

An Interview with Moses Harrison II

Illinois Supreme Court Historic Preservation Commission

Moses Harrison II practiced law in Collinsville, Illinois before becoming a circuit judge, an appellate court justice, and an Illinois Supreme Court justice from Illinois's Fifth District. He served as Chief Justice from 2000 to 2002. Justice Harrison passed away on April 25, 2013.

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Abstract

Moses Harrison II

Biographical:

Moses Harrison was born in Collinsville, Illinois on March 30, 1932. He graduated from Colorado College in 1954 earning a Bachelor of Arts degree. After a year off from school, he went to law school at Washington University in St. Louis, Missouri, graduating in 1958. Harrison immediately began practicing law in Collinsville as a general practice attorney. He married his wife Sharon in 1961. After fifteen years of practicing law, he accepted an appointment as judge of the Third Judicial Circuit in 1973 and won election the following year. In 1979, he accepted an appointment to the Fifth District Appellate Court and won election the following year. In 1992, he won the election for Illinois Supreme Court for the Fifth District. He served as chief justice from 2000 to 2002, when he retired from the court. Justice Harrison passed away on April 25, 2013.

Topics Covered:

Growing up in Collinsville in 1930s and 40s; Great Depression; World War II; Collinsville High School Basketball team and state tournament; Colorado College; Organizing with Teamsters; Law School at Washington University; McCarthyism; Private practice cases; Car bombing of law partner; Circuit Judge and cases; Appellate Judge and cases; Election to Illinois Supreme Court; Illinois Supreme Court Building; Dissenting opinions: *First Springfield Bank v. Galman*, *Barnett v. Zion Park District*, *Spritzma v. Mercury Marine*; Justice James Heiple; Death Penalty, *People v. Kokoraleis*, *People v. Bull*; Death Penalty moratorium and clemency; General Observations on Judiciary.

Note:

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Oral History Transcript
Illinois Supreme Court Historic Preservation Commission

Moses Harrison II

Chapter 1: Youth and Education

Q: Today is June 30, 2010. We are in the home of Justice Moses Harrison. I'm John Lupton, the Director of History Programs for the Illinois Supreme Court Historic Preservation Commission and we are doing an oral history with Justice Moses Harrison. Well, let's begin. Why don't you tell us where you were born.

A: I was born in Collinsville, Illinois March 30, 1932.

Q: And tell us about your parents and your grandparents.

A: My father was a dentist and he practiced over 40 years. My grandfather was a physician. He practiced over 50 years. My mother was an RN, a registered nurse. I had an uncle who was a dentist and another cousin who was a veterinarian. Looks like I'm the only one who went bad. Went into the law.

Q: Did you ever hear any family stories relating to the lynching in 1917 of the German, Prager, or of the East Saint Louis race riot in 1917? Collinsville was a busy time then.

A: Right. Oh, yes. We... It was customary in those days. It was a lot different 75 years ago. You did a lot more neighboring, and you did... Every Sunday I'd eat with my grandparents and a lot of meals we ate together, and, of course, we talked about all those things. They knew Prager. I knew one man from Collinsville who operated a restaurant there that was there when they hung Prager and they liked to talk about the details. For instance, they talked about how when they had everybody who was observing touch the rope so that they could claim that everybody was part of it. And nobody knew much

about Prager. Apparently couldn't speak the language very well at all. And he had a -- being of foreign descent, he probably didn't understand a lot of things being said, and so therefore he wasn't outgoing or jovial or anything like that. And he was generally disliked. But I don't -- I never heard anything that he really did that was bad. I was always interested in the subject. I remember in undergraduate school I did a paper on Prager hanging and I had a lot of good material from the Collinsville Library. You know, it was in the paper, things of that nature. As far as the race riot, they talked about it but I didn't know much about it. Years later, when I was a young man we had another riot in Saint Louis that I saw. And I went over -- I was -- some fellow -- we went over to pick up some metal furniture and it all started in a playground over there or swimming pool area in the summer and you could just see the sides coming together and the crowds coming and they had a riot. And it was bad. Not as bad as the first, of course.

Q: What do you remember about growing up in Collinsville in the 1930s?

A: Well, it was just very different. It may sound corny to someone of your age. A lot of people wouldn't understand it. But it was only a community of about 10,000 people. Pretty well -- everything was pretty open and just kind of turned the kids loose in the morning and they'd have sense enough to come in about noon to eat and then about 5:00 -- 4:00 or 5:00 o'clock, they'd come home, whenever the father would get home for dinner. So it was a free and open community. Everybody knew everybody. You had 3,000 babysitters because if you acted up, by the time you got home, your parents knew about it. You were told about it. And they were strict in that way. But, oh, it was great. We could go all over town and we had our hangouts. I lived near the old downtown area and there were always places we liked to go. Little picture show, nothing going on

during the day, we hung around there in the city hall, in the fire department and the police department and the water tower. We had our hangouts we went. But it was great. We didn't have a lot of organized activities but we seemed to find enough to do. You know, you always knew... There was always woods you could go to and you knew guys who'd be down there and have some fun. We had a lot of... I thought it was just harmless fun. And then later we'd make up ballgames. It was... As far as I was concerned, it was a golden era. We really enjoyed life.

Q: Did the Depression affect your family much?

A: Well, everybody. But, you see, everybody was in it, so it didn't bother you. I had a buddy named Jim Evans. On Tuesday nights, you could go to the theater for ten cents for you and one cent for a buddy, so it'd be 11 cents between the two. So what you'd do is one guy would pay six cents and the other guy a nickel and you'd both get in. The movie house was a big center of social life throughout the second grade on. And it was a simple life but we had a lot of fun things you can't believe today. But, for instance, when I was a boy, we'd hike a lot of different places. We got tired, we'd come back home, we'd ride on the back of tomato wagons. Farmers who were bringing in tomatoes. And we'd ride on the back. The streets in Collinsville were cleaned by a man with a horse and wagon. You know, he'd clean the -- brush the streets. And the streets were all paved with brick. And it was just... It was old fashioned, just like it's portrayed on TV. It was just a nice, simple life. But no. During the Depression, nobody had anything. But as far as a kid was concerned, you know, you didn't know any different. You just thought that's the way it was supposed to be. But times were tough. It was hard. And you had to watch every penny.

Q: Being this close to Saint Louis, did you make it over to baseball games?

A: Yes, and --

Q: Were you a Cardinals fan or a Browns fan?

A: Well, I rooted for both. There's a lot of interest in baseball then. You know, no TV to watch, so it was a big ordeal to go to a ballgame. You had to get on a bus in Collinsville and then ride to downtown Saint Louis and then you had to get on a streetcar, ride on Grant Avenue to the old Sportsman Park. They had a deal that they called the knothole games and where kids -- where you could get a ticket and you got in free. The seats were out behind third base. Everybody had a good time, even though the thing's pretty simple. Didn't cost much to go over there. You know what the prices are like now at a ballpark, right? It was a different world. But...

Q: Are you still a Cardinals fan?

A: About all I read is in the newspapers. Still a Cardinal fan, though.

Q: What films do you remember when you went to the theaters with your friends?

A: Well, the big thing was Hopalong Cassidy. That was the big thing. If you could ever see one with Hoppy, oh, that was big pictures. And a lot of those were on... They'd have a Saturday matinee you could see. Tarzan was another thing. Everybody -- they all liked Tarzan and the town, for about three days after the movie, showed... You know, it was just a lot of innocent... Good, clean... Kids had fun. We did a lot of fishing. We didn't have a swimming pool in Collinsville, so we swam in mine ponds. And that was good and bad. It was great swimming but it was kind of dangerous. I know that -- an old retired miner had to jump in one time and pull me out. I remember his pulling me out. Grabbed my hair and pulled me to shore. I got in trouble. And it was just interesting. It

was just a lot of... You know, it was just a neighborly feeling. That's all that you had. And I enjoyed my childhood.

Q: Well, let's jump ahead a decade. What are your memories of World War II?

A: Well, as kids, we were worried that we were going to lose that war. And the thing I remember most about it is how patriotic everyone was in the community. You know, everybody watched the war news, heard the war news every night on the radio. That was everyone's interest, in winning that war, and doing what they could for the war effort.

Q: Do you remember where you were when you heard about Pearl Harbor? It seems to be like a watershed moment.

A: Yes. I do remember. I was at my grandfather's house and they were trying to explain to me about it. Of course, I had an uncle -- a young uncle who was there who predicted the war would be over in two weeks. Win in two weeks. You know, those Japanese didn't have any planes like we did or anything of that nature. It was just foolish on their part to go to Pearl Harbor. So there you are. But, no, we were all interested in war effort. The youngsters would go around. Metal drives were... Any waste metal. You know, we'd do everything we could do to collect metal which was needed. And, of course, you went through all that food rationing and stamps. But nobody complained because it was all for the war effort and for the boys. But it was just part of that era of growing up.

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

A: Well, by that time you're... You know, really things hadn't changed that much. Still no TV. The big thing in Collinsville, and in most little small towns, that was basketball. It was the big entertainment and that was the... The community spirit was behind the... If you can believe it, the high school basketball teams. There are a couple of my classmates

who still go to the games and they invited me to go not last year but the year before. And I went out to a game with him, old buddies of mine, and had a lot of fun. Talked about old times. But couldn't believe it. When I played when we were in school it was always a sellout every game and people waiting to get in. They were very... When we were at the game, as I said, two years ago, there weren't too many students there. The gym wasn't filled. I just know... No interest. But there's other things that the children can be interested in, which I'm sure is probably a better use of their time than watching the basketball game. But we had a lot of fun at the games. Again, it didn't hurt anybody and we talked a lot about it. And my senior year we went to a state tournament and got fourth place. And we really thought that was something.

Q: Did you start?

A: I played. I started a few games but the truth of the matter is I was potentially mediocre. But I got to play quite a bit. And then I played in college. First year we had the freshmen ruling, NCAA ruling only freshmen could play freshmen ball. And I lettered my sophomore year. We played in the Rocky Mountain Conference and I had a lot of fun traveling out in Wy-, Montana, Wyoming, New Mexico. Played in a tournament there. And it was a lot of fun. Took a little too much time, so I had to quit after my second year.

[00:15]

Q: Let's go back to the state tournament. You said you went to state your senior year?

Obviously it was one class?

A: Right.

Q: Then --

A: There were 800 teams in the tournament.

Q: 800 teams in the tournament.

A: Yeah.

Q: So tell me about your trip to state.

A: Well, there's not much to tell because, you know, we were there on business. Play a game. Win. And I thought we had a good team, had a chance. But it was a powerful team that year who had won the state championship the year before from Mount Vernon, Illinois. Of course, they won again. But, oh, it was interesting. Like I was telling you about how the community operated. I -- when we were going... It was determined that we won the regional, were going to go to state, why, the cleaners would clean all your clothes so you had clean clothes to take. They gave tickets to the boys for their parents or family members, and we were very proud of that because, you know, in those days in that Huff's gymnasium it was -- there weren't a lot of tickets so that was a big deal. And, oh, it was very exciting stuff to go up there. They called it the Sweet 16 and it really was. It was a sweet -- sweet tournament. Sweet... It was a nice experience. And the main thing I remember while I was up there is after the final night we were there my parents were there. We played for the third place trophy. At any rate, somebody from the University of Illinois, I think they invited our team to a party at this fraternity house. I went with several other guys and we would get a girl from Collinsville who was there to go with us. The reason I put it that way is that time very strict training rules. Vergil Fletcher was a wonderful coach and wonderful man, but he had very strict rules. Our senior year, during the basketball season, you couldn't date. No, no girls. So we had to be careful how we talked about that. But that just shows you how times have... Time... You tell a kid that

today and they'd laugh at you. We didn't have anybody out there. I'd say the kids are a lot smarter than we were. But anyway, I went to the party at the University of Illinois. That was the night I decided I definitely wanted to go to college. So it was a nice experience up there, seeing everything and playing basketball was a lot of fun. We had a lot of fun. I was with a good good group of guys and all the seniors who were in the club played college basketball. Of course, some were in a lot different than league. I was in a very small conference out in Colorado. We played, as I said, schools in Wyoming, Montana, but it was small time. But, in the interim, our team that played on the national championship team for the University of Indiana. So we had all different caliber of players. As I said, I wasn't too good.

Q: But when you were in Urbana, you realized you wanted to go to college.

A: Right.

Q: Why did you pick Colorado College?

A: Well, I worked in the summers out in De La Vista, Colorado at a boys camp out there and I did all kinds of things. I worked in the corral. Ran a laundry one summer. I did all different kind of things and I really liked it and fortunately there were a lot of other young men out there that influenced me. He said, "Well, you know, don't do it like everybody else. You like it out here, you want to go to school, why don't you go to school around here? Go down there to Colorado Springs. They got a great college down there. Look into that. So I did and I looked at it and liked it. Worked out fine. Got a degree, undergraduate degree.

Q: What was your degree in?

A: Political science.

Q: How'd you become an organizer with the Teamsters?

A: In the summer, I worked in Colorado Springs in a... Drove a truck and I cubed concrete blocks and it was tough. You know, You're at that high altitude, no clouds in the sky, working outside all day. It was hard, tough -- tough work. And I got interested because I was all with Mexican American people. I guess I was the only Anglo that worked out cubing blocks. I got acquainted with these people. They're working real hard and it was tough for them to get by. They had a family and all. And they all had families. And our pay at that time... Before I tell you what our pay was, I have to tell you there were fifty guys who wished you'd drop dead so they could have your job. It was just tough times. We got paid a dollar nickel an arm and thought we were lucky to have work. So that's when I decided that I was interested in the labor movement and helped organize our shop right there, the company I was working for, and we finally got organized. But it was very interesting all the things we did. Later on I went out to New York City to try to get a job with Meany in the AFL-CIO. I wasn't successful but it worked out. Had a good life anyway.

Q: When did you go to New York City? Was this during your --

A: Well, this was when I --

Q: -- time at Colorado College or after?

A: No, this was after law school.

Q: OK. So then you came back to the Mid-west.

A: Right.

Q: Why did you want to study law? How did you get interested in law?

A: Well, originally I got interested because my father talked about it and what a great profession it was because there was a man whom he admired by the name of Don Buckley who was a lawyer in Edwardsville. He liked Mr. Buckley and he admired him and told me about him. And, so I was a little bit interested in it because of that, Mr. Buckley and my father knowing him and telling me about it. But when I went to undergraduate school at Colorado College my advisor was a lawyer from Pennsylvania, a plaintiff's trial lawyer and very successful. And in those days they still had that idea about treating TB patients by bringing them out to the clear air in Colorado or higher altitudes, which... Later that theory was abandoned. But anyway, Mr. Doug Mertz was out there and he influenced me a great deal. He was one of my professors in the political science department. He really influenced my life and explained to me what the law was about and that you could really help people. I was attracted to him as a fine human being and to the law. He had a world of experience and I -- that's when I decided that's what I would like to do.

Q: And you went to...?

A: Washington University.

Q: Washington University.

A: In Saint Louis. Um-hmm.

Q: What was it like to attend Washington University in the 1950s?

A: Well, it's much different than it is now. Our basic pedagogic methods have improved. Our -- basically we went to class and briefed every case and wrote it out. And you better have that -- thing briefed and you better know it when you came to class with the professors there because if they were going to spend their time with us we had to be

prepared. But we had a good faculty there and they taught us the law. But there wasn't, there weren't any clinics then or anything like that. And very few people could work and go to law school, too. We had a couple of guys that could, but... Their theory was a little bit different about admission to law school and much more liberal in their admissions standards and policies. And for instance, in my class -- in about every class, about 50% flunked out. I think we had 80 some started in my class and 40 of us finished. So it was just a different attitude. They gave you a chance to see if you could do it or not. Now, of course, they have so much demand to get in law school, you must do well in the preliminary exams to be admitted.

Q: This was at a time when McCarthyism was kind of running rampant?

A: Oh, yeah.

Q: How did that affect law school at the time?

A: Well, it didn't affect the law schools so much because we were really interested in the nuts and bolts of practicing law and being prepared to be lawyers. But where it did affect us was in undergraduate school. It was really a problem. Many things or articles that we wanted to read or things we wanted to see, our professors had us check with them first. If there was a prob -- could be a problem and they would get the infor -- you know, get the information for us and order the things because they didn't want our names to appear on any list that would make us suspicious, suspected of being communist sympathizers because everybody in political science considered going into government work and it was a real problem in those days. Colorado Springs -- the school I was at was very liberal but Colorado Springs was a very conservative area. Lot of conservative people. And it was a problem. For instance, we took a compare -- I took a comparative government course

and we wanted to get the *Manchester Guardian* newspaper from England, see what it was like, and we wanted to get the *Daily Worker* to see what the Russian viewpoint was on things. And the way we did that is... Of course, all those subscriptions were taken out in Doug Mertz's name and then he'd pass them out to us as they came in. But it's funny you raise that because I haven't thought about that for years, and of course, nowadays there isn't that problem. But it was awful. Terrible. Yeah. You know, people's lives ruined by McCarthy and what he said. And became obvious later on that he was just looking for a political issue to talk about. I'm convinced of that.

Q: And one follow-up to that is the Anastaplo case. He was the gentleman who had to take the loyalty oath and basically he refused to say that he was a communist.

A: Right.

Q: Is that -- does that case -- is that familiar? Do you remember the case?

A: Well, I remember the case, of course. But, you see, at that time in undergraduate school we weren't particularly interested in details about the law and things of that nature. We were interested in the politics of it and what it amounted to. But you had to be very careful. Didn't want to... Anything could reflect on you poorly. And, of course, Doug Mertz and the rest of the professors were right in protecting us because it could be a real problem later on. You almost had to live through that era to understand it and believe it. You know, can you imagine somebody being investigated because someone else said, "Why did you think he was a communist sympathizer?" and the answer was, "When I was near him, I just felt like it." And you felt...

Q: And that was enough?

A: Yeah. That's right. It was a terrible time as far... But the communists had some control, particularly in the entertainment field, music and movies. It was just enough to get people upset and concerned.

[00:30]

Q: Getting back to Washington University, did they teach any kind of particular legal philosophy?

A: No, they didn't. No. It wasn't philosophical. It was just hard. Read the cases, brief them carefully and we'll discuss and see how much you understand. That's what it was. But that's not bad. You know, it makes you think, makes you read the cases, and when you have to put down things, write it down, you have to know what you're doing and understand it and it wasn't bad. I thought it was... I thought they did a good job.

Q: Is this when you started to form sort of a judicial philosophy? Did you have any formation of legal thought at the time?

A: No, because I didn't know any lawyers. I didn't have any experience in the law. I just knew generally that's what I wanted to do. So what you're trying to do is get -- pass the course you're studying, graduate and pass the bar exam, hopefully make a living.

Q: Prior to your attending in 1954, Washington University was going through a process of desegregation. Do you remember any of that?

A: No. Didn't...

Q: Did you have any African American law students in your class with you?

A: Yes, yes. Yes, we did. And --

Q: You said there were 80 that started and 40 graduated. How many were African American?

A: In my class, there were only two or three. There were more ahead of me. But a couple, as I recall, were successful lawyers in Saint Louis. There's a man by the name of Curtis, Howard Curtis, who was very active in the Civil Rights Movement and went all over the country. I think he ended up in New York. But no, that wasn't... You know, we were aware of that but it wasn't... People were just not as sensitive to the issue of race as we are now, thank goodness.

Q: Do you remember a Founder's Day speech that Earl Warren gave in 1955?

A: You'll have to tell me a little bit more about it.

Q: Actually, I don't think I have a lot of detail on it.

A: A Founder's Day speech at Washington U?

Q: Yes. Um-hmm.

A: No. In '55?

Q: '55. Early '55.

A: OK. No, I graduated in -- from undergraduate school in '54 and I was out of school a year and then the next year I started at Washington University. But if Earl Warren had been around, I would have been there had I been at Washington University or knew about it. I'll tell you that.

Q: So you took a year off between your undergrad and your graduate?

A: Yes.

Q: What'd you do for a year?

A: Well, I had some health problems and I had to take care of those.

Q: But Warren was such a terrific guy, you know. Talking about their appointment to the Supreme Court today. You know, he had no experience as a judge. But can you imagine

being nominated to be governor of California by both parties. He was something. He was an outstanding man. I was admitted to the United States Supreme Court and he was the chief justice at the time. It's a bad thing to say and I don't mean this, literally. They weren't this way at all. But as a young man, you go to be admitted there and you look at them. Nine people sitting up there and they all look old. Frankly, they all look like a bunch of chicken thieves up there and Warren, oh he has a tre -- he can say, "Good morning, gentlemen. We're pleased to have you here in the United States Supreme Court." You know, you were sold already at anything he said. He was terrific. Terrific personality. I admired everything about him, his opinions and... He was a fine, fine man.

Q: What kind of music did you listen to at this time or what kind of books were you reading?

A: Well, the music... I always was kind of corny, square guy. But this is even going to sound worse in this day and age. But I really liked Dixieland music and enjoyed that very much on all the records I could. And they had a lot of places in Saint Louis where you could go in those days and it didn't cost you any money and have a few beers and listen to music. And that was fun. As far as books, quite frankly, I wasn't doing a lot of reading when I was in law school. I didn't do anything but study. And then, you know, when I got out of law school, practicing the law was difficult to get a job and it was -- the practice was difficult because it was hard. Talking about, well, '55 through '58. And I was more interested. So there was no profound object study program. I did that in undergraduate school. Did a lot of different reading on everything I could get my hands on.

Q: Now, going back to something you said earlier. You were the first lawyer in your family. What was your family's reaction to you studying law and getting a law degree?

A: Oh, I was encouraged. In anything I ever did, I was encouraged by my family. Anything I wanted to do had been fine. No problem with that at all.

Q: What was your political and social outlook during this time?

A: Well, I think I've always been liberal but I'm accused more now of being a hard line liberal. But I hope my political outlook was that I was objective and looked to the facts and decided the issue based upon sound reasoning. I hope that's what it was.

Q: Was your family Democratic or Republican?

A: No, my family was Republican. My father, rather, I should say, was Republican. My mother, my... But all my friends were Democrats and most of the area was pretty -- this was really a heavy Democratic area to live in.

Q: You're a Republican family living in a Democratic area?

A: Yeah.

Q: OK. What was your conception of your generation?

A: It was really a generation that was affected greatly by World War II in every way, you know. World War II itself, and all the things we went through then, kids and then... Like when I started college, most of my friends were there on the GI Bill. You know, which was really something. It was great. A lot of my friends couldn't have gone to school if it hadn't been for the bill. I think that that was generally a period of prosperity. You know, since World War II we've had prosperity in this country. So, yes, I'd say it was -- World War II was one of the greatest factors.

Chapter 3: Harrison's Law Practice

Q: Let's kind of switch gears here and talk about your legal career. So you graduate from Washington University. You pass the bar in 1950 --

A: '58, '58, um-hmm.

Q: '58. And --

A: The bar in Missouri and Illinois.

Q: In Missouri and Illinois?

A: Um-hmm.

Q: So you entered private practice at that point immediately?

A: Right. I wanted to be a lawyer and I had romantic ideas about the law and saving the world. But I kind of wanted to practice in my own community so I came back home and associated with a local lawyer there. And I was with him about two years and then I went on to New York, as I told you before, to see if I could do any good out there and I didn't do any good professionally. I didn't have the right contacts and the right know-how. But I had a really good time. Two weeks as a single fellow and I had a friend of mine from law school that I could stay with who was a judge, judge advocate for the first army out there on Governor's Island just off Manhattan. So got to see a lot of New York anyway.

Q: What other types of cases did you try? What was your practice made up of?

A: My shingle was out for everybody. Anything that they had. I had all kinds of cases. And I tried everything. I tried a case one time that was kind of odd, that... This is going to sound silly to you but it was kind of different. We used to have horse sales in, not a horse barn, but a little area where they had cattle sales down in East Saint Louis. And the fellow that operated the sales put two stallions together in the same bin and, of course, they fight until one kills the other one and that's what happened. And a lot of got involved and these were... My client's horse was a very good Appaloosa horse, so I took the case. As I said, I took everything. And we tried it with a full blown trial and it lasted

about a week. And, of course, I'm trying to get through to the jury that you can't put two stallions together. That's negligence. You just can't do it. One's going to kill the other. So I had -- and everybody's afraid to testify against the defendant because he was a big time horse operator in the area. But I got a guy who owned thoroughbreds to testify, was a good witness. And we tried the case to completion and I got a verdict. But I thought it was an interesting case to try to persuade a jury. You know, you think about it. Lawyers must have big ego to go in there cold and try to convince 12 people that they're right about something. You got to have some ego to do that. Just go in there, they don't know you, don't know anything about it. But it doesn't sound like much we're sitting here now but that... That was hard to put over, hard to convince. And it was kind of funny. Of course, I got teased a lot about the case and so forth. The caliber of cases were taken... But it was an interesting case.

Q: Any other cases that stand out?

A: Oh, I handled everything. I handed the... There was a case where... When they were building SIU in Edwardsville...Southern Illinois University... Really a well... I mean, that campus is just beautiful and the buildings are very well done and there was a (field?) and a pour, concrete pour, on one of these big buildings where they had a theater. And what we finally found was wrong and what happened was they put a theater in it and they

[00:45]

didn't have enough supports in the area where the opening for the stage was. But took a lot of depositions to finally figure out what happened. But -- so you soon learned that it was better to have as much knowledge as you could about everything because you didn't

know what was going to come in your office next. So yes, I did that, plus the usual thing small town lawyers do. Divorce. But general personal injury.

Q: How did you meet your wife?

A: Oh, it's not a very interesting story. Kind of funny. My father was a dentist, as I told you. He had a house right next to his office building, or not far away. And she brought her... My wife brought her little sister in one Saturday for him to see and she was... There were instructions that the nurse told her that Dr. Harrison wanted to give her for her little sister. And he had just left to go to his house for dinner and she was -- or lunch, rather, and she was supposed to go with her. Well, on Saturdays I usually went to the law office and then for lunch I'd eat with my mom. So I've never been told yet if I was set up on that or not. But anyway, that's how we met. How Sara and... Talk about exciting stuff. Why, it was an exciting time. We were engaged and a short time after that we got married.

Q: What year did you get married?

A: Let's see. I've been married 48 years. I think it was -- it was '61, I think.

Q: What was it like to be a working lawyer in the 1960s and 1970s?

A: Well, it was hard work and you were very busy and you had to hustle if you wanted to make it. And you had to watch your overhead and just a lot of hard work but I loved it. And I worked for a plaintiff's firm, Listerman Bandy (sp?), Listerman & Bandy, in Saint Louis, Illinois, which at that time was really a growing community. Lot of work down there. Lot of people needed lawyers. It was great. They gave me an opportunity to try cases right away and that worked out very well. I enjoyed that. Then I organized my own firm and took in a classmate by the name of Dwight Taylor and then I took in

another partner whom you know, Philip Rarick, who was later on the Illinois Supreme Court and a fellow by the name of Bob Cadigan (sp?), who was a very good lawyer that passed away. Originally from Springfield. So I had a little experience with different lawyers and I was president of the Madison County Bar and there were some great lawyers here in that area. Morris Chapman. I don't know if you ever heard of him or not. He's deceased but he was a great lawyer and did a lot for the bar association. George Moran (sp?). We had some -- we really had a good, good bar. And I ran for the Board of Governors against a man who was raised -- in line to become president and some of my friends wanted me to run for that. So I did. And won in a landslide. I think I won by about eight votes in the whole district. But anyway, tried to stay active in the bar association, which I think lawyers should.

Q: Did your political or social outlook change during the '60s?

A: Well, sure. Everyone became more liberal than they were before. You can become more liberal, more understanding, a lot more tolerant of things, I think. I think it's been great for the country. Sixties. I know a lot of things are criticized but it was a great era, I think.

Q: And you were in private practice for 15 years and there was a report of a bombing at your law office.

A: Yes.

Q: Do you know what the motivation was behind that?

A: Yes. I had a partner whose name was Dwight Taylor. Very likable man. Very good man. Outstanding athlete at Washington University. He was a baseball player and just a good all around man. And he did mostly corporate work and real estate work and he was

also corporation counsel for the City of Collinsville. We came out of my office one day at noon, which we never went in or out together at the same time. But this day we just happened to. He crossed the street, said, "Hey, Mose, there's a briefcase in my car. Is it yours?" I said, "No, it's not mine." I said, "Wait. Wait a minute." He opens the car door and a huge bomb explosion. And so it was a terrible thing. We had to take him to the hospital immediately. He was blinded by the explosion and remained blind for a couple of days. Very, very nice man. Couldn't figure out what it was. But the only thing was he was dating a woman who was very attractive. Beautiful woman. But I never knew him to have any trouble with anyone so I always thought it was some farmer boyfriend or something who was --

Q: But it was never --

A: -- jealous about it. Never?

Q: It was never resolved or never answered?

A: No. No. And he -- he took the right attitude. He said, "I'm not worried about revenge." He said, "I just want to recover best I can and get on with my life." Of course, that is the enlightened view that he took and was the proper approach but it would be hard to do that. Most people would want to get even, you know, but he wasn't that kind of man. And he had plenty of courage, too, you know. It wasn't any -- excuse me. Wasn't any lack of courage to do things.

Chapter 4: Judicial Experience

Q: OK. So you practiced law for 15 years.

A: Yes, Sir.

Q: Why did you decide to become a judge?

A: Well, what happened was there was a judge in our area who was killed. Terrible. He was killed in a one car automobile accident. And some of my friends who were lawyers talked to me about we should have a judge from the Collinsville area and tried to encourage me to run for circuit judge. It was a big... You know, 15 years. It sounds like a long time but I was finally getting established and it was a big decision to make whether to do it or not. But what I thought about was it all -- it's also a great opportunity to do some things and do some good. And so I ran and it worked out fine. I have not regretted it at all.

Q: What was the process you had to go through to become elected? Was it a partisan election?

A: Oh. Oh, absolutely, and I'll tell you what that process is. I had to go through the usual political machinations. I got the -- had to see my local Democrat precinct committeeman and got their endorsement and then I went to the county meeting and did all that went with it to get their endorsement. And that's no small task in a rough, tough industrial area like we live in. And a lot of different segments of our society to consider and people in our county. I've been a lifelong resident up to that time of Madison County. I now -- where you're sitting, I now live in St. Clair County, which is adjoining, close by. But I went through all that and then I got the endorsement and ran and it seemed like I had... Yeah, there were three other fellows running at the time, so there were four of us.

Q: In the primary or in the...?

A: No, in the general.

Q: So you were the only Democrat running?

A: Right, um-hmm. Um-hmm. Yeah.

Q: Was there any -- was the -- was the political culture back then if you were a Democrat you won?

A: Right.

Q: OK. So what kind of cases, then, did you hear as a circuit judge?

A: Well, we hear most everything in this circuit. You'd be surprised at the number of cases that we handle because... We're really a great railroad center here and I -- we have a lot of business with terminal railroads were... Cars coming in from the east, coming in from the west come here and trains are made up, go out to the west, go out to the east or the north or wherever it is. But this is really centrally located and you can see, if you look at a map for the country and for the big industrial areas. So we did a lot of FELA work. And then, this is a big industrial area, although I live on a farm and there is still a lot of farmland. There's a lot of oil refineries in Wood River and there was a lot of heavy industry in Granite City and Madison -- were steel foundries. And so we had all kinds of industrial accidents. And everything else that goes with the practice you have in most every county. You know, condemnation and general personal injury and criminal cases. So it was a great area to practice law in and to be a judge in at the time that I was a lawyer and a judge. And I enjoyed it very, very much. So I really liked it as a judge in Madison County because we were busy. We disposed of 20, 30 cases every month, you know, as a judge with trials and settlements. You know, you'd try two or three cases and you'd settle ten and you're set to go. So I enjoyed it very much.

Q: You only served in Madison County or did you travel? What was the circuit at the time?

A: Well, the circuit was Madison and Bond County but there was one circuit judge elected from Bond County, so one man stayed out there permanently and he was always there.

But yes, I went out to Bond County and tried cases. We had a circuit judge out there helping maybe one day a week.

Q: Any cases stand out in which you presided?

A: Well, no. I -- they were all interesting cases. We had all kinds of construction accidents. Had a man who... Doesn't sound like much now but it was a very complicated case. That was trying to put in an elevator. It was small. It was kind of a lift that was going to be in this hospital and got decap, decapitated. And it was all cases that would take a week or so to try and amounted to big litigation. And so we just tried a lot of cases.

[01:00]

Q: And you were on the circuit court for... Looks like about six years.

A: Right.

Q: And then you were appointed to the appellate court?

A: Right. In Mount Vernon, Illinois.

Q: How was -- you were appointed to the appellate court first and then won election?

A: Yes, um-hmm.

Q: How was the process different in becoming an appellate judge than becoming a circuit judge?

A: Well, you run for the appellate court, then you're running -- rather than two counties, you're running in 37 counties. And, of course, that's a lot different. That campaigning, going around, and you have... You know, publicity and the newspapers were happy. You have more ads and so forth. But it's quite different. But, of course, the process is so much different. You know, you don't... As a trial judge, you know, you see the lawyers every day. You talk to them because you're waiting around or you're waiting for

motions to be prepared. You are more in contact with the lawyers, and, of course, with the jury. All the case -- most every -- most of the cases I had were jury cases when I was a trial judge. At any rate, that, of course, was entirely different, the appellate courts. You don't have an opportunity to visit with the lawyers at all because they come in and make their oral presentations and that's all. You know, I think that's it. You don't see them, you don't talk to them, you don't do anything except ask questions.

Q: How was that?

A: You have jurisdiction.

Q: How was that in the circuit court, then, because you were probably practicing with or against many of these lawyers --

A: Yes, I --

Q: -- and then a day later you're their judge.

A: That's right.

Q: How was that relationship?

A: That wasn't a problem at all. They were always... I had no trouble. They were always respectful to me. And it wasn't me, it was the position as judge they were respectful of. It was -- that was no problem at all. Because I had both sides --

Q: Did you have any favorites? People you were happy to see come in or people you weren't happy to see come in?

A: Oh, there are always lawyers that you like the way they present things. Yeah. I remember... As I said, I met very good with lawyers. Sandy Courine (sp?). Excellent lawyer. Rex Carr (sp?). These names probably don't mean anything to you but they're very good trial lawyers. Yes. Probably best in the country. Morris Chapman, as I said,

and George Brandt (sp?). We had some great lawyers, so... I really enjoyed it. It was good.

Q: And then so you said at the appellate court the attorneys would just make their arguments and then...

A: You'd never get a chance to talk to them, you know.

Q: So there was no questioning?

A: Well -- oh, well, no. We questioned during argument but there was no opportunity to talk to them, really, where it appeared to be appropriate. You know, if you talked to them before their oral argument or afterwards, if somebody sees, there's always some suspicion that you're talking about the case. You just can't do it. That's all. Just got to hear the case and go on to the next case, you know, to hear your next argument.

Q: And then as an appellate judge you were conferring with colleagues. You had fellow justices, which you did not have at the circuit level.

A: Right, right.

Q: So how was that dynamic different?

A: Well, it wasn't a lot different. Even on the circuit level, when you have difficult issues to decide, you discuss that with your colleagues in a professional way. "What would you do with this? What's your view in this?" But you're right, of course, from the appellate court. That's all you do is talk about -- discuss your approach and how you're going to do things. I was very fortunate. I had very professional people. I was just lucky. And good people to deal with that were easy to get along with.

Q: Any significant cases that stand out on the appellate court?

A: No, there's just the -- the same cases you saw on the circuit court and the same cases that you studied in law school. The same issues. The same issues as circuit court and law school and in the appellate court.

Q: Then why did you seek -- why did you -- excuse me. Why did you seek election to the Illinois Supreme Court?

A: Well, I just felt that this was a -- would be an opportunity to make some law. You know, your ultimate decision-maker in Illinois is the supreme court. Of course, I'd -- by that time I'd been a judge for nearly 20 years and I had ideas about things and how things could be improved, I thought, and I thought that I could contribute and had the experience. I had worked hard on the appellate court and as a circuit judge and felt that I had the experience and the practical experience of being in practice 15 years. It was more than most of my colleagues had. And I felt I could contribute.

Q: What was the process in getting elected to the Illinois Supreme Court?

A: Well, it's similar except it's a lot harder physically. Of course, you must, again, get the support of your local organization, you know, and, as I told you, it was going through the city council, Democratic party, and then getting the county endorsement. But then in my district I have 37 counties and I campaigned in all of them. And it's hard work because there's no rhyme or reason to when these counties are going to have parties or fairs or thing that you want to see, so pretty hard to schedule things, you know. You're running back and forth throughout the district and there's really only three major highways in the district. You came down from Springfield today; you can see when you got road problems it's a problem getting back and forth and making all your meetings. But I felt that I represented the whole district. I had to be acquainted with people in the district, I

felt, and as a practical matter felt that I had to campaign hard if I was going to win because you had to know people. And I did. I went out. I think I campaigned for 19 months and was home eight nights in 19 months. I was out campaigning every night.

Q: So that had to have been fairly expensive.

A: Well, it's not like it is nowadays. My... We said we'd be opening this conversation, so you don't have to ask the question. My campaign cost about 500,000. About a half a million. And that wasn't extravagant. By the time you have TV in Saint Louis to get this area, and we had it in Southern Illinois station and we had it in Kentucky to get this southern most part of the state, we had some in the northern part of the district. By the time you get in the TV and all the papers and what you have to do, you can't do it for much less than that and really get your message out. But we tried to save as much as we could but we wore out a couple of automobiles traveling.

Q: How does a judge... I'm trying to think of a better way to ask this. How does a judge solicit money to run for office?

A: Well, of course you can't do that. Just impossible to do. You have to have the money go through a committee and, as you said, it's just people that know you and know you're interested in good government and lawyers who know you who solicit money.

Q: Do you have any of these campaign ads, clippings from newspapers, recordings of TV ads, anything like that? Do you have any of that memorabilia?

A: Oh, sure. I got -- can show you. I got all kind of books of that. What I did during the campaign.

Q: And who was your opponent?

A: Well, in the primary I ran against a very good man who was a judge at the time, Charles Chapman, and a fellow who was the judge down in Randolph County who was a very good judge, Judge Carl Becker (sp?). They were both excellent judges and had considerable support throughout the district. And then in the general I ran against a guy who was very popular and at one time I was on the city council in Collinsville and I served with his father. He was a councilman, too. His name was Don Weber, whose father was Norman Weber. Very nice man. Very nice to me and Don was state's attorney in Madison County. Very popular and did a good job of state's attorney. So I felt that I had three worthy opponents.

Q: 1992, which was the year that you won the election was also called the Year of the Woman. It's when Justice McMorrow was elected. What was it like to win an election in the Year of the Woman?

A: I didn't notice any difference about anything. I'd served with a woman on the court of review, Dorothy Spomer, when I was in the appellate court. She was a very good judge, as was the supreme court justice, Mary Ann G. McMorrow.

Q: Well, there's a quote here that talks about the Year of the Woman. "The demand for female judges is based upon a number of concerns: the belief that they may bring a special perspective to the bench, the desire to convince both attorneys and litigants with the fairness of the judicial system and the conviction that female judges may contribute to permanent change by transforming the attitudes of their male colleagues in the judiciary and by providing examples of women in authority for all the members of the bar, male and female alike." What is your response to that quote?

A: I don't think it is sound at all. I don't agree with any of it. I felt that women were treated and thought of just as if they were men. And that's what I found. They're lawyers. They're judges and they think like lawyers and judges. You never thought of them being a woman. It's another judge. And I -- as I said, I had terrific judges that were with me. The reason I mention Mary Ann, of course, she was the first on the supreme court. But my experience with a woman judge on the appellate court, she was a terrific judge. Justice Spomer. And we had great respect for her. She was terrific and a terrific person. And the same on the supreme court. No, we never thought about it. And I never knew any woman that I knew that I was associated with as a judge that was trying to prove something or change the way a man thought, anything like that. No. Never. Never any problem with that.

Q: So what was your margin of victory then when you won the election in '92?

A: I was fortunate enough to have a sound win. I got over 60% of the vote.

Q: So you get on the supreme court. What was the first day like for you when you were on the supreme court? When you arrive in Springfield?

A: Oh, it was fine. I couldn't have been treated any better. Justice Miller was the chief. He was very kind to me. Everybody on the court couldn't have been more professional.

[01:15]

They impressed me as being hard workers and very careful and I was impressed, favorably. It was just a grand experience from beginning to end and all nice to me. Very nice to me. And a lot of different kind of people. Judge Rarick -- I mean, Judge... I'm thinking about Judge Rarick, I guess. But I was thinking about Justice Freeman had been on the court sometime and Justice McMorrow, whom I really didn't know but was

impressed right away with her and she writes very well. Also reasons very well. I thought she was great. And I knew Ben Miller because he and I had been on the Board of Governors of the Illinois Bar and I admired him. Justice Bilandic was just a terrific guy in all the experience he had as mayor of Chicago. See, who have I missed?

Q: Heiple?

A: Heiple. And I had met Heiple before when he was on the appellate court and I was always impressed with Heiple. I thought he was a very good judge and had great intellectual ability and a tremendous sense of history. You talk about any history of Republican or Democratic party, what happened 15, 18, 25 years ago and he could tell you precisely what was going on. A very bright guy and a nice man. So I felt like I would be blessed.

Q: What was it like living on the third floor of the Supreme Court building?

A: Oh, it's fine. Were you up there?

Q: I have never been up there.

A: Oh. It's very comfortable. It isn't the -- it is not like a fancy hotel or anything but it's certainly more than adequate. It's very nice. We have a nice... That's all you need. We have a nice bedroom and separate bathroom and then you have another room that's kind of like an office where you work in the evening. But really that's all you need. You know, you don't need any more than that. And then we all eat together and... You know, they made it as comfortable as they could for us while we were there. They did everything they could to make it like home and make it homey. And they did everything they could to make us happy. We were very comfortable there and it was so handy to have your meals there that you could do so much more. You know, you'd have two

hours for lunch. You could get a lot done in two hours. And then you have a little lunch and then you work on some cases. And it was handy and then you can just go right downstairs and you're in the courtroom ready to hear cases. You know, it's a great system.

Q: OK.

A: I think.

Q: What kind of dinner conversations, lunch conversations did you have with your colleagues?

A: Everything. Talked about everything. Liked to talk about politics and what's going on in the country. Didn't talk about cases. That was kind of an unwritten rule we had. We didn't talk about cases. It was very pleasant. We had a good cook and she tried to cook properly for us, see that we had a good menu. And then there was always a few people that had diet restrictions and she would take care of that. Our cook was great. Linda. So, no, the living there wasn't bad at all. Justice Bilandic, a big city man, not only enjoyed coming down... We didn't have a lot of free time, but whenever we did we'd take a little walk if we could. No, it was very pleasant there.

Q: Any stories about the building itself that you might have?

A: No. I guess --

Q: The courtroom itself or...?

A: No, I guess there are, if I thought about it. But the building, the whole thing's interesting. You know, when you get upstairs there to where the justices live in their rooms... For instance... And you know it's a very old building. But the doorknobs are engraved with the seal of the court and little things like that. A lot of historical things there. And then

there's... Used to be kind of a statue in the room between the second and third floor or the first and second floor. No, second and third floor. Of a bust of a judge who apparently was on the court for some time and I always claimed to Heiple it looked like him. He denied it but I said it did.

Q: Was that the bust of Caton? John Caton?

A: Yes. You got it. That's exactly right. We'd have fun with that. But you'd see a few things like that around. But, you know, you have the feeling -- feeling, rather, that history's been made in this courtroom every time you sat in there. But we were interested in getting right -- the right result and we were interested in hearing those cases and hearing what the lawyer had to say. And by reading the briefs beforehand and reading carefully and reading the cases that were cited, you always had questions to ask. And that was our interest.

Q: What kind of role did you have administratively when you first came on the court or as you progressed along the court?

A: Oh. Well, the one job that nobody wanted to do was have anything to do with the building. And, of course, I knew nothing of it. I never been in the construction business, know nothing about the building. But I'm embarrassed to tell you this but when I came on the court there was mold on the drapes in the beautiful courtroom and I thought, "Oh, we can't have this." So made some comment about it. So immediately I was appointed as liaison of the building and in charge of the building. So I talked to my colleagues informally and they all agreed. And I -- so I talked to Justice Miller and he got the name of an expert to help us and we got rid of the red theater carpeting in the courtroom and got similar to what was there when they built the building. And we got new drapes and

this expert we had taught the administrator how to oil some of the wood and try to preserve as best we could and preserve that beautiful courtroom. But nobody paid too much attention. It's hard to understand but you're not interested in what the courtroom looks like or what's going on. They were interested in those cases, hearing those arguments and getting a disposition quickly. So that's what we wanted to do. So yes, I... No, I was the worst equipped for my job but anyway, it worked out all right. We got some things done that made it look a little bit better. And it's my understanding now that Justice Burke is in charge of it and she's really doing a good job and some things planned and one time before we had everything approved to get remodeled in that building. And I don't know what happened. I've been off the court now for eight years, about eight years. I don't know what happened but it never came about with the capital development that they -- capital development I thought was always very cooperative with us but it just didn't work out.

Q: It's about to happen now.

A: That's what I'm told.

Q: The court's going to move out about in June of next year and they're going to do a massive renovation of the building.

A: I understand they're going to have to meet in Chicago. The court'll meet in Chicago?

Q: Yes, that's probably where they'll meet. Justice Burke was actually throwing around the idea of meeting in each of the districts.

A: It's probably better to have one place. You got the records and can do it. And you got that courtroom, you know, in Chicago. So I was on the court ten years and we heard one case up there.

Q: One case in Chicago?

A: One, one. One.

Q: OK. Why did you meet in Chicago for that? Was that something relating to Chicago or...?

A: Not particularly. And I can't tell you what it was now. Let me think a moment here. I can't remember exactly. I don't know if it was the redistricting case or what it was. But we met in Chicago and we had -- apparently we had to be up there for something else. And because we were all going to be there, it would have been convenient for us to meet there so that's where we met. But that's the only time.

Q: Well, let's talk about some of the cases that you ruled on.

A: Sure.

Q: What... It's been said that you're best known for your dissenting opinions. Do you agree with that?

A: Yes, I wrote a lot of dissents.

Q: OK. Well, let's talk about a few. In *First Springfield Bank v. Galman*, you wrote that, "If the successive Illinois commerce depends on enabling multinational corporations to maim and kill schoolchildren with impunity, we are lost." So considering that in this case the multinational corporation was not held liable, what advice would you give to those who desire justice under the law when they are opposed in court by a multinational corporation?

A: Well, you got to keep trying them. That's all. You got to keep after it to get a good result. And the law develops.

Q: Talk about that case a little bit. The --

A: The little girl?

Q: Yes.

A: Sure.

Q: Um-hmm. What happened?

A: Well, as I recall now... You know, I don't have the case in front of me, so give me a little leeway here.

Q: Give you some leeway, sure.

A: OK. But the little girl was a foreign girl going to school here and I think she was from Paris and she -- this trucking company parked illegally. Absolutely no question about it. They were parked in illegal zone and she attempted to go around the truck to get to a crosswalk. And, of course, when she did, she -- when she got hit and I thought it was a clear case of liability and that's why I wrote the dissent.

Q: What are some other cases that you remember that...?

A: Oh, I don't know. I wrote one one time that got a lot of... I can't remember if it was good or bad, if it was all criticism or good. I can't tell you. But a lot of my dissents I was criticized for. But this one was a case involving a swimming -- a swimming pool and the statute had some language that the court interpreted. As long as you had a lifeguard there, you complied with the statute and therefore there was no liability. Well, that was just crazy as far as I was concerned. You got to have a lifeguard that's there doing his job and you're liable. I don't care if you got 40 of them there. You didn't comply with the statute. You're still on for negligence if you have a guard not doing their job and not paying attention. So I would write these dissents and wrote how I felt. And my colleagues, most of them -- oh, every once in a while they would -- there would

be an exception to the general acceptance of my dissents. But generally speaking, they accepted them. I certainly didn't mean it personal in any way or reflect on them but I just... I didn't write a dissent unless I thought it was just dead wrong. I mean, if it was close... Or I would have worded it another way or some little thing. I didn't write dissent in those kind of cases.

Q: Tell me about the *Spritzma v. Mercury Marine* case.

[01:30]

A: Oh, that was a case where I was voted down six to one. One dissent. Couldn't get anybody to join me. And went to the United States Supreme Court and the Supreme Court affirmed my position. They said there was liability. It had to do with a guard being on a motor. And the point is that the position our court took is that, again, if you complied with the statute that's all you had to do. And I said, "No, it wasn't. If you create a negligent condition, you were still -- still on even though you may have complied with one part of the statute." And to me it was a non-issue it was so clear. It was clearly wrong. But it still made me feel good that the Supreme Court took my position, reversed them. But it seems to me by the time that got reversed I was no longer on the court. I'm not sure. I didn't get to tease anybody about it, I know that. I would have.

Q: You also mentioned in that dissent that you argued that the Illinois Supreme Court shouldn't yield to the decision of a lower federal court without a US Supreme Court ruling in that case.

A: That's right.

Q: What do you see as the proper relationship between state supreme courts and federal courts?

A: Well, they both had their own jurisdiction. We're not bound by anything. Of course, we are by the United States Supreme Court. But other than that, we're not. Of course, I would read what another judge said, whether he's a federal judge or not. Didn't matter. I'd be interested in what he had to say.

Q: What are some of the cases that you wrote where you wrote majority opinions?

A: Well, I wrote majority opinions and there were lots of them. But mostly what you remember is the dissents, where you tried to convince people to go along -- go along with you.

Q: And this all occurred in the conference room when you were discussing the case?

A: Yes, oh, yes.

Q: Um-hmm.

A: And then afterwards, if you had to find one guy who disagreed, he wrote a dissent, would tell you about it, why. I -- there's nothing wrong with calling him and saying, "Here's the point I'm trying to make and this is how I'm trying to convince you." Here's what I'm concerned about. That's perfectly proper and appropriate and should be done.

Q: How is the assignment process? How does that work? Who gets assigned to write an opinion in a case and...?

A: It's just arbitrary. One, two, three, four, five, six, seven and you go around. That's all. Just an arbitrary deal. It's not because of your personality or knowledge in a particular area of the law. That's what I thought it was, is somebody who had experience.

Q: People don't volunteer to write an opinion?

A: No, no. You don't do that. No, no. That means, "I'm better than anybody else here. I ought to write this opinion." You'd have some, you'd have some fights over that, you

know, whose to -- oh, I'm better prepared to write that than you are. No, that's a pretty good system they have. And it works out, you get to write pretty much on everything.

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

A: Well, I wasn't really involved in that other than... You know, the governor was his lawyer and he asked me if I would testify as to what happened. I went over there and testified before the committee but I wasn't involved with really anything that went on. I was just a witness.

Q: I guess your role in that was -- or part of your role in that was that Heiple, when he was chief justice, had appointed you the chair of the court's commission?

A: Yes, uh-huh. Well, that's what he wanted to do and that's what he did. He appointed an appellate court judge as administrator of the court and that's what he wanted to do. It was different. And he asked me if I would take the position. He's the chief justice. Why, what are you going to do? You want to cooperate with him. As a colleague, that's what you should do to try to help any way you can. And I said, you know, sure. Sat on the commission before. We had a good one. But the inference was made that we were involved in some way but I knew nothing about the case. There really wasn't much to it after the hearing.

Q: That was the argument that they were making in the newspapers, was that he appointed you --

A: Oh, yeah, I read all that.

Q: -- because you were allegedly good friends. And, yes. What's your --

A: I don't --

Q: -- reaction to that?

A: Oh, that's newspaper talk. I started out his friend and then I became good friend and then I became pal. I just -- and Heiple and I were colleagues on the court. Tried to be friendly with everyone that you're colleagues. That -- whether -- if you act professional, that's what you should do. But I had never been in Heiple's home. I had never been out with him socially other than at a bar meeting or something we were invited to as a court or there in Springfield. I really wasn't any closer friend to him than anyone else.

Q: Well, let's jump to the death penalty in Illinois.

A: OK.

Chapter 5: Capital Cases

Q: What was your role in the implementation of the moratorium?

A: Well, I really didn't have any role in that.

Q: But you helped lay the groundwork for it? Did you help --

A: Not that I'd -- I'd say I had no role in it I know of. But, of course, I wrote an open letter to the governor telling him that he should stop the execution in the... I was just going to say the name but...

Q: Kokoraleis?

A: Kokoraleis, yes, the rape case, which was a terrible case. The facts... If you ever look into it, it's awful. But the court was wrong in not hearing it. You know, we don't know. He might have come up with something. Talking about a man's life. But they were wrong.

Q: So did you feel like your court opinions relating to the death penalty were part of this moratorium movement?

A: No, and I can't explain that moment to you. I'll tell you a little bit about it. They had a... "Sixty Minutes" was interested in a death penalty hearing in Illinois. They contacted me and I didn't have time to go to -- you know, I was chief at the time. I didn't have time to go to New York. I didn't have time to go to Chicago anymore. And I said, "Oh, sure, I'll give you an interview if you come down to my office and I'll do it." And Mike Wallis came to my office, interviewed me. Well, when I listened to the program and the governor was on the program and I thought he was prominent and did a real good job. So I put in a phone call to him but I didn't hear a reply for several days. And he finally called me and I told him that I had just called to say what a good job that he had done on that program and I hoped it did some good that we could do something about this death penalty in Illinois procedure. And that's all there was to our conversation. So I, as to the moratorium I didn't have anything to do with it directly. Now, whether I did otherwise, I don't know. But I had written him an open letter in the public, it had been published in the papers, telling him that in this case, the one we just spoke about, that he was in a position where he did have the power to do something and should stop the execution.

Q: Do you oppose the death penalty on moral grounds?

A: Well, I'm going to answer your question directly because that's what I told you I would do. Yes. I'm opposed to it on moral grounds but that was not the basis for any of my legal decisions on it. The thing that brought it to light to me was... Here I was, I thought I knew a little bit about the practice of law. Had been an active practitioner for 15 years, active in the bar, served on the appellate court 12 to 13 years. But I had never handled a capital case. Until I got on the supreme court, I didn't realize how sloppy they were as far as the prosecution of these cases. And I looked at them. I said, "Gee, this guy may

not even be guilty of this offense,” in many of those cases. And it really bothered me. And the more I studied I saw these problems. And then at that time that I wrote the first dissent and though there were nine men whose convictions -- and were going to die -- had already been executed had been reversed. Nine. Now, if it had been one or two I could understand that. But nine. You know, something wrong with our system. And to kill an innocent man, what could be more reprehensible than that? I mean, I just... It’s awful when you think about it. So I tried to write the governor about it and I never heard from him. He didn’t reply at all. So I didn’t know what position he was going to take, what he would do, if he would grant... And, of course, there was clear authority for him as governor to consider each case individually and then decide. But, you know, I told him that in the letter. But to let all those men loose at that time. I mean, I don’t know legally what the -- I haven’t studied that. I don’t know what the situation is there. I don’t know what authority he would have to grant a moratorium. And it wasn’t an issue that was raised to the court while I was on the court. I don’t know what authority he had to do that. But he did. Of course, I was glad to see it because I was glad to see those men not be executed for the reasons I’ve just stated. But, no, I didn’t end it and I wasn’t part of it. I’m glad it happened and I’d like to take credit for it, but the truth of the matter is I wasn’t connected with that.

Q: Let’s back up a second because you had mentioned that you didn’t have any capital cases when you were a circuit judge. Or -- and obviously not as an appellate judge.

A: And not as a lawyer.

Q: And not as a lawyer. Did you always have feelings of opposition about the death penalty --

A: No.

Q: -- when you were practicing in the '60s?

A: No, you know, --

Q: Or --

A: You're interested in what you're dealing with. You know how that is. It's -- and it's not bad when you're a lawyer. That's what you ought to be doing.

Q: Did you have any thoughts when the *Furman* decision came out by the US Supreme Court?

A: Oh, yeah. You know, everybody talked about it and then right away changed their mind. I think they came out with a second case in '56 maybe.

Q: '76.

A: No, '76. Yeah.

Q: The *Gregg* case?

A: Yeah.

Q: Yeah.

A: '76, right. Yeah, '76 I meant, not '56.

Q: Did you have any feelings about that? When the *Gregg* case overturned the *Furman* case?

A: Well, that's what it did and, of course I had feelings about it but that was the law then.

Q: Some of your anti-death penalty opinions, you -- were you arguing that *Gregg* did not apply to Illinois or that Illinois law didn't meet the standards that were set forth in *Gregg*?

A: I never said anything like that. And I recall -- I certainly don't ever remember taking that position.

Q: In the *Bull* decision you had argued that Illinois' sentencing scheme was unconstitutional under the Illinois and federal Constitution.

A: Right. The Eighth and 14th Amendment in the federal Constitution.

Q: Which say?

[01:45]

A: Well, that you can't have cruel and unusual punishment and that you must give a full hearing and equal protection.

Q: Can you talk about the *Bull* case?

A: Sure. That was really the first one that I wrote inevitably we were going to execute an innocent man. It was a terrible thought that that would happen and I feel sure that it will. That case was -- dissent was very short but I think it was sound and I think I made the point there's not much more that you can say and it was based upon not any thoughts that I had or any moral reasons or any upbringing or any experience that I had but just on plain logic and the law. And that's what I cited in dissent and I still stand by it.

Q: And that was the case where one of your colleagues had mentioned that you're inserting your personal opinions? I mean, did -- what's --

A: Oh, they all said that and got excited about it. It wasn't my personal view at all. I never decide things based on my personal view. It was based always on the law and what happened. But, man, nine reversals of convictions in a short period of time indicates something's wrong. And that was my job as a judge to say that. And it is constitutionally infirm if we would be killing an innocent person, executing an innocent

person. Now, you think that might violate the Constitution some way? You know, I think anybody is sensitive to that, should be. I don't know why our court -- and I couldn't sell anybody on it. But it was entirely different, that's all.

Q: What was your role in the formation of the special committee on capital cases that the Supreme Court formed?

A: Oh, I really -- I can't take credit for that. I think it's been successful and I think very conscientious. As you know, Justice Fitzgerald was the chairman of that committee and did an excellent job. Much better than I thought anybody could do it. It was great.

Q: So your thoughts on its findings were positive?

A: Oh, it was good. Yes, it was very good.

Q: What were some of the changes that came about?

A: Oh, well, this idea that counsel has to be competent and have some experience I think is really important and a key to it and that's the big thing as far as I was concerned because I could see mistakes being made, you know, in the trial and that's -- you know, now you're going to be represented, you're going to be represented by somebody that's competent and will be in there and you've got a chance. And that's the idea. If we're going to give them counsel, that means competent counsel. No, I thought it was good. I had no idea it would turn out that well.

Q: What --

A: I was afraid other than Fitzgerald, Justice Fitzgerald doing the job that he did, I was afraid it would be one of those committees that would just be kind of -- try to whitewash the problems with the death penalty and all that. Oh, you got this committee now. Excuse me. What they've done is -- excuse me. Solved all the problems... They never

said that. They said it was difficult and they gave it a lot of thought and did work on it. It was obvious to me, a good job.

Q: And when Ryan finally -- Governor Ryan finally issued the moratorium, what was your personal reaction to that?

A: Well, I was surprised. Everybody said it was obvious to them that that's what he was going to do, but you didn't hear too many people saying that before he did it. But I told you my thoughts on it was I'm glad he did it and it was a step in the right direction. But to do it properly, it seemed to me each case has to be decided individually and...

Q: What did you think of the -- I'm sorry, go ahead.

A: That's fine.

Q: No, what did you think of the governor's commission? Because he had formed his own commission on the death penalty. What were your thoughts on the findings of that commission?

A: Oh, they didn't bother me whatever they said. It's the governor. He can do what he wants.

Q: What was your reaction then when he granted clemency to all of the death row inmates?

A: Well, that's what I thought you were referring to before. I thought it was great.

Q: Well, there was the moratorium and then there was the clemency, the...

A: Yeah. Oh, excuse me. Yeah, it -- that was fine. That's what I wanted. I don't want people getting killed who may be innocent.

Q: Do you think the moratorium's been successful in correcting the flaws in the Illinois death penalty system and should the moratorium continue?

A: No, I think it's inept in the way it's been done. I think it should be done properly under the law and each case should be considered individually by the governor.

Q: What should happen with the death penalty in Illinois?

A: Abolished. Should be abolished now.

Q: Federal? And federal?

A: Yes.

Q: So you're saying then that the -- and I'm sorry. I don't mean to put words in your mouth.

A: Go ahead.

Q: So the moratorium -- what -- what I'm trying to ask you. The legal ramifications of the moratorium you would say are -- it's not enough or...?

A: No, we've taken care of this one situation, this one group, but it hasn't changed the problem.

Q: OK.

A: And, no. And -- and I set that out. And I also sent a letter to him setting that out, too. He had the authority to do this and should do it.

Q: OK. Well, let's get away from that heavy topic.

A: Well, that's fine. And I'm glad it's -- I'm glad it's out. It's an interesting topic and it's something that should be discussed and there still should be something done.

Q: Um-hmm. You don't hear a lot about it now as much as you used to.

A: No. At one time... And I got a lot of criticism for *Bull* in my dissent. And you don't hear anything about it but it's still a serious problem. My goodness. I said anybody would be offended at that, an innocent person being executed, and it could very well

happen. And, you know, life in prison without parole is a pretty serious punishment. In fact, some would prefer the death penalty.

Q: I think what sort of changes these feelings sometimes is when you have something like a Timothy McVeigh or a Charles Manson.

A: Sure.

Q: That sort of changes the opinion on how people feel about the death penalty.

A: Oh, sure.

Q: So it just seems to go in these --

A: Yes, well, of course --

Q: -- these waves.

A: -- people like that, they think, sure, they certainly deserve it, you know. But you got to think of the overall picture.

Q: Um-hmm, um-hmm. OK. Let's change gears a little bit here.

A: OK.

Q: And just sort of talk about general things.

A: Sure.

Q: What are your thoughts on cameras in the courtroom?

A: Oh, I'm for cameras in the courtroom. That's what we take great pride in. We have open court. We don't decide these in some court or star chamber in the back room. It's out there where everybody can hear it, see what's going on and knows what's going on. And yes, I'm for cameras in the courtroom.

Q: How should the judiciary relate with the media? Or does the -- how did you relate with the media as a judge?

A: Well, I tried to be honest and straightforward and open. And if I couldn't explain something that was a confidential nature, why, that's what I said and that's what I think you ought to do.

Q: As a judge, what are the best means to enhance the public's awareness of the judiciary?

A: Well, I have a theory and you may not agree. I'm sure some people don't. But the supreme court has established a system whereby if any group in the state wants a judge to come and speak to their group, they can do that. And they have a judicial speaking bureau through the administrative office. And I think that's the best because then you got -- I think it's much better to have things like that rather than a televised talk. Better to have a live judge there and have some personal contact and you can see that this is a human being, it's a decent human being who's trying to do the right things and follow the law and the law -- that everybody knows the law. And I think that's -- if that's followed through and people start doing more of that and they're aware of it, that's one thing I believe in.

Q: What does the judiciary do? What's the purpose of the judiciary?

A: Well, you're just to sit there to see that it's -- a trial -- as far as a trial judge, is conducted in an orderly manner and the purpose of the appeals is to see that the law is followed and everyone's treated equally.

Q: As a lawyer and a judge, you were a member of a number of bar associations. What do you consider to be the nature of the relationship between bar associations and judges?

A: Well, I think it's important. I had a little experience with bar associations as president of the Madison County Bar. I was on the board of governors, the Illinois bar. But I didn't realize how much work the bar associations do until I got on the Supreme Court. There

are lots and lots of committees that we appoint that are -- we're appointing lawyers to help us and bar associations to help us and I think it's important that they cooperate.

After all, they both have the same interest, to establish a sound court system.

Q: Did you do pro bono work when you were a lawyer?

A: Yes, I did.

Q: What are the benefits of doing pro bono work?

A: Oh, you just -- you're there to help people and that's a good way to do it. Those people really need help and I didn't announce this until it was close to my retirement. But I tried to do some pro bono work every day I practiced.

Chapter 6: Retirement

Q: Why did you decide to retire from the supreme court?

A: I had some very personal reasons that... I was 70 years old, for one thing, and I had served 29 years. I kind of feel like I had done my duty. And I liked it very much. I'd have liked to go on forever and we had some illness in the family.

Q: What have you been doing since retirement?

A: Nothing. No, my wife's been sick and I had to take her out to Denver to a hospital there for treatment. She still goes about once a year and does that. Live here on the farm and try to spend time with my grandchildren. But my first answer was the most accurate one. Nothing.

Q: What do you see for the future of the profession of law?

A: Well, I can't say much about that but I still think it's a great profession and I think there'll always be a need for a good lawyer and there'll always be a place for a good

lawyer. And the lawyers are ingenious and they'll figure out causes of action and things they can do to help people and protect people's rights. I still think it's a great profession.

[02:00]

Q: What do you see as the role of our organization, the Illinois Supreme Court Historic Preservation Commission?

A: Oh, I think it's the most important thing. Illinois has been asleep for years in not having this. I talked to a former justice on the Iowa Supreme court. You know, Iowa's a pretty small state and they have such an agency but it's done through the bar associations. But ours is much better. It's going to be done professionally, right? I'm impressed with everyone I've met associated with it. So I -- no, I think it's very important and we must have a strong court system. And the court really needs help in this area. You know, the judges don't have time to be around talking about what they do and how great our system is and it is -- and somebody's got to do it. And I think it's fantastic and it's terrific. No, I think good things are going to happen.

Q: Would you have done anything differently during your legal career or judicial career?

A: Not only in my legal career, but my whole life. I would have done everything differently knowing what I know now. Yes. Made a lot of mistakes.

Q: You're going to have to elaborate on that now. What would you have done differently?

A: Well, everything. You know now what areas of the practice you would get in earlier, you know, when you found out about it. As far as the judiciary, you wouldn't make some of the mistakes you made to begin with. Well, you learn, certainly, by doing the job and you wouldn't let things bother you as much. Realize that you have to just kind of ignore

some things and go on. That's all I mean. But no, I'd have done everything differently in my life to prepare.

Q: So what do you want to be remembered for? What is your legacy as an Illinois Supreme Court Justice?

A: Oh, just that I worked hard, did the best I could. That's all. I'm a very ordinary man in every regard by anyone's standards. And I can't expect much more but I did the best I could.

END OF INTERVIEW