

An Interview with John L. Nickels

Illinois Supreme Court Historic Preservation Commission

John L. Nickels worked in private practice for twenty years prior to his election as a Circuit Court Judge in 1982. He was elected an Appellate Court Justice in 1990 and an Illinois Supreme Court Justice in 1992, from Illinois's Second District. Justice Nickels served on the Illinois Supreme Court from 1992-1998. Justice Nickels passed away on June 24, 2013.

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Abstract

John L. Nickels

Biographical:

John L. Nickels was born in Aurora, Illinois in 1931. He attended Northern Illinois University in DeKalb before going to law school at DePaul University, where he graduated in 1961. After he obtained his law license, he began working as a private practice attorney. He became a circuit judge in 1982 and an appellate judge in 1990. In 1992, he was elected to serve on the Illinois Supreme Court. He retired from the court in 1998. Justice Nickels passed away on June 24, 2013.

Topics Covered:

Growing up in rural Sugar Grove in 1930s and 40s; Great Depression; World War Two; Attending Marmion Military Academy; Life in the Army; College Experience at N.I.U.; Studying law at DePaul; Experiences as private practice attorney; Getting elected a Circuit Court Judge; Circuit Court experiences; Appellate Court experiences; Getting elected to the Illinois Supreme Court; Illinois Supreme Court; Cases: Baby Richard Case, *City of Chicago v. Morales*, *Berlin v. Sarah Bush Lincoln Health Center*, Rolando Cruz case; Attempted impeachment of Justice Heiple; Death penalty; General Observations on Judiciary.

Note:

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Oral History Transcript
Illinois Supreme Court Historic Preservation Commission

John L. Nickels

Chapter 1: Early Life, Education, Law Practice

Q: I am John Lupton, the Director of History Programs for the Illinois Supreme Court and Historic Preservation Commission. We are doing an oral history with Justice John L. Nickels. Today is July 15, 2010 and we are at the law offices of Ottosen, Britz, Kelly, Cooper, and Gilbert. OK. Justice Nickels, where were you born?

A: I was born in Aurora, which is a town about ten miles from here and actually lived in Sugar Grove, which – on a farm, which is about – actually about five or six miles south of the office here. So I've been around a while.

Q: Your parents were farmers?

A: My parents were farmers. I noticed the ancestry question. They – generally of Luxembourg background and my parents were both born in this country. I think my grandparents were all born probably in or near Luxemburg. So that's where I started.

Q: You grew up in Elburn or did you grow up on the farm south of Elburn?

A: Well, the farm is about five or six miles south of Elburn. I grew up on the farm. That's where I was through -- through my youth and, in fact, even after I graduated from high school I came back to the farm or stayed on the farm and actually farmed for a living. Worked as a -- on the farm I think until I was possibly 23 years old and then I -- then I was drafted, went into the Army, and spent my two -- did my two year hitch. And then when I came back out, I started with my college. Started with my undergraduate college at Northern Illinois University, although I had, while I was in the Army, taken a number

of credit courses that I was able to use at Northern toward my degree. So that's kind of where I started.

Q: Let's go back to your childhood for a second. Do you have any childhood memories, any fond memories of growing up on the farm?

A: Well, I have a lot of fond memories. In fact, way more fond memories than others. It was a good active life. We had -- our friends would come over. We didn't have a lot but there were three or four of us that were somewhere near the same age, my younger brother and I, and did everything that kids do. We had a crick ran through the farm, so we spent a lot of time fishing and that kind of kid stuff. But had a -- I had, I think, probably a good -- good childhood. One that I look back on with fond memories.

Q: How many siblings did you have?

A: Three brothers and three sisters.

Q: Where are you in the order?

A: Right in the middle.

Q: Right in the middle. OK. What do you remember of -- do you have any memories of the Depression?

A: The Depression was sort of something that I was aware of in that I would hear my parents or their friends talk about the Depression. I was born in 1931, so the Depression in 1941, I think, it was still somewhat around. So that I had an awareness that times were tough but other than that I don't have any -- any particular memories -- memories of it, of the Depression.

Q: What about World War II? Do you have any memories of World War II?

A: Yes. I remember World War II. Again, I was born in '31, so I was ten years old in '41. I remember Pearl Harbor and remember then that we were involved in the war. Of course, then by the time I got out of high school -- I graduated in 1948 -- and then, as I said, I farmed for five years before I was -- then went into the Army and did my two year hitch in the Army.

Q: Did any of your siblings fight in World War II? Were they old enough?

A: My older brother was in the Army but he was -- he never left the United States. He was stationed in New Orleans or something like that. But other than that, no, my family wasn't involved.

Q: What was it like to be a teenager in the 1940s?

A: Well, I think probably very much like it is today. Teenagers are teenagers. Of course, your family and your school and your friends is sort of your -- your world and I think probably I had a good and constructive teenage years. I suppose did some of the things that most -- many teenagers do that maybe I'd do different today. But other than that, no, I think my teenage years were somewhat uneventful.

Q: You've mentioned that you graduated high school in 1948. You went to Marmion Military Academy --

A: Yes.

Q: -- in Aurora? Did that function as part of your high school education?

A: That it -- that it... Marmion Military Academy is basically a four year high school. And so I did -- I spent there and that's basically where I did my high school education, is at Marmion. Marmion at that time was a boarding school and they also had day students. I was a day student. I did not live at Marmion and I wasn't there as a boarder. As such, I

would commute to Marmion on a daily basis. As -- and I think that the breakdown was probably roughly about half and half. Half day students, half boarders. And, again, just picking a number out of the air. Probably a total enrollment of five or 600 students totally for the four years. And other than that, basically just a high school education. And, of course, they --

Q: Were -- were they -- I'm sorry, go ahead.

A: It was also a military academy and, of course, it was also a parochial school. Marmion -- Benedictine fathers were Catholic and so that's sort of where my high school years were spent.

Q: What was it like going to a military academy? Did you have experiences there that you...?

A: Well, it was a -- it was a real cultural shock, I guess, when I went there. My parents... I'm not sure how I ended up going there, but apparently they felt that was where I needed to be. I was really pretty much a farm kid and loved to hunt and fish and do outdoor things. My friends were rural. Had rural backgrounds and, of course, when I started to Marmion I was mixed up and involved with young people from across the -- across the -- the -- I mean, there were a lot of town kids and not so many country kids. And it was a -- it was... Took a little adjusting to get used to the association with the town kids as opposed to the farm kids, country kids that I had sort of grown -- grown up with and gone to school with in grade school.

Q: So then after Marmion you returned to farming?

A: Yes, I went back. I went... While I lived at home all the time, I was at Marmion and continued to live at home for another five years, until I think it was about 1952 that I

went into the Army. I was drafted into the Army, went in. I spent time at Fort Knox, Kentucky. In fact, most of my time was at Fort Knox, although I did spend some time in Louisiana. I attended one of the military schools or something like that.

Q: You were drafted after Korea? After the Korean War? So you didn't -- you didn't have an opp -- opportunity is not the right word but...

A: I did not. Well, the Korean War was -- I think ended I think in 1952 and I went into the Army in 1953. And I'm not real sure of those dates. I -- it may not have ended yet but it was certainly winding down by the time I went into the Army.

Q: What are your memories of life in the Army? You were in there for two years?

A: I was in for two years. It was quite a culture shock because I -- again, I was a farm kid. Been on the farm in the country, and although I went to Marmion, which was a military academy. It -- it was an experience and it took some getting used to. I was -- I was an enlisted person as opposed to an officer. So it was... I guess I had the same experience a lot of other people had when they were in the -- in the military. Again, I didn't leave the country, so it was... Everything I did was here. And, as I say, I spent most of my time at Fort Knox, Kentucky.

Q: What were you... Did you have any specific duties in the Army? What -- what -- what were you being trained to do?

A: Well, I was an... Oddly enough, I was an A&E mechanic, which was aircraft and engine mechanic, and that was for the Army, which was a little unusual. And the only aircraft that -- that the Army had or were -- that were part of their -- of the Army scene was the -- what we called liaison aircraft, single engine L19s, basically. And rather -- we were... I worked at a -- in an airplane hanger a lot of the time and was basically responsible for

this L19 and its comings and goings and things like that. But it was a good job. I enjoyed it. I learned a lot.

Q: Then you were discharged from the Army and why did you decide to go to Northern Illinois University, then?

A: Well, I -- I took a number of college courses while I was in the Army, and so I had, I don't know, I would suppose probably 30 semester hours. And that seemed to be the logical thing to do and I -- at the time was single and lived at home and was able to commute to DeKalb. It's about 30 miles from my home. And so that just seemed to be the obvious place to go and so that's where I went. I majored in business administration. Basically business -- a business major. Some leaning into the -- to the accounting field.

Q: What were your impressions of college life as compared to the military and the military academy?

A: Well, I guess by the time I got to the -- to college, I was probably 23 or 24 years old and had been on the farm and then in the military. So where -- it -- it was pretty much what you expect in college and I found college to be interesting and I did after college -- then went on to -- went on to law school, DePaul University in Chicago. And, of course, law school was a challenge.

Q: At Northern, what -- so you said you studied business.

A: Yes.

Q: Did you have an interest in the law at that point or...?

A: Yes, I did. I -- in fact, I took a business law course just as a part of my regular curriculum. But it kind of... I had an interest in the law and I thought being a lawyer

would be an interesting career and I guess that's what attracted me to go to law school and did go to -- to law school.

Q: And when did you meet your -- your wife?

A: I believe it was about 1952 that I... I believe it was... I'm trying to figure... I guess may... It -- it might have been 1954, because I think we got married in 1956 and we went together about two years before we got married.

Q: Is she from the area?

A: Yes, she's from Batavia.

Q: And she's a -- she's an artist? Is that correct?

A: Yes, yes.

Q: What's it like to be married to an artist? [laughter]

A: Well, she -- it means she obviously is a creative person and enjoys doing art and, you know, I think... I guess being married to -- to -- to her is good. And we've been married now 55 years, I think.

Q: That's an interesting dichotomy, I guess. You've got the creative artist and a lawyer who, you know, looks to precedent and...

A: Um-hmm.

[00:15]

Q: So kind of an interesting connection there, I thought. What kind of music did you listen to? Or did you... What kind of books were you reading at this time of your life in the mid fifties?

A: Well, of course, the books would have been college material and things of that nature. Movies were just the regular movies that were -- that existed at that time and in that

period. We didn't -- we'd go to the movies occasionally. It wasn't something we did a lot of. But just movies are movies.

Q: No movies stick out or no books stick out?

A: No. Not -- nothing particular.

Q: What was your political, social outlook at this time?

A: I suppose that I would -- I just took -- put myself in a category. I think I probably had some liberal thinking and liberal leanings which would be age appropriate, I think, and I think that it -- when I went to Northern, I -- I -- of course, I had been out of high school for five years before I went to Northern, so I was somewhat of an adult when I went to Northern. And I think going through college as an adult is a little bit different than as a teenager. But I found college to be a good experience, a rewarding experience, and then I went directly from college. I went into -- into law school. So -- I mean, it was, you know, a summer or something in between but...

Q: Were your parents Republicans or Democrats?

A: You know, I can't honestly answer that and that sounds like I should. My guess would be they would probably have been more Republican than Democrat but we were really not a real politically active family or we'd -- I don't think we discussed politics on a regular basis. I suppose we all had our positions but that was about it. But I -- I would say they -- if they were anything, they were probably more Republican than Democrat.

Q: Getting back to something you brought up before when you were at Northern. You took an interest in law. Why did you end up choosing to study law? It seemed like you were... You know, three possible career paths. You know, you had this military

experience, you had this business experience and you were interested in the law. What directed you towards -- towards the law?

A: Well, I guess I -- I think my business major just sort of fostered my interest in the law and I guess ultimately made -- made me make the decision to take the challenge of law school and go to law school. And I think -- it was just something that I was interested in. And then, of course, once you get into college and then I end -- on into law school, you become more involved in the interest or in the field of law and the application of it, etcetera.

Q: What was your family's reaction to your choice to study law? Did they want you to go into farming or...?

A: I -- I don't recall that they had any specific reaction, negative or positive. I believe I was the first member of my generation of my family to go to college. One of my older brothers ultimately went to college and was a priest, who's now deceased, but I guess college sort of fit into my -- into my... I think I -- after I had been out of -- out of school for two or three years, then I was able to get back into the school mode and go to college. I think it was -- I was more prepared for it then than I was when I got out of high school.

Q: What was it like to attend DePaul in the early -- you were there in the early '60s, is that correct?

A: I think I might have started at DePaul in... I believe it was '58, '58 or '59 and I went -- actually spent only two years there because I had enough -- enough credit from when I was in the Army and then that I earned at DePaul. In fact, I think I was one course short of my bachelor's degree when I got lined up with Northern Illinois University Law School and they agreed to accept me and then I got DePaul to agree to accept -- let me

transfer back a course from law school so that then I -- that would act as completing my degree, my bachelor's degree. And so that's how it went down.

Q: And what was your reaction of Chicago? Living -- did you live at -- in Chicago at the time?

A: I was married and we lived -- we lived in Chicago for I think about -- approximately a year. And then we moved -- moved back out to the valley. We -- in fact, we moved to Batavia and lived in Batavia. And I think our first two or three children were born in Batavia. And then we moved from Batavia then out -- further out and back to Sugar Grove, in the Sugar Grove area, and ultimately then built -- ended up building a home on -- on some of the farm that we had subdivided. So that's kind of where I ended up.

Q: Was there any culture shock moving from a small town to one of the larger cities in the country?

A: Yes. There was a culture shock in that basically I was a farm kid and getting mixed up in grad school in Chicago and it was a different experience. I can't say that it was a negative experience but it was different than obviously being -- living out here and even going to school in DeKalb. But I found it to be constructive and challenging.

Q: Was -- when you were at DePaul, was there any sort of specific legal philosophy that DePaul taught? Did they concentrate more on formalism or realism or was it changing at this time?

A: I guess the answer first is no. I think our -- our main goal, and it seemed to be this goal of the school, was to be able to pass the Illinois State Bar and that was the ongoing challenge. In fact, after I graduated from college and before I went to law school, I think I took a bar course or a course that -- to get some ideas as to what you needed to know

and I had the good fortune of taking the bar and being successful on the first go around, which wasn't necessarily always the case. A lot of fellows had to take it -- do it a time or two before they made it. But I was fortunate in that I made it on -- on my first try.

Q: You didn't have to take LSATs or anything like that to get in, so, I mean, it was kind of a weeding out process during the first year or... I mean, did you have -- what was the attrition?

A: Well, yes. I don't recall ever taking any LSATs. I just basically wanted to go to law school, went to DePaul and either I interviewed them or they interviewed me and I was admitted and that was it. I don't -- I don't recall any testing. And I -- you know, I found law -- law school to be challenging and interesting.

Q: So you get your law degree in 1961. Or, I'm sorry. Law degree. You get your license to practice law?

A: Yeah. I think I get my license in '61. I think I graduated from -- from Northern like in '58 and then went to law school and graduated from law school in '61.

Q: And then how did you end up in Geneva to practice law?

A: Well, after I -- after I passed the bar, then I needed to make a living and Geneva I always considered. I mean, it's kind of the local area and I interviewed with a lawyer in Geneva who agreed -- made -- made me an offer and hired -- hired me. The lawyer's name was Gates Clancy (sp?) and his -- I think -- well, his son, I think, still practices law today and so that's where I was and I think I spent three years with that law firm. Then I went into partnership with a man named Louis Nuendorff (sp?) in Sandwich, Illinois and then at that time we opened an Elburn office. So I was in Sandwich and Elburn. Well, then it wasn't real long before I had enough business in Elburn to where I didn't have time to go

to Sandwich, so then we separated our partnership and I took the Elburn part of the practice and then that's where I practiced until... I practiced for roughly 20 years before and then I ran for a judicial position and was elected and then became a judge, a trial judge.

Q: You were a solo practitioner in Elburn?

A: Well, I -- a solo practitioner with -- with generally a couple of associates that were passing through or would work for a year or two and then move on to their next stop. But generally a solo practitioner, yes.

Q: What kind of cases did you have, while either in Sandwich or here in Elburn?

A: It was a very general practice. We did a lot of things that general practitioners do. You know, leases and we did some -- some injury work, like personal injury work. Business types of law. Just basically general practice.

Q: Any cases that stand out as interesting or important during that 20 year period?

A: None -- none that come -- come to mind specifically. I think all of my cases were interesting when I was doing them but I don't know that one stands out partic -- doesn't stand out particularly more than another.

Q: What was it like to be a working lawyer in the 1960s and '70s? Did the civil rights affect you in small town America, '60s or '70s affect any of your -- part -- any part of your practice?

A: Not -- not to any great extent. I had a good practice and a good business and I enjoyed -- I enjoyed practicing law. And, you know, I found it to be challenging and rewarding and so... But I don't recall that there were any specific cases that arose out of the military or anything like that that I was involved in.

Q: Did your political or social outlook change at all during this period?

A: I'm not so sure it changed. It probably solidified. I'm not sure whether -- whether that's change or not. But yeah. I'm, I guess, pretty normally a -- I have some conservative leanings but have some -- not radical ideas but some progressive ideas to mix in with the conservative part of my politics, I guess.

Chapter 2: Life as a Circuit Court Judge, and Appellate Court Judge

Q: How and why did you decide to become a judge, then?

A: Well, I had practiced law for about 20 years and a vacancy occurred and so I -- I -- at the time I -- I mean, I really had... As I say, had practiced law for 20 years and I guess I was ready for another challenge or maybe it's something that I had always thought I might like to do if the opportunity ever presented itself. And so when the vacancy opened up, I -- I chose to run for it and filed and ran for it and was elected. And then I -- I was a trial judge for from about '82 to -- I think it was 19 -- probably '91 or something like that.

Then I went on to the appellate court for a couple of years, and shortly after I went on to the appellate court... I was appointed to the appellate court I think by the Supreme Court, I think it was, and then a vacancy opened up on the Supreme Court, so I just turned around and ran for that. It was a -- there was an office, you ran for it. And, in fact, it's still an elected office. And was successful and there it was.

Q: On the circuit court... So you were a trial court judge -- would you say ten --

A: Yes.

Q: -- about ten years, did you say?

A: Probably -- probably six years. Then I went on the appellate court for two years and then I went on the Supreme Court and I'm not sure of that. Might -- might have been six or seven years.

Q: What -- what kind of cases did you have as a trial court judge?

A: Well, as a trial court judge, I was a full circuit judge and heard anything that circuit judge -- circuit court hears,

[00:30]

anything that they have jurisdiction of, which is pretty general. So we had quite a variety in the kinds of cases. I think I may have been... I don't remember that I was ever assigned to the divorce branch, but I did divorces as a part of being a judge and pretty much then I just... So whatever came before me is what I -- is what I heard. Did contract stuff, did personal injury. You know, real property law. Had quite a variety of the areas of law that we covered, or that I covered as a trial judge.

Q: Where did you preside at?

A: Primarily Geneva, which is about ten miles east of here. Although I -- I did... I -- I physically live in DeKalb County and did then -- have for the last 30 years and I did spend a certain amount of time in DeKalb County. DeKalb County at that time had a couple of judges that were their regulars and then I was assigned there from time to time. And I spent some time in DeKalb County, where -- in their county seat, Sycamore. But I spent more time in Geneva as a trial judge than I did in DeKalb.

Q: So you were elected to the circuit court and then you sought election to the appellate court?

A: Yes.

Q: And how was serving on the appellate court different from serving on the circuit court?

A: Well, of course, the appellate court's a reviewing court and the circuit court's a trial court, so that the difference is pretty obvious, that your primary responsibility on the appellate court is reviewing decisions of the appellate court. I'm sorry, of the trial court. And, you know, being an appellate judge, is -- it's just a much different experience than being a trial judge. You're -- you're dealing with -- as a trial judge you're dealing with witnesses and local sets of facts and things like that, whereas on the appellate court you're reviewing what some other trial -- what some trial court has done at any -- at any given time. So it's -- I mean, it's quite a lot different between the trial court and the appellate court. And then, of course, I was on the appellate court -- I think it was two years. It might have been two or three. And shortly after I ran for the appellate court, an opening -- a person, fellow I knew, Tom Moran (sp?), retired, he was a Supreme Court judge, and that created a vacancy, so I just turned around and ran for that vacancy and was elected and so then I was on the Supreme Court. So I was an appellate judge probably, I don't know, between two and three years and then I went on to the Supreme Court.

Q: So let's -- let's kind of pursue that for a second. You had mentioned that Moran had retired and then you decided to -- I mean, how did you decide? How did you make that decision to decide to run for the Illinois Supreme Court?

A: Well, I guess once you're a trial judge or an appellate judge, the -- I suppose being on a supreme court seems to be the natural progression, although I don't know that everybody feels that way. But at least that's the way it seemed to me and it's the way it worked out for me. And I think the openings came at the right time and fit well into my agenda, so to

speaking, and so it... I ran for office three times and was successful three times. Never had the bad experience of not winning, so...

Q: What was the process of running for the Illinois Supreme Court? Did you have to raise funds?

A: Yeah. We -- it was --

Q: Cause it's a partisan election?

A: Yeah. It was -- it was partisan and I think continues to be a partisan election, although here, this area is more Republican than Democrat. And it wasn't real partisan. But it, in fact, was partisan. I'm sure I filed to run in the Republican primary and was successful and then went on to run -- run -- well, I first ran for the circuit court and then ran for this, for the appellate court and then for the supreme court. So I ran for all three offices.

Q: Who -- do you remember your opponent? Your Democratic opponent in the race?

A: I -- my race for the supreme court, my opponent was a fellow named George Unverzat (sp?), who was a -- George was a lawyer in DuPage County and he had been on the -- on the appellate court for quite some time and so that was my opponent for the supreme court. I don't remember on the appellate court specifically. It seems to me I had a couple of opponents when I ran for the appellate court. I honestly don't remember -- remember - - remember the names.

Q: Do you remember your margin of victory when you were elected for the Supreme Court?

A: Yeah, it was... I won quite handily. I -- I -- just picking numbers out of the air, I don't -- it seems to me there were like 20,000 votes cast in the election and I think I got 14 or 15,000 and my opponent got the other five or six. So it went to -- went pretty well in my direction.

Q: Did you have to campaign? Did you travel --

A: Oh, yes.

Q: -- travel about the district to campaign?

A: Oh, yes. Tra -- traveled about the district.

Q: Tell me about that.

A: And leaned on the precinct committeemen and tried to, you know, make -- nail down as many votes as you can and it -- it worked well for me. It seems like I had the good fortune of not having... I mean, my opponent -- opponents didn't seem to work as hard as we did and it seemed like the harder you worked the luckier you got. And so I was always -- had the good fortune of winning.

Q: How does a judge running for election go about raising money to pay for a campaign?

A: I'm not sure currently whether there are any restrictions on it or not. When I ran there, there were no particular restrictions. You couldn't do unethical things or offer to make a decision in a particular way if you got a contribution. You just basically made your -- your fundraisers. Basically indicated you were a person running for judicial office and you needed funds for advertising and posters and things of that nature. So it was -- maybe it was a little more generic when you run for a judge than if you run for being a representative of some sort.

Q: Do you want to take a break here?

M: That's fine.

Q: OK. Because we're just -- since we just about have you on the Supreme Court. This might be a good time for a break.

A: All right. What machine do I need to play the disc on, then?

M: Just on a television with a DVD player.

A: OK.

M: Or a computer that has a DVD player on it.

A: I think we've got a DVD on our television at home, I think.

M: OK.

A: Yeah.

M: You have any problems, call me and let me know.

A: OK.

M: We'll make it to where you can have access to it --

A: OK, good.

Chapter 3: Life as a Judge on the Illinois Supreme Court

M: -- (inaudible). OK. All right. You're going. You're rolling.

Q: OK. OK, well, we've got you elected to the Illinois Supreme Court. What was it like living on the third floor of the Supreme Court building?

A: I -- I found my experience in the Supreme Court to be very constructive and very positive. We would go to Springfield or meet in Springfield. The court would -- it seemed... As I recall, maybe five or six times a year for a period of two or three weeks and consider opinions and things of that nature and you ask about living on the third floor. That's where we would stay. Again, the food was good and it was a constructive experience. I enjoyed Springfield and the camaraderie of the fellow justices. And it was a -- it was a positive experience.

Q: Give me an example of like what happened during a day of -- from sunrise to bedtime. What was a typical day like on the third floor hearing a case?

A: Oh, appreciate that it's been ten years since I was on there, since I've retired, so it may be a little -- a little foggy. But a regular day we'd be pretty much on our own -- on our own. We would hear cases, hear oral arguments, primarily in the morning. Then break for lunch and then after lunch we would sometimes meet and discuss the various matters that we had heard and give our particular view or position to the fellow justices. I -- I don't remember what... Well, other than that, you -- you were assigned your -- your case or -- when it was your turn to be assigned to a case. Basically, you -- you -- if there were arguments on the case, oral arguments, you'd listen. The court would listen to those but then the person -- the justice assigned to write the opinion would come up with a draft opinion and then usually it would be submitted to the other justices for their perusal and comment and amendment or suggested amendment in a fairly orderly manner. Or manner. And...

Q: So when you would write an opinion in a case... Well, how -- let's back up for a second. Did the chief assign that to you or was it rotational?

A: I'm sure it was rotational. I don't -- don't believe that it was assigned generally -- at least generally speaking it wasn't assigned.

Q: And how long -- how long in general did it take you to write an opinion?

A: Well, of course, there's probably a great variety in the --

Q: Depending on the case.

A: Depending on the case and the complexities of the facts and the issues. To generalize, I -
- it seems to me that -- and this is really guessing, and, again, it's been ten years since I've been on the court. But it seemed like we probably generated ten or 15 opinions a year, I mean -- and that would be finished opinions that were submitted to the court and

then published. And, of course, we had our clerks and they would, you know, research -- do the research on it. It -- I had no -- as I -- it's hard to quantify but I'd say... It wasn't a decision a week because that'd be 52 decisions and I'm sure we didn't have that many decisions. But -- but it -- it -- it -- whatever time it took, it took. If it was a complicated - long complicated one, we'd -- you'd meet with your clerks and discuss it and so on and so forth. And it'd be a -- you know, a fairly sizable task. If it was pretty straightforward, it didn't take long.

Q: Then you -- you finished the opinion and you'd give it to your colleagues. And then, as you said, so there was a give and take --

A: Yes.

Q: -- where they --

A: Yes.

Q: -- make constructive criticism or...

A: Well, sometimes even not so constructive but... But no.

Q: I guess that's the point of dissents.

A: That's right. Well, and that's the point of the discussion, is to get -- to get an idea of whether you're out in left field or not or find out that your colleagues are all out in left field. And it -- it -- it's a system that worked.

Q: Tell me about -- so do you remember some of the important cases that you ruled on and you wrote the opinions of?

A: Well, I guess I'd lead by saying, well, they were all important when you were working on them. But I suppose one of the cases that comes to mind is the -- what we call the Baby Richard case, which was a custody issue and it was around for a while and was quite

controversial. There was a lot of not public input but public interest in the results and not -- and it was -- not everybody was on the same page, it seems like, and that -- that case comes to mind. Other than that, none other comes to mind at this moment.

Q: OK. Well, let's -- let's track on this Baby Richard for a second.

A: All right.

Q: So tell me a little bit about the case? I mean, what -- what was going on?

A: It was a custody case, I'm sure. And again, it's been a while.

Q: Twenty years removed almost for this.

A: Yeah. Yes. And, as I say, there was seemingly public interest in the case and not all of the public was on the same page. Which was a little unusual to be lobbied as a justice. And it wasn't something that happened often. But there -- there was quite a lot of

[00:45]

interest, as I say, in that case and everybody seemed to have a position on it. And I'm -- I'm sorry. I -- I can't give you a factual scenario without looking at some notes, at least.

Q: One of the cases in which you wrote an opinion was *City of Chicago v. Morales* and that was about gang loitering ordinance that was declared unconstitutional because it was an arbitrary restriction on personal liberty and then violates due process. How difficult is it for a judge to strike down legislation as unconstitutional? How do you arrive at that conclusion?

A: Well, it's not a matter of difficult or not difficult, or at least not usually. It's a matter of basically reviewing the facts and circumstances. I think in the case that you refer to it was a gang loitering ordinance and I guess you... You know, if it is consistent with the Constitution you go with it and if it isn't, you determine that it's contrary to the

Constitution. And it seems like in that case there were some fairly interesting issues and as to how far the legislature could go in dictating to members of the public who they might associate with or not associate with was sort of the basis of this suit. Again, I'd have to sit down and review it to get much more specific.

Q: Another case, *Berlin v. Sarah Bush Lincoln Health Center*. The court was divided over an interpretation of a decision that had been written 60 years before at the Illinois Supreme Court. Is it unusual for the court to debate the applicability of a decision written so long ago? Or does time effect the interpretation of a law?

A: Well, it -- as a member of the court, you -- you listen to the arguments and obviously they'd refer to the case law that affects their opinion, the -- the basis of the facts that are before the court. I -- I suppose the interpretation probably tends to not change but to vary. The interpretation varies. And I guess if -- if -- if the -- if the case is wrong, I mean, decided wrong or against public policy, the reviewing court then comes down in that -- in that position. That's what they're -- they're there for. And the appellate court does and then, of course, the Supreme Court is the ultimate arbiter and decides whether it's affirmed or reversed. So it's -- that's just the way it works.

Q: What are your memories of the Rolando Cruz case?

A: It was a -- at the time, it was a -- that was a fairly active, and again, controversial case. Give me a few facts so that I can...

Q: Cruz was the one who was found guilty of killing a young girl and the evidence, which was suppressed at the trial level, caused him to be found guilty and sentenced to death. I believe he was sentenced to death twice and then the Illinois Supreme Court eventually ruled that he was -- he was free based on some evidence of some testimony from another

witness that -- that was suppressed at the earlier trial. But it was -- it was a major case regarding capital punishment.

A: Um-hmm. Yes, I remember the Cruz case and it was... It was quite controversial, as I recall. And not only controversial, but it then, when you get a number of justices that are -- the appellate justices, they don't always agree either. Which -- it's -- that adds to the -- to the -- to the whole scenario and ultimately one of the justices has to write an opinion and the others need to either concur or dissent, one or the other. But the system generally, you know, works itself out and some of the more controversial ones or factually unique ones are a little harder to agree on than others.

Q: Are there any judgments or opinions that you gave that in retrospect you struggle with today?

A: I -- not at all. I guess it seems like you -- you make a decision, you render that decision, the opinion is generated, end of story. And it's unusual to -- or at least I never, you know, wondered whether I did the right thing or the wrong thing or... I mean, it's my job. I did my job and gave it my best shot and I'm on to the next case.

Q: What are your memories of the administrative role of a justice of the Illinois Supreme Court? Were you appointed as liaisons to any...?

A: Yes. I was a liaison to two or three things. I again would have to review my notes to even figure out what they were at this point. But it was -- it was not a huge part of the job. On the other hand, it... You -- you know, there was a certain amount of administration, the assignment of cases and the agreement of opinions and the writing of dissents and things of that nature. But it was an orderly process and the cases, generally, you worked through them in an orderly fashion.

Q: What are your memories of the attempted impeachment of Justice Heiple?

A: That happened not too long after I went on to the court. I was fairly new on the court. Heiple was, and I think even continues to be, a bit of a controversial person and I guess in my view he -- Heiple's a very -- very capable lawyer and generally had good decisions. Now, he might have a tendency to find himself out in left field once in a while, which probably could be said about any of the justices. But he might have been a little more adamant or a little more vocal about his positions than some of the other justices. But Heiple was a very good lawyer and a very good thinker. He just, as I say, got out in left field once in a while, which probably all of us do.

Q: One thing about the Cruz case, getting back to that, is that, you know, there was the issue about prosecute -- prosecutorial misconduct. And you -- what encouraged you to speak out about pros -- prosecutorial -- prosecutorial misconduct? That's a hard word to say.

A: It seems like I -- and I remember that. Which I really didn't do very often. I think that there was -- that was a case that there was a lot of disagreement on and it seems to me that I felt that maybe the majority was going a little too far in their micromanaging of people's existence and things of that nature and, again, without reviewing it, it's hard for me to comment on it because... But I do remember. I did try to dissent in the -- in the Cruz case.

Q: Well, just to... You had remarked, and this was in a speech to the Illinois State Bar Association, "That state's attorneys have a role in the public image of the court. They have a sworn duty to do justice. They are called upon to be advocates and that they must be, but there are parameters and limits. They must walk that fine line. In their exercise of prosecutorial discretion, they must be keenly aware of what is fair and just. They must

represent society but it must be within the pale of both the federal and state constitutions to make sure that they are presenting their cases fairly and accurately and that they shouldn't mislead the court or the jury."

A: I think -- think that -- well, it was part of one of my speeches, I think is --

Q: That it -- yes.

A: Yeah. And I would... You know, having heard it, I would con -- I think that I would stand on those words and I -- I wouldn't... I don't have any problem with them today any more than I would have ten years ago.

Q: In April of 1999, the Supreme Court formed the Special Committee on Capital Cases. Did you have any thoughts on its formation or its findings?

A: I'm aware of the fact that we did that. I -- I don't have any recollections up or down as to how that came about or, for that matter, what the results were.

Q: What was your reaction to Governor Ryan's -- George Ryan's call for a moratorium on the death penalty?

A: That was kind of controversial at the time. And, of course, the thing that jumps out at you is that our government's made up of three branches, the executive and the legislative and the judiciary and I think that my thought was and is that he was off base on making this declaration. That wasn't his job and I think it was probably inappropriate. Other than that, I don't have a lot of recollection of it.

Q: And not long after that, he granted a blanket clemency.

A: Yes.

Q: How did you feel about that or what did you think of that?

A: You know, I don't have a problem with that. I've never been a huge proponent or opponent of the death penalty. We had it. We -- we used it. I think there are certain factual situations that call for it. Probably not very many but in an extreme case. But, as I said, I don't know that I was ever particularly a proponent of the death penalty. When it was the law, I followed it and after it wasn't the law, I didn't follow it is kind of what it amounts to. So I suppose you could spend a day pondering whether it's good or bad, should have it, shouldn't have it. But I think as part of the court you do some of that, but really your job is to follow the law that exists and not to be making law. That's what the legislature is supposed to do. But I think there's a lot of blurring and a lot of crossing over between that and that's just, again, part of the way the system works.

Q: Do you -- what do you think should happen with the death penalty in Illinois. It's still on the statutes. Should it be abolished or should we keep it?

A: I guess if I had to vote up or down on it, one way or another, I think I'd abolish it and be done with it, because it's not something that... It's gone out of style, I think, and a lot of moral ramifications to it. So it'd be a lot simpler if we didn't have it.

Q: Why did you decide to retire? You retired in '98, is that correct?

A: '98 or '99. I think I was 70 years old and decided it was time to quit. I live on a farm and I like the farming existence and enjoy that part of my life and I'd sort of been there, done that, as far as the practice of law and the judging business and so I was ready -- I was ready to call it a day.

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And it's now been ten years or so and I really can honestly say I've never had any particular regrets that I retired. I had a -- as I say, a good career and a lot of good experiences, but I was ready to move on.

Q: What have you been doing since retirement, then?

A: Whatever I want.

Q: Good answer.

A: Of course, I could say vindicated. I have a farm and we actively farm the farm. And that, of course, includes the marketing of grain and all of that sort of thing. I -- I find it to be interesting and fascinating, although I'm not as physically involved. I still enjoy being part of it.

Q: Do you still practice law?

A: I -- not really. I -- I get involved occasionally but usually it's on a gratuitous basis. But I don't really practice law as such. No, I'm pretty much retired.

Chapter 4: The Judiciary and Society

Q: Just some general questions about the judiciary. What are your thoughts on cameras in the courtroom?

A: Again, I've never been a particular proponent or opponent of it. I think if they have cameras in the courtroom it needs to be pretty closely supervised as far as the court having input into whether they are permitted or not permitted. I think if the cameras in any manner or in some manner cause the court's opinion to go in one direction or the other, I think then it's kind of a negative. But as far as informational -- in other words, the photographing and the information that is provided to the public or whoever, I don't really have a problem with that. It's just that I think there needs to be fairly close

supervision to make sure that it doesn't become involved in the decision making process, either by its presence or its lack thereof and things of that nature.

Q: The judiciary seems to be the branch that most people aren't aware of. Everyone knows the governor and everyone knows about the legislature. What are your thoughts about promoting the public's awareness or enhancing the public's awareness of the judiciary?

A: I would certainly not be opposed to that. I think the more information that the public has I think is good and I think if they have an interest or want to make comments or be critical of the judiciary, I guess they need to know what they're talking about. And I -- it just doesn't -- the public participation doesn't bother me at all.

Q: What do you see as the role of a judge in society?

A: Well, I guess to do his job, to make decisions on sets of circumstances or facts and the application of law to them. And that's his job.

Q: When you were a lawyer and a judge, you were a member of a number of bar associations. What do you see as the relationship between the judiciary and bar associations?

A: I really don't know that there's any -- I don't know that I would describe it as a relationship. The bar association exists, the court exists, lawyers belong to the bar association. I think judges belong to the bar association. As I said, I don't know that there's a lot of interrelationship to them. I think that the bar association needs to maintain its role and the lawyers need to maintain theirs. I think there needs to be a fairly clear division in the application, I guess, and I'm not sure where I'm going with this. Yeah, I think bar associations generally are constructive and do constructive things.

Sometimes they get involved where they shouldn't and that's inappropriate, but other than that... That's the way it goes.

Q: What role do you think our commission, the Illinois Supreme Court Historic Preservation Commission can play in preserving the history of the courts of Illinois?

A: Well, I hadn't given that a lot of thought, but I guess doing what we're doing and interviewing people that are willing to talk to you and trying to document and arrange the going's on of the court. I suppose at the right time maybe have some opinion or criticism of it if it -- not in their -- in their judgment going in the right direction. But other than that, I think, you know, they sort of co-exist.

Q: Do you think studying the history of the judiciary is important?

A: I guess I'm not sure I'd use the word important. I think it's constructive. I think people might benefit by having a better understanding. On the other hand, I'm not sure that that's something that would be a -- something that I would be aggressive about. I think it's something -- it's a kind of a personal -- either you're interested and you're involved or you're not interested and you're not involved kind of thing. I don't have a problem with that.

Q: What do you see as the future of the legal profession?

A: I don't see that it... I see it continuing in the fashion that it has for the last 50 or a hundred years and progressing and being a part of our system and part of the law making pra -- practice. I think it's constructive. I think the legal profession is a positive part of our -- of our society and culture and should be.

Q: If you had to do it all over again, would you do anything differently?

A: No, I'm happy with where I've been.

Q: Happy with where you've been. What do you want to be remembered for as an Illinois Supreme Court Justice? What is your legacy?

A: Well, I guess I would hope that people would read my decisions and be aware of what I did or didn't do and look at it in a favorable light. I'm a member of society as much as everybody else is and obviously I would hope that my contributions were constructive and would be interpreted as constructive. Other than that, I don't have any position on it, I guess.

Q: Just from, you know, in doing a lot of this research I've been reading a lot of the opinions. And reading your opinions was actually quite enjoyable. [laughter] Your -- you get to the point, you summarize your legal arguments and that's it.

A: Well, thank you.

Q: You know, I -- so I found yours actually very in -- and I'm not a lawyer, so I find your opinion -- I found your opinions very good.

A: Good. Well, thank you very much. You're very kind. You make points with a judge when you tell him his opinions are good. [laughter]

Q: Anything else you'd like to add?

A: No, I think we've covered quite a lot of territory.

Q: Thank you very much.

A: Yes, thank you. Very interesting.

END OF INTERVIEW