commissioner to magistrate.

LS: Yes, and I think his mind kind of went bad too.

CF: There's a number of people throughout the circuit who were appointed either as a referee-in-bankruptcy or a commissioner and missed the grade when the position was really up-graded to magistrate or bankruptcy judge.

LS: Well Glendenning was, had a nice personality but he wasn't a strong, strong character.

CF: Was he recommended at all by the Democrat party?

LS: No, that was a personal appointment that I made.

CF: Russ Nehrig was a personal appointment wasn't he?

LS: That's right.

CF: Because he came with Republican credentials didn't he?

LS: No, no he was a Democrat.

CF: He was a Democrat.

LS: Young Democrat. He was in . . . he and his wife, his wife was very prominent in the Young Democrat club.