

**STANDING ON THE CORNER WHEN THE STREETCAR  
CAME BY: AN INTERVIEW WITH THE HONORABLE  
JOSEPH P. KINNEARY (1905-2003)**

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I. FORWARD

Appointed by President Lyndon Johnson on June 28, 1966,<sup>1</sup> Judge Joseph P. Kinneary served on the bench of the District Court for the Southern District of Ohio for thirty-five years, making him second in longevity in his district; only Judge Humphrey Leavitt served longer by two years.<sup>2</sup> Kinneary retired in September of 2001 only because a stroke made it impossible for him to serve any longer. He died two years later, on February 14, 2003.<sup>3</sup> Judge Kinneary believed that being a district court judge was the pinnacle of the career ladder for an attorney—and he was devoted to his work. Indeed, on one occasion he told a fellow judge: “If I had the money, I would do [the job] for free.”<sup>4</sup>

Born in Cincinnati on September 19, 1905, the son of Joseph and Anne Mulvihill Kinneary, the future judge developed a strong work ethic early in life.<sup>5</sup> Because his father, a salesman, died when he was eight, the young Kinneary spent most of his time outside of school working.<sup>6</sup> While attending Cincinnati’s catholic schools, Kinneary caddied at the Cincinnati Country Club; he then sold shoes to help pay for college.<sup>7</sup> After receiving his B.A. in 1928 from the University of Notre Dame, Kinneary returned to Cincinnati and earned his LL.B. degree from the University of Cincinnati

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<sup>1</sup> JOURNAL OF THE EXECUTIVE PROCEEDINGS OF THE SENATE OF THE UNITED STATES, 89th Cong., 2d Sess., 664, 705-708 (June-July, 1996).

<sup>2</sup> Judge Leavitt served from 1834 to 1871.

<sup>3</sup> Robert Ruth, *Judge Joseph P. Kinneary 1905-2003*, COLUMBUS DISPATCH, Feb. 15, 2003, at A1; Karen Andrew, *Law was Joseph Kinneary’s Passion*, CINCINNATI ENQUIRER, Feb. 17, 2003, at B4, 2003 WL 55039517.

<sup>4</sup> John C. Elam, Speech at the Commemoration of the Presentation to the United States District Court for the Southern District of a Portrait of the Honorable Joseph P. Kinneary (July 22, 1986) [hereinafter Commemoration].

<sup>5</sup> Ruth, *supra* note 3.

<sup>6</sup> Ruth, *supra* note 3.

<sup>7</sup> Ruth, *supra* note 3.

College of Law in 1935.<sup>8</sup> Unable to get a job with any law firm in the midst of the Depression, Kinneary rented a small room in the office of an insurance agent and tried to find clients. He eked by until, in 1936, he became a speaker on the campaign trail for Franklin Roosevelt, who was seeking reelection as President. Then, in 1937, Kinneary was appointed Assistant Attorney General of Ohio.<sup>9</sup> He remained in that post until 1939.<sup>10</sup> During World War II, he served as chief counsel in the Food Procurement Division of the Army's Quartermaster Corps.<sup>11</sup> After being discharged in 1946 at the rank of Captain, Kinneary again went back to being a solo practitioner.<sup>12</sup> In 1950, he married Byrnece Camille Rogers.<sup>13</sup>

Kinneary regularly went in and out of public and private practice during the 1950s, serving from 1949 to 1951 as First Assistant Attorney General of Ohio and special counsel to the Attorney General from 1959 to 1961.<sup>14</sup> He was also a delegate to the 1952 Democratic National Convention. Because of his extensive political activities, Kinneary became friends with both of Ohio's Democratic Senators, Frank Lausche and Stephen Young. These connections most probably won him his appointment, in June, 1961, as United States Attorney for the Southern District of Ohio. Kinneary served in that position until President Johnson appointed him to the federal bench.<sup>15</sup>

The district court is the trial court of the federal system. Today, the Southern District of Ohio has eight authorized judgeships, but when Kinneary took his seat on the bench there were only four—two in Cincinnati, one in Dayton, and only Kinneary in Columbus. The job kept him busy. In the 1980s, for example, Kinneary handled over 600 cases a year, "two and a half times the number recommended as manageable by the Judicial Conference of the United States."<sup>16</sup> To deal with such a

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<sup>8</sup> Ruth, *supra* note 3.

<sup>9</sup> Ruth, *supra* note 3.

<sup>10</sup> Ruth, *supra* note 3.

<sup>11</sup> Ruth, *supra* note 3.

<sup>12</sup> Ruth, *supra* note 3.

<sup>13</sup> Ruth, *supra* note 3.

<sup>14</sup> Ruth, *supra* note 3.

<sup>15</sup> 1 ALMANAC OF THE FEDERAL JUDICIARY 75-76 (1999); THE AMERICAN BENCH: JUDGES OF THE NATION 1889 (10th ed. 1999); JUDGES OF THE UNITED STATES 274 (2d ed. 1983); JUSTICES AND JUDGES OF THE UNITED STATES COURTS 301 (1999); BICENTENNIAL COMM. OF THE JUD. CONF. OF THE U.S., HISTORY OF THE SIXTH CIRCUIT 154-55 (1976); Mary Bridgman, *Bench Mark: The Reign of Judge Joseph Kenneary*, COLUMBUS DISPATCH, Mar. 16, 1986, at G1.

<sup>16</sup> Bridgman, *supra* note 15.

tremendous workload, Kinneary instituted the pretrial system in Columbus.<sup>17</sup>

In addition to many thousands of fairly routine cases, Kinneary presided over several trials which would have a lasting impact on Ohio's political and economic life. Only a year after his appointment, Kinneary issued a decision in one of the nation's seminal civil rights cases, "[e]njoining Ohio from entering into contracts for the construction of the . . . Medical Basic Sciences Building" at the Ohio State University unless contracting firms employed laborers and craftsmen without regard to race, color, or membership in labor unions.<sup>18</sup> After that, he continued to handle cases that would expand opportunities for minorities, women, and others who society discriminated against. In *Dozier v. Chupka*,<sup>19</sup> Kinneary ordered the Columbus Fire Department to change some of its hiring practices which had no relationship to a candidate's ability to perform his or her job but which had the effect of discriminating against African Americans.<sup>20</sup> In addition, Kinneary ordered the department to adopt a goal which would eventually lead to the employment of African Americans "in the approximate percentage" to their percentage in the general Columbus population.<sup>21</sup> Later, he would issue similar orders to end sexual discrimination in the department.<sup>22</sup>

*Wade v. Bethesda Hospital*,<sup>23</sup> another highly-publicized case, illustrates the role federal courts play in protecting the powerless. Carolyn Wade sued seven defendants for violating her civil rights by ordering and then performing a forced sterilization on her because they deemed her to be "feeble minded."<sup>24</sup> In resolving the issue of immunity, which was a necessary prerequisite for the suit to proceed, Kinneary held that the Ohio probate judge who ordered the girl to submit to sterilization was not entitled to judicial immunity because he acted beyond the scope of his authority; the doctor who performed the operation and the hospital where the surgery was performed were not public officials or institutions and therefore not immune to liability; and the officials of the Muskingum County Children Services Board were individually responsible for their

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<sup>17</sup> Bridgman, *supra* note 15.

<sup>18</sup> *Ethridge v. Rhodes*, 268 F. Supp. 83, 89 (S.D. Ohio 1967).

<sup>19</sup> 395 F. Supp. 836 (S.D. Ohio 1975).

<sup>20</sup> *Id.* at 854-61.

<sup>21</sup> *Id.* at 860.

<sup>22</sup> *See generally* *Brunet v. City of Columbus*, 642 F. Supp. 1214 (S.D. Ohio 1986).

<sup>23</sup> 337 F. Supp. 671 (S.D. Ohio 1971), *mot. for recons. den.*, 356 F. Supp. 380 (S.D. Ohio 1973).

<sup>24</sup> *Id.* at 672-73.

actions.<sup>25</sup> Only the Children's Services Board itself, as an agency of the state, had Eleventh Amendment immunity from litigation.<sup>26</sup> By making individual officials responsible for their actions, Kinneary ensured that judges and government officials could not hide behind the argument that they were just following orders.

*Barbara C. v. Moritz*<sup>27</sup> involved residents of the Orient State Institute who alleged that they had been "warehoused" at the institute and that as a result of their institutionalization at Orient, they had been denied the opportunity to take advantage of the public school system, vocational rehabilitation services, recreational services, and social contacts with the general population.<sup>28</sup> Kinneary held that the federal court had jurisdiction because there were no unsettled questions of state law, no interference with state judicial proceedings, and plaintiffs' claims raised federal law violations which the federal courts were created to adjudicate.<sup>29</sup> A month later, the parties, before trial commenced, entered into a joint stipulation and an agreed plan to redress these deprivations.<sup>30</sup> Three years later, in April, 1984, the last residents of Orient left to live in more appropriate settings.<sup>31</sup> Expressing empathy for these mentally retarded plaintiffs, Kinneary told the *Columbus Dispatch*: "If even one of those mentally retarded residents transferred got into the proper facility with the proper services, my job was done."<sup>32</sup> He said that in his years on the bench, this case gave him the greatest personal satisfaction.<sup>33</sup>

During the Vietnam War, Judge Kinneary showed sympathy and understanding for those opposed to the war but denied conscientious objector status. Most times, after he convicted the defendants for violation of federal draft laws, he granted probation, as did many of the other federal judges, as long as the men agreed to do the same type of service required of conscientious objectors.<sup>34</sup> Probably the most publicized of the Vietnam

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<sup>25</sup> *Id.* at 673.

<sup>26</sup> *Id.* at 673-74.

<sup>27</sup> No. C-2-77-887 (S.D. Ohio Sept. 19, 1980).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Barbara C. v. Moritz*, No. C-2-77-887 (S.D. Ohio Oct. 19, 1981) (joint stipulation).

<sup>31</sup> Law Clerks' Dinner in Honor of Joseph P. Kinneary, United States District Judge for the Southern District of Ohio (June 2, 1984) (unpublished document, on file with author) [hereinafter Law Clerks' Dinner].

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Interview with Judge Michael R. Merz, Magistrate, U.S. District Court for the Southern District of Ohio (May 22, 2001). *See also* Criminal Docket for U.S. Dist. Ct., S.D. Ohio, vol. 19-20 (1966-1969).

war-related cases in the Southern District of Ohio, however, was *United States v. Green*,<sup>35</sup> involving an Ohio State University professor who reportedly burned his draft card in class as an anti-war protest. After a jury convicted Green for failing to have his Notice of Classification in his possession, Kinneary suspended his three-year sentence, placed him on probation, and ordered him to pay a \$1,500 fine.<sup>36</sup>

In a series of cases beginning with *Socialist Labor Party v. Rhodes*,<sup>37</sup> Kinneary held that Ohio's election laws, which since 1948 had worked to eliminate independent and third-party candidates, unconstitutionally burdened an individual's Fourteenth Amendment right to equal protection of the laws and First Amendment right to free political association.<sup>38</sup> As a result of these cases, the Ohio Legislature rewrote Ohio election laws to ensure more equal access of minority views to the public and the ballot.<sup>39</sup> In a different type of case, Kinneary dismissed a criminal indictment against a bank for making loans, which had not been fully repaid, to John Gilligan's 1968 United States Senate campaign. He held that 18 U.S.C. § 610, which prohibited any national bank from making a contribution or expenditure in connection with any campaign for political office, was an unconstitutional taking of property when it prohibited fully-secured loans made at ordinary interest rates following standard business practices. For Kinneary, campaign financing regulations, to be constitutional, should "promote an informed electorate," not thwart debate; election laws, "as far as possible," must "prevent elective office from becoming the exclusive prize of the influential or rich."<sup>40</sup> According to one of Kinneary's law clerks, this "precise language found its way into the legislative history of

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<sup>35</sup> *United States v. Green*, Cr. No. 9139 (S.D. Ohio 1969).

<sup>36</sup> *Id.*

<sup>37</sup> 290 F. Supp. 983 (S.D. Ohio 1968), *aff'd in part and modified in part sub. nom.*, *Williams v. Rhodes*, 393 U.S. 23 (1968).

<sup>38</sup> *Id.* at 991-94. *See also Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262 (S.D. Ohio 1970).

<sup>39</sup> *See Socialist Labor Party*, 318 F. Supp. at 1267-74; *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972); *Kay v. Brown*, 424 F. Supp. 588 (S.D. Ohio 1976); *Anderson v. Celebreeze*, 499 F. Supp. 121 (S.D. Ohio 1980); *Brown v. Socialist Workers '74 Campaign Committee*, No. C-2-75-92 (S.D. Ohio June 25, 1981), *aff'd*, 459 U.S. 87 (1982). For a detailed analysis of the Supreme Court decision in *Brown v. Socialist Workers*, see Steve Sloan, Note, *Brown v. Socialist Workers '74 Campaign Committee and the Constitutionality of Campaign Disclosure Requirements as Applied to Minor Political Parties*, 1 J.L. & POL. 195 (1983).

<sup>40</sup> *United States v. First Nat'l Bank of Cincinnati*, 329 F. Supp. 1251, 1254 (S.D. Ohio 1971).

the Federal Election Campaign Act of 1984—though it was not attributed to Judge Kinneary.”<sup>41</sup>

Private individuals also benefited from Kinneary’s determination to enforce the First Amendment’s safeguards of free speech and political association. In *Joyce v. Garnes*,<sup>42</sup> Kinneary, writing for a three-judge court, permanently enjoined Ohio from enforcing a loyalty oath.<sup>43</sup> The oath required people to swear that they did not advocate the overthrow of the government and that they were not members of a party who so advocated.<sup>44</sup> The Ohio Bureau of Employment Services required those seeking unemployment compensation benefits to make this oath before they could receive benefits.<sup>45</sup>

Judge Kinneary presided over several highly-charged criminal cases. Perhaps the most publicized was *United States v. Ryan*,<sup>46</sup> a five-week trial of several Columbus police officers for involvement in gambling and racketeering.<sup>47</sup> Defended by F. Lee Bailey, among others, the defendants were acquitted when the evidence failed to establish beyond a reasonable doubt that the defendants used interstate communication facilities to carry on gambling.<sup>48</sup>

In terms of pure financial issues, *Mobil Oil v. Marathon Oil Company*<sup>49</sup> was Kinneary’s biggest case. In the second largest takeover bid in United States history, Mobil made an unfriendly tender offer to acquire the Ohio-based Marathon Oil Company.<sup>50</sup> While Kinneary issued a temporary restraining order blocking a new Ohio law that would have prevented the takeover, he refused Mobil’s request for a preliminary injunction to block the merger of Marathon and United States Steel Corporation, thereby paving the way for a friendly merger rather than the hostile takeover.<sup>51</sup> Although the Sixth Circuit reversed Kinneary in a 2-1 decision and held that the Marathon-United States Steel agreements violated the Williams Act, a writer in the *Legal Times of Washington* editorialized that “the corporate and securities bar ‘generally viewed

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<sup>41</sup> Law Clerks’ Dinner, *supra* note 31.

<sup>42</sup> No. C-2-71-139 (S.D. Ohio 1973).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Cr. No. 9253 (S.D. Ohio 1969).

<sup>47</sup> Law Clerks’ Dinner, *supra* note 31.

<sup>48</sup> Law Clerks’ Dinner, *supra* note 31.

<sup>49</sup> *Mobile Oil v. Marathon Oil Co.*, No. C-2-81-1402, 1981 WL 1713 (S.D. Ohio Dec. 7, 1981), *rev’d*, 669 F.2d 366 (6th Cir. 1981).

<sup>50</sup> *Id.* at \*3-\*12.

<sup>51</sup> *Id.* at \*31.

Kinneary's carefully reasoned opinion as correct," and the Sixth Circuit's "novel interpretation of the Williams Act [as] 'confused' and 'disturbing.'"<sup>52</sup>

Judge Kinneary heard several cases challenging state actions as violative of the First Amendment's stricture mandating separation of church and state. In *Wolman v. Essex*,<sup>53</sup> Kinneary wrote for a three-judge court composed of himself, Court of Appeals Judge John Peck, and District Judge Robert Duncan in his first "parochial" decision. The court held that Ohio's practice of providing secular textbooks and instructional material, speech and hearing diagnostic services, remedial services, and other similar services to private, nonpublic school children, including those attending religious schools, was constitutional; the state did not violate the Establishment Clause of the First Amendment by providing such services.<sup>54</sup> The Supreme Court disagreed, in part, holding that providing texts and diagnostic tests was constitutional, but that providing such extras as equipment and field trips was not.<sup>55</sup> In *International Society for Krishna Consciousness*,<sup>56</sup> the Court denied the Krishna's motion for injunctive relief to prevent the state from prohibiting roving solicitation at the Ohio State Fair.<sup>57</sup> Kinneary held that such a prohibition did not violate the First Amendment's Free Exercise Clause because the Krishnas could lease fair booth space to proselytize.<sup>58</sup> In *Quappe v. Endry*,<sup>59</sup> Kinneary upheld a school board decision that allowed elementary school students to hold Bible study meetings at their school, but required that the meetings be held at 6:30 p.m. rather than directly after school.<sup>60</sup> He wrote that the decision did not violate any portion of the First Amendment.<sup>61</sup> He found the school board's decision reasonable because meeting directly after school in a group headed by a teacher might look like the establishment of religion, but meeting in the evening separated the school from the activity.<sup>62</sup>

These interviews with Judge Kinneary are part of a larger project, a history of the District Court for the Southern District of Ohio, to be published in 2004 by Ohio University Press. As part of that history, I

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<sup>52</sup> Law Clerks' Dinner, *supra* note 31.

<sup>53</sup> 417 F. Supp. 1113 (S.D. Ohio 1976).

<sup>54</sup> *Id.*

<sup>55</sup> *Hazelwood School District v. United States*, 433 U.S. 299 (1977).

<sup>56</sup> 440 F. Supp. 414 (S.D. Ohio 1977).

<sup>57</sup> *Id.* at 425.

<sup>58</sup> *Id.* at 420-22.

<sup>59</sup> 772 F. Supp. 1004 (S.D. Ohio 1991).

<sup>60</sup> *Id.* at 1015.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

interviewed all the men and women then living who had served as judges on the court. This helped me, as a historian, to gain greater insight into how the judges viewed their role and how they proceeded to carry out that role. Too often political scientists and legal scholars rely on statistical analyses to draw conclusions that miss the human dimensions. These interviews bring back into focus the human interaction that takes place in the courtroom. They also illustrate how dramatically the legal profession and the practice of law has changed over the last century. Finally, the interviews show how Judge Kinneary believed the courtroom was a sacred place, and that its sanctity is upheld by proper conduct on the part of all parties—attorneys, litigants and defendants, jurors, and witnesses. Kinneary often publicly reprimanded those who did not conduct themselves properly.<sup>63</sup> The judge ordered a lawyer wearing a brightly colored sports jacket to go home and change. He jailed one juror after he was late twice and another who was not paying attention and told Kinneary he didn't care about the case.<sup>64</sup>

If attorneys were unprepared, they might witness Kinneary's drill-sergeant-like tactics.<sup>65</sup> Kinneary was known to interrupt counsel and lecture witnesses.<sup>66</sup> In the 1974 trial of Anthony LaFatch for extortion, Kinneary sternly admonished jurors, imposed a gag rule on reporters, lectured the government's key witness for not answering questions directly and for speaking too softly, took over the examination of witnesses, sometimes for prolonged periods, and once even suggested that the defense attorney object to one of the prosecutor's questions and then, when he did, sustained the objection.<sup>67</sup> Such behavior led many to avoid Kinneary's courtroom. The entire Columbus bar, however, respected him for his dedication and his integrity. Symbolic of that respect, the United States Courthouse in Columbus was officially renamed the "Joseph P. Kinneary United States Courthouse" on September 18, 1998, in honor of his service.<sup>68</sup>

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<sup>63</sup> Law Clerks' Dinner, *supra* note 31.

<sup>64</sup> Law Clerks' Dinner, *supra* note 31.

<sup>65</sup> Law Clerks' Dinner, *supra* note 31.

<sup>66</sup> Law Clerks' Dinner, *supra* note 31.

<sup>67</sup> Martha Colaner, Judge Joseph P. Kenneary (unpublished pamphlet, University of Cincinnati College of Law) (on file with author); Bridgman, *supra* note 15; Commemoration, *supra* note 4.

<sup>68</sup> Bridgman, *supra* note 15.

## II. INTERVIEW

**I looked at your biography. You grew up in Cincinnati and attended parochial school there. You then attended college at the University of Notre Dame and law school at the University of Cincinnati College of Law. I would like you to begin by discussing what you think are some of the highlights of your legal career before you became a judge. You were in private practice and you were also an Assistant Attorney General.**

A. I was an Assistant Attorney General before I went off to WWII. Later, when I returned to Cincinnati, I set up a private practice. Then, in the presidential election of 1948—when Harry Truman unexpectedly nosed out Tom Dewey—my good friend Herbert S. Duffy was elected Ohio Attorney General. Quite unexpectedly, about a month after the election in the early part of December 1948, I received a call from Herbert Duffy on a Friday. He stated that he wanted me to come to Columbus to be his First Assistant Attorney General. The position of First Assistant Attorney General is a statutory position. In other words, it is prescribed by statute. And the actual function of the First Assistant is to supervise the work of all the Assistant Attorney Generals. I told Mr. Duffy that this was a great surprise to me and that I was situated well in private practice in Cincinnati. But he insisted that I come up to see him in Columbus on Monday. Between late Friday morning and Sunday evening, I made up my mind to go to Columbus. I cannot tell you exactly why, but I did go up to Columbus. When I walked into Herbert Duffy's office, I said, "You don't have to say a word; I'm coming with you." Of course he was very pleased, which is why I am in Columbus today. I have often tried to recall at what point in time between Friday morning and Sunday evening that I decided to leave Cincinnati. One of the reasons was that I was single at the time

and my brother and I were the only surviving members of our family. Thus, I had no close family connections tying me to Cincinnati.

**How did your experiences in the Attorney General's Office differ from your experiences in private practice? What do you see as some of the major contributions and exciting things that happened there versus private practice?**

A. The opportunity to work with the approximately thirty Assistant Attorney Generals who were then in residence in Columbus was an invaluable experience which, under any other circumstances, I would not have had. It gave me the opportunity to think about and decide on a course of action in various areas of the law. I have a fond recollection of my relationship with the Attorney General. We had a completely trusting relationship, which of course continued for many years, even after we left office and before Herbert Duffy's death. Unfortunately, Mr. Duffy died at a very young age. It also gave me a first-hand insight into the day-to-day operation of the state government. It gave me the confidence that I could deal with a group of lawyers on at least an equal basis.

**Was your work mainly in advising the executive branch or were you litigators?**

A. From time to time I argued cases before the Supreme Court of Ohio. Back in the early years of 1949 and 1950, the criminal jurisdiction of the Ohio Attorney General was very limited. It is greatly broadened today, though. The office is much, much bigger than it was in those days. For example, when I came to the federal district court in July 1966, I was the only district court judge. As a matter of fact, in the Southern District of Ohio in 1966, there was only one judge in Cincinnati, one judge in Dayton, and one judge in Columbus. Today in Columbus there are four full-time, or "active," judges. As a senior judge I have always taken almost a full load of cases. I take a 100% draw on the criminal docket and an 80% draw on the civil docket, which is to say that for every criminal case that is assigned to an "active" judge, I have an equal draw. On the civil side, I draw eight cases, whereas the "active" judges draw ten cases. In that way, I have always maintained a full staff, which is composed of my secretary and my law clerks. I have always had two law clerks—two lady law clerks, I'm happy to say.

**Were you active in politics before being appointed to the bench?**

A. Yes, I was. I never held an elected office, but I was active in Democratic politics in Cincinnati. I was active in The Young Democrats

of America, an organization that was founded in the years of the Roosevelt administration. I was also active at the local level—with my own ward and precinct—because a very close friend of our family in Cincinnati was a leader in Ward 3. I've always thought that a person's religion is a result of his parentage, but his political affiliation is an accident in circumstances.

**How was becoming a Democrat an accident of circumstances?**

A. I don't know. My father died when I was quite young—I was eight years old in September 1913 and he died the following January—so I have no recollection or knowledge of my father's political affiliation. I don't think he was either a Democrat or a Republican. He was in a business in which he could have been either.

**Of course, Cincinnati was a very Republican city.**

A. Yes, it still is. I was never solicited or talked into becoming a Democrat. I just naturally fell into it.

**Did it surprise you when President Johnson appointed you to the bench?**

A. I think it was a step up from being the United States Attorney. I was the first person in the Southern District of Ohio to go directly from being the United States Attorney to being on the court. President Kennedy appointed me United States Attorney upon the recommendations of Senators Frank Lausche and Stephen Young of Cleveland. As the First Assistant Attorney General, I had frequent contacts with Mr. Lausche, who was at that time the Governor of Ohio. I was the liaison between the Attorney General's Office and the Governor's Office because the personal relationship between the Governor and the Attorney General was not, shall I say, enthusiastic. As I recall, when the Governor wanted to convey anything to the Attorney General he always sent for me, so I really got to know Mr. Lausche. Nobody ever really got to know Mr. Lausche very well because he wasn't the kind of person to allow anybody to know him very well, you see. But I was no stranger to him, so when my name was proposed for appointment as the United States Attorney, he went right along with it. He told me that himself.

**So you got your appointment not because you actively campaigned for people, but based more on who you knew.**

A. I was told that I would be appointed the United States Attorney and that I didn't have to do anything. I didn't have to see this person or that person. And of course the newspapers were speculating about this person

and that person, but my name was never mentioned. Somebody asked me one time, “How come you were appointed? How come this building was named after you?” My stock answer is, “I was standing on the corner when the streetcar came by, and I ran out and caught it.”

**Did you know President Johnson personally?**

A. No. I met President Johnson on two occasions, but he wouldn't remember me from a bale of hay, meeting the thousands of persons that he did. I don't think that a person receives a federal appointment solely because a senator admires him or her. I was fortunate in knowing Governor, and then Senator, Lausche. I was also fortunate in knowing Senator Stephen Young, who during the time that I was the First Assistant Attorney General was a representative-at-large. In those days, there was an office in the federal system that was elected by the whole state, and Steve Young was elected to that office.

**What do you see as the main function of federal district courts?**

A. Their function is to define for the ordinary citizen his or her rights under the Constitution of the United States, and to define and interpret federal statutes. Their function is not only to define citizens' rights, but also to determine whether citizens are recipients of those rights. United States district courts define citizens' obligations and their, shall I say, “just desserts.” The trial judge—the U.S. district court judge—is unique in that he or she, by reason of having life tenure, is completely removed from all normal human competition. You don't have to look over your right or left shoulder or look behind or around you. You don't have to spend one second considering what the “political” thing to do is. You are completely free. You are in a position to indulge or execute human compassion, and you don't have to worry about results.

As a U.S. district court judge, it is natural that you will be reversed by the court of appeals, because while we as judges have some wonderful qualities, we are not infallible. And I have always gloried in the simple fact that I, like hundreds of others district court judges, am completely free to call the shots as I see them. All of us in our daily lives, in the business of living, have to indulge in some political thinking and some political actions. By political actions and thinking, I don't mean the interests of the Republican or Democratic Party. It's the promotion of your own interests. For example, if you join a civic group where you live, you say to yourself, “Well I better interest myself here because I want my part of the city to be one of the better parts of the city and I will therefore work for it. And I'll be nice to this person or that person even though he or she won't be my bosom buddy.”

**Would you say that federal judges, because of their life tenure, can be more just and fairer than elected state judges?**

A. I wouldn't say they are more just or fairer. I would say, however, that they may not be influenced by political considerations when deciding a case. I don't condemn elected judges at all for naturally being influenced by things outside of what is before them as facts.

**How would you characterize your judicial philosophy? Some people have said that your liberal or Democrat inclinations sometimes bias your approach, especially in civil cases. Would you agree with that? How would you characterize yourself?**

A. I have never spent two minutes trying to sell myself. If I had to answer that question, I would say that, generally and naturally, I am conservative with respect to financial and property interests. On the other hand, with respect to personal considerations, which arise mainly in the criminal field, I would say that I am liberal. I think as a natural evolution in an ordinary judicial mind, the longer you serve, the more conservative you become. I have never thought of myself as being unusually harsh in sentencing, even before the sentencing guidelines came into being. I like to think that I have an instinctive relationship with the particular person in front of me. I can decide very easily whether that particular individual should either serve time in confinement or be put on probation. I don't think that is a particularly difficult thing to do. I don't know. I have never really thought about who I am. I've always had complete confidence in my own ability to fairly handle whatever questions arise in the course of my duty.

**Do you think the new sentencing guidelines are detrimental to trying to achieve justice and fair sentencing?**

A. I would say that they are inhibitive, but not detrimental. After all, what would you expect among more than 500 or perhaps 600 federal district court judges who have the power to impose sentences? You wouldn't expect them to all be the same. I think that if a man or woman is qualified to impose a sentence, he or she is qualified to impose a fair sentence. Before the implementation of the new sentencing guidelines, we were only required to state the reason why we imposed a certain sentence. And I have a stock answer for that question, which I have never deviated from. I impose this sentence because, in my studied judgment and consideration, I

have decided that it serves the best interest of justice. You can't say any more than that. I'd like to see the looks on the faces of the members of the group who devised the sentencing guidelines. Let them chew that over for a while. I don't know, and I don't think any other federal trial judge would know, whether the guidelines are good for the system. I know that it is unrealistic to expect 500 or 600 independent individuals to approach a decision in the same way and to come up with the same sentence within a narrow range. I think that the mere establishment of the sentencing guidelines shows a lack of confidence in the fairness of the judgment of trial judges.

**Related to that, what do you see as the role of the law in our society? How does the law impact the average citizen? The business community?**

A. But for the federal system of laws and the fifty different state systems, the United States would be another Kosovo. I believe that there are two reasons why we live in a relatively peaceful society. One reason is the existence of the state and federal judicial systems. The other reason is organized religion, whether it is Christianity, Judaism, Islam, or any other religion. Organized religion is not going to cure anything, but it greatly discourages us from going out and doing something wrong. For example, when we drive an automobile, we instinctively stop for a stoplight—we try to observe the traffic regulations. But for religion, we would have violence every second.

**You have decided several cases involving the First Amendment religion clauses. How, if at all, did your Catholic background impact your decisions?**

A. I happen to be by reason of birth a Roman Catholic. I don't pretend to be either a prominent Catholic or a very highly-devotional Catholic. I keep up with my faith's requirements, but my faith has never influenced my decisions. In fact, if I were confronted with a question involving public support of religious faith or practice, I would either reject the case or lean the other way. I have been asked a number of times to name the most important cases I've ever had. I say I don't know because the case in front of me right now is the most important case.

**A book I read by a political scientist said that the role of policy making has been expanded at all judicial levels and mostly at the district court level. Would you agree that federal judges today have wide opportunities for policy making? Could you elaborate?**

A. I don't agree with that. In making a decision in an injury case, policy would be the last thing I would think about. In the last four or five years, the media has devoted a lot of attention to whether a prospective political appointee is liberal or conservative. Based upon my own experience, I'm completely free; I don't have to please this political party or that political party. I only have to please my own conscience. I only have to do what I think is right.

**Do you think you deal with cases from a different philosophy or approach than do judges who may have been appointed by Ronald Reagan?**

A. No, I don't. Every federal district court judge is a unique human being. In my opinion and experience, it makes no difference who appoints him or her. Ronald Reagan established a reputation for being a very cautious conservative. Considering his background, he may be the luckiest person who ever entered national politics. Without looking at the qualifications of a potential judge, it may be that Reagan would naturally ask, "What is this man's reputation?" In the ordinary practice of law, however, we are not confronted with questions of politics. The only politically-charged case I've ever heard was an abortion case, which came before me after the *Roe v. Wade* decision. Judge Carl Rubin, who is now deceased, came down to see me. He said, "If you don't want that case, I'll take it." I said I'll keep the case, thanks for offering. I'm not a Catholic judge, a Protestant judge, a Jewish judge, or an abortion or anti-abortion judge. I'm just a judge and I took the case. It was the easiest decision I ever made. I decided consistent with *Roe v. Wade*. I told Carl that it was no big deal.

**When political scientists look at statistics, they see that the role of the court has changed in a variety of ways. What do you see as some of the more significant changes in your lifetime?**

A. On the civil side, the cases that we are getting in here now involve controversies between organized economic groups rather than between individuals. Increasingly, the parties—the plaintiffs and defendants in civil cases—are not individuals; they are economic groups.

**What do you think causes that?**

A. Well, it is consistent with the whole trend in our commercial life. More and more large groups are combining—merging. More and more individual banks are being absorbed into larger groups. That's what is causing it, you see. I'm a fiscal conservative, which is why all of this jumping up and down is amusing to me. One day, the Dow Jones is up 130

points; the next day it is down 145 points. And you read about hundreds and hundreds of people who are multi-millionaires now on paper. It all goes back to the fact that I am a product of the 20s and 30s. I'm not a product of the 60s or 70s.

**We already talked about the civil side. In what ways do you think the criminal side has changed over time?**

A. Originally, the FBI almost always had a case on every criminal calendar. I had a criminal case every Friday morning. The FBI always had at least one case involving interstate transportation of a stolen automobile. Those types of cases were easy for them to pick up and add to their statistics, thereby further justifying the existence of the FBI. But then, in the 60s, 70s, and 80s, the drug defendants increased, increased, and increased. Increasingly, there were more black defendants for drug offenses than there were white defendants. The reason for that is that the blacks are economically unprepared, whether you like it or not. The simple fact is that the whites are better prepared because of history and because of their ability to absorb training and education. So that is the change on the criminal side. Today, drug cases comprise a majority of the cases. We generally don't have any cases involving violence, unless there is a crime committed on federal property. I have never had a murder case. The nature of the criminal cases in the federal courts today is consistent with the changes in our society.

**Do you find that there are more cases on the docket?**

A. Oh yes, there are more. As the population has increased, so too has the docket. Everything in our daily lives seems to be increasing. We are confronted with increasing amounts of traffic all the time. It's hard for us to get out of our driveways now.

**Also, there seems to be an increase in the number of federal laws granting rights to certain individuals and groups.**

A. Some ambitious lawmakers support legislation in exchange for the promise of support when they come up for re-election.

**What of your family?**

A. I was looking through some of my family's papers and I found a Certificate of Citizenship that was issued by the Probate Court of Hamilton

County, Ohio, in 1857. At that time, the state, not the federal government, issued Certificates of Citizenship.

**Where is your family from?**

A. All of my grandparents were born in Ireland. My paternal and maternal grandfathers both arrived in the United States in 1856. And, like all other immigrants, they went to the places where their friends and family were. So my maternal grandfather continued on to Cincinnati, whereas my paternal grandfather, whose name is Simeon, stopped in New York and started a family there. My father came with his family from New York to Cincinnati.

**I would like to talk more about the function of the courts. Do you find yourself confronted with a lot more motions to dismiss? Are you issuing more motions to dismiss? In other words, are you getting rid of more cases before they get to the trial stage than you used to?**

A. Yes we are. That is due to the very fortunate institution of the system of magistrate judges here. As you probably know, the magistrate judge in civil cases can decide all motions except dispositive motions. A dispositive motion, as you know, is generally a motion that gets rid of a case. Magistrates have greatly assisted district court judges. When we—the district court judges—get a case, it is ready for trial. Either personally or through a magistrate, we may conduct what is called the final pretrial, which results in an agreement between the parties as to this and that. It's all designed, of course, for the trial to run smoother. On the criminal side, the magistrates can fix bail and so forth. They don't have any more power than that. We still essentially do everything in the criminal cases.

**We are talking about motions to dismiss and the increased docket. It seems at least statistically that there are more and more cases for judges to hear.**

A. Yes, there are more and more cases to hear. But when you consider that we have four so-called "active" judges and two senior judges—Judges Holschuh and myself here—we have plenty of judges to hear the cases. In addition, we have three magistrates, one of whom is a former law clerk of mine.

**Do you think individuals have as good a chance to get their day in court—to get justice—today as they did 30 years ago?**

A. I would say that individuals have a better chance to get their day in court today than they did 25 or 30 years ago. Most law clerks come to

courts directly from law school. I have always told many people that one of the great rewards of being a district court judge is my daily close association with my law clerks, because they are privy to all of my thoughts and I expect the same from them. When they come to my court, I tell them, “Don’t tell me what you think I want to hear, tell me what you think.”

**Do you think law clerks are as educated as they used to be?**

A. No question in my mind. Judging from the quality and ability of the law clerks that come my way, I think that they are more educated than they used to be. The quality of legal education is much, much greater than it was in my day—in the early 30s. These kids are well-prepared when they come to my court. When I was in law school, students were still riding horses.

**What Supreme Court decisions, if any, have significantly impacted the work of the district courts? Have there been any Supreme Court decisions that have significantly impacted your role and the role of the courts?**

A. Yes, *Miranda vs. Arizona*. We run across that case more and more all the time.

**Do you think the *Miranda* decision has provided protection for individual rights?**

A. Yes, I think *Miranda* was a good, fair decision.

**We talked about motions to dismiss. What do you think about trying to settle cases out of court?**

A. I think that a U.S. district court judge who has a “minimum exposure” to the work of the court ought to be able to decide whether there is a fair opportunity for the parties to work towards a settlement. That is my own rule, a rule that I have always strictly followed. I only apply that rule in civil cases; I never touch the criminal cases, regardless of whether there is a plea agreement in place. A plea agreement in a criminal case is between the criminal defendant and the U.S. Attorney General’s Office.

In civil cases, I decide if there is a fair opportunity. Whether there is a fair opportunity for the parties to work toward a settlement depends, in part, on the quality of the parties’ attorneys. If a case hasn’t been settled by the time the case reaches the final pretrial stage, and if I think that there is a fair opportunity and that the case should be settled, I ask, “What, if

any, conferences or efforts have been made to settle this case.” Surprisingly, in many cases, the attorneys will say that they haven’t discussed settlement. So I say, “Would you like to discuss it?” If they agree, I say, “You, the plaintiff, sit in the conference room, and you, the defendant, go into my chambers.” I then say to the plaintiff’s attorney, “Give me two figures, your demand figure—your highest figure—and a lower figure—the lowest figure that you will accept to settle the case.” I will then decide whether I can get the plaintiff and the defendant in the same ballpark. And if I decide it’s worthwhile, I’ll ask the defendant for two figures. If the parties’ figures are in the same ballpark, I’ll bring the parties together and say, “Let’s settle this.” I don’t beat them over the head. I think some district court judges are proud of the fact that they can settle this case and that case! I think my way is a fair way to do it.

**You handed me an article about you. Many judges talk about your demand for proper decorum in the courtroom. Do you find that lawyers today tend to be more combative, less civil, than they were fifteen or twenty years ago?**

A. No, I don’t. I suppose the people who write about me like to say how strict I am in the courtroom. I am a different person when I am on the bench. To start with, I consider the courtroom a sacred place. It’s the first opportunity for the ordinary person to say, “He did this to me,” and it is no place for counsel to put on an act and show off. During my early years on the bench, I devised my own instructions to counsel. In all my years on the bench, I really haven’t had any trouble with counsel; there have been only two incidents where I thought it necessary to take a recess and bring what I considered the offending counsel into my chambers. And when I got him in here, I read him the Gospel according to St. Joseph. I have never spoken harshly to a lawyer in the presence of a jury or in the presence of parties. I have never had the occasion or the necessity to hold a lawyer in contempt—I’ve never been bothered by that. The lawyers know not to fool around with this guy; he’ll bite your head off. I know I’m a different person when I’m in the courtroom.

**Let’s switch gears. Many of your decisions are reviews of administrative agency decisions. I think I read somewhere that you wrote that administrative decisions deserve deference. Would you elaborate on how you treat appeals from administrative decisions? What standards do you use?**

A. Did I say, “deserve deference?”

**In one case that I read, some African American citizens were concerned about the construction of highway I-670. They thought that**

**the highway would break up their community. In that case, you said that deference should be given to administrative decisions.**

A. I may have said that. In the great majority of cases, the administrative decision-maker has come to the right conclusion. In at least nine out of every ten cases, I usually went along with his or her decision. The administrative decision-maker has made the record. He had the case before him. I don't recall the case, but if a properly-constituted body decides to route a road a certain way, then that body has given it more thought than a group of black citizens who don't want it for their own reasons. If routing a road a certain way is going to financially offend certain property owners, there is a very adequate way to compensate for that.

**I would like to talk about judicial procedures, which I know very little about. From what I have read, people say that federal court procedures are very different than state court procedures. Would you agree? If so, in what ways are they different?**

A. Essentially, federal and state court procedures are the same. In Ohio, state courts are different than federal courts in that the municipal and common pleas courts have very heavy dockets. Were a municipal court judge to set aside several days to judge a jury case, it would skew up his or her docket. The big difference is that, in federal court, we have more time and can be more deliberate. In other words, in federal court, the pace of the trial is much slower and more deliberate. The common pleas courts in large cities like Cincinnati, Columbus, Dayton, and Cleveland have to operate faster.

**Do you think that the federal district courts operate differently depending on region or local culture?**

A. I think they do. There will be slight, but not essential, differences.

**Could you explain some of those differences?**

A. I don't know. I think maybe that the way a jury would be selected in Texarkana, Texas would be different than the way it would be selected in Syracuse, New York. I know in my selection of the jury I have twelve people placed in the jury box. I use twelve people in both civil and criminal cases. Some judges use only eight people. In the federal system, you have to use twelve for a criminal case. I allow the questions to proceed in a certain way. Only those questions that I decide are relevant to the case can be asked of the twelve in the box. If a person in the box raises his hand and I excuse him, he is replaced right away. Even in this court I

don't know if the other judges follow my practice. As a matter of fact, I know very little about how other judges proceed because I have strictly observed a point of never going into a courtroom when another judge is trying a case. I wouldn't want the other judge to think I was spying on him.

**What makes you decide to write an opinion or to have an opinion published?**

A. Whether an opinion is published depends on the publisher. If an individual district court judge decides that this is a new application to a different set of circumstances and it would be a worthy precedent, he or she will write an opinion. This usually occurs in civil cases. I think the fundamental reason to write an opinion is to state the reasons for arriving at a certain conclusion, which primarily benefits the court of appeals. That's the requirement for the written opinion.

**So if it is new or controversial you would write an opinion?**

A. Not necessarily. I don't know the exact percent, but I would say that probably more than 50% of civil cases are appealed to the court of appeals. The written opinion is for the edification and knowledge of the court of appeals.

**If you were writing a history of the district court, which cases, if any, would you highlight as the most significant?**

A. I really can't. Some cases, like the Marathon Mobil case, have attracted a great deal of publicity. There was the case when I upheld the selection of the presidential electors when Jimmy Carter was elected. I really don't know. I don't think that any of them are earthshakingly important. Primarily, the cases are important to the people involved in them, you see. I really think that there is too much attention given to certain cases. Naturally, the cases that the media is interested in will attract the most public attention.

**You were involved in several affirmative action cases. For example, in separate cases, certain African American and female Columbus firefighters argued that some of the Columbus Fire Department's procedures were discriminatory. Did you consider those cases significant, and how did you arrive at what you considered a fair solution?**

A. Of course, anything I've ever decided I consider to be fair.

**Right.**

A. Although maybe the court of appeals didn't agree with me.

**I do not remember.**

A. I do remember the firefighter cases. Just as I can't tell you exactly why I came to Columbus, however, I can't tell you exactly how or why I came to the decisions that I came to in those cases.

**In another interview, you said, "I want to believe the world will be a little better place after I'm gone." Can you think of some ways in which you've contributed to making the world a little better place?**

A. The short answer to that is my example of conduct in the court—the way I've handled the litigants. The overall results of my decisions. I think that as each of us look back at our lives—no matter what our professions or obligations are and no matter what we are entrusted with—we hope that our having lived has benefited mankind. It's better that he lived than he didn't live. When you come to a decision, your general feeling is that it is the right thing to do.

**Do you think people respect the law and the court system today?**

A. Well, number one, I don't believe they think much about it. Number two, for those people who are involved in the court system, be it the federal or state system or the civil or criminal system, it depends on how those people came out. If pressed for an answer, I think that people who have never benefited from or been involved with the court system would throw up their hands and say that we are better off with the court system than without it. We here in America are the most fortunate people in the history of the world when you think of the horrors that have been committed over a period of years. We don't stop often enough to count our blessings. If you think you have it hard here in Columbus, Ohio, I have often said, go to the coal mining areas of West Virginia and see how they live there, or go to Europe and see some of the standards of living there. We are greatly fortunate. I think that although people are grateful, they don't stop to count the roses.

**I think that is true.**

A. I have had what I consider an extremely fortunate life. It seems that I always happen to be there when the streetcar comes by.

**Why do you think lawyers, in the eyes of the general public, have such a low reputation?**

A. They have a low reputation? They are engaged in controversy. It's just the opposite of a doctor. You seek the assistance of a doctor to maintain or regain your health. If you regain or maintain your health, you are grateful to the doctor. He's somebody who served you well. When the ordinary person is in contact with lawyers, the person is trying to get something or trying to prevent somebody from taking something away from him, or the government wants to punish him and he doesn't want to be punished. So in the very nature of the profession, it's controversial.

**I am confronted with trying to write a history of the court. Do you have any words of wisdom for me? What would you think a history of the court should highlight?**

A. I think that the personalities of the men who have been on the court should have a very minor role. I think that you should emphasize the evolution of the importance of the federal courts over the course of the years, without reference to the contributions of certain individuals. For example, if people still remember how to spell my name correctly six months after I'm dead, I will be grateful.

**So what do you think has contributed most to the evolution of the importance of the court? Obviously, the court has become more important.**

A. There are two things, I think. First, it's the legal education of the lawyers and the complexities of the practice of law. Second, both the federal and state court systems have become more important in our daily lives, because our daily lives have become more complicated.

**So we need the courts to arbitrate?**

A. Yes. We need the courts to keep us on a compromising, common-sense basis so that we will continue to be a fair and orderly society.

**Do you see the courts as a safety valve?**

A. Oh yes, no question about it. The courts, our system of laws, and religion are continuing us as a civilized, progressive society. I have no fear about the future of this country; it's in good hands.

**Good, great.**

A. I see nothing but good things happening down the line.

**I think that is enough for now, unless you have anything you would like to add.**

A. Thank you for coming over Roberta.

### III. FOLLOW-UP INTERVIEW

**I assume it is alright to archive these interviews and perhaps publish them?**

A. That's OK with me. You have put all my answers into good, plain English. You have done a wonderful job. You would think I was right in front of you talking. You haven't got an unnecessary word in there.

**Well thank you.** [Judge Kinneary then reads from the first interview to illustrate some of the important statements. The portion Judge Kinneary highlighted dealt with his negative views about the sentencing guidelines.]

**I talked to Judge Rice and he said you have a great perspective on how the legal profession has changed. He thought that you might want to talk about what it was like to practice law when you first got started. Do you think lawyers are better trained today?**

A. Yes, without question. In most cases today, the practicing lawyer has an undergraduate degree and, on top of that, a professional degree in law. I am sure that all of the law schools, both state supported schools, like the Ohio State University College of Law, and private schools, like Capital University Law School, prepare a man or a woman well to practice law.

**Do you think the "tone" of lawyering has changed? Was the legal profession a "kinder" profession when you started?**

A. I don't think so. In 1935, at the University of Cincinnati College of Law, fifty-eight degrees were awarded. I was ranked ninth among the

fifty-eight people. I didn't make "coif." Of those fifty-eight people, I would say that twelve, or at the most fourteen, had a law office to go to after they graduated that was operated either by a member of their family or someone with whom they had a special relationship. Of the fifty-eight, there was exactly one who had a paid engagement. His name was Griffin Irvey. He was ranked second in the class, and he earned \$50 a month. The number one man in our class was a man named Logan Morrow, whose father at that time was a very renowned and well-respected Cincinnati lawyer. He had been a member of the largest firm in Cincinnati, Nicholas, Morrow, Woodmorse & Kenner. It had ten, maybe twelve, attorneys, including partners. That's how small it was. Logan and I were good friends. We were required to form law firms for trial practice in school. Classes were held on Saturday mornings. So I organized a firm of Morrow, Murphy, and Kinneary. I latched on to the two brightest guys in the class. For the summers after my first and second years of law school, Logan arranged for me to work at Nicolas, Morrow, Woodmorse & Kenner. I was kind of an errand boy there, but I absorbed the atmosphere of a law office. After graduation, Logan went to his father's firm. I was on the street. Mr. Morrow wrote letters on my behalf to at least six Cincinnati law firms. I knew Mr. Morrow fairly well because I had visited his home many times. In response, all of the firms said, "You are a bright young man, but we have no room for you." So I ended up renting a room in the office of an insurance agent and practicing by myself. That was how difficult it was to start. The big difference today is that if you make any kind of a decent record in law school, you are assured of a position in a firm. Today, there are firms with hundreds of attorneys. That was unimaginable in those days, you see.

**What kind of cases did you start out with?**

A. There was a wonderful man who had two sons, both of whom were lawyers. His name was Peter McCarthy. He kind of shepherded me around and sent people to me. I had an uncontested divorce case. The standard fee was \$50. You picked up whatever you could. I well remember the day when a friend of mine, a lawyer who graduated one or two years before me, came to me and said that Franklin Roosevelt was starting his reelection campaign for President in Ohio. He said that Ohio had been divided into two parts, the western side and the eastern side, and that Mr. Roosevelt was looking for a so-called youth speaker to join the group on the western side. He said that I would give speeches in the various counties in western Ohio. And I did, in 1936. I read the papers very avidly and just harangued the opposition. I well remember that we finished up our schedule of visiting the various counties on the Friday night before Notre Dame played Ohio State in Columbus. By that time, I had become a good friend of a brilliant lawyer by the name of Timothy

Hogan, who was practicing in Cincinnati. His father had been the Ohio Attorney General many years before. And he was the most brilliant, all-together man I ever encountered.

**Is this the Tim Hogan who became a district court judge?**

A. Yes. I became a judge in July; he became a judge in November.

**Did you ever work together with him?**

A. Oh, no. We were never together. I was always in Columbus and he was always in Cincinnati. But when Tim didn't want to take certain cases in Cincinnati, for one reason or another, he would always refer them to me. But I've strayed from the subject a little. There is a world of difference between the opportunities for law school graduates today and back then. Today, big firms like Jones Day pay close to \$100,000.

**Do you remember how much you earned your first year?**

A. No, I don't remember.

**I am curious about Judge Hogan. They talk about every judge being different. Was Judge Hogan different from you in how he ran his court or in other ways?**

A. I don't know. Let me say, first of all, that I have always made it a cardinal point never to go into a courtroom when another U.S. district court judge was conducting a trial—never, for any reason. So I was never in the courtroom when Tim was presiding. But I know, for one reason or another, he asked me to come to Cincinnati to try a case. But Judge Hogan and I spent considerable, or at least a fair amount, of time talking about what we would do under certain circumstances in trying a case. I think it was a process of practical education.

**What kind of reputation did Judge Hogan have?**

A. Oh, he was a very highly-respected judge, especially among lawyers.

**You knew a lot of judges in your lifetime, didn't you? You knew Judge John Peck and Judge Porter.**

A. Yes. Porter was one year ahead of me at the University of Cincinnati College of Law.

**Did you know him?**

Yes, I did.

**What was he like?**

A. Well, he was a very nice man. He wasn't a class leader or anything like that. I think he was very fortunate in his career after law school. I was just about to finish up my time as the so-called chief judge of the district. The chief judge is the man who has served the longest as a judge who hasn't reached the age of 70. And I was about to reach 70. And here was Porter and Hogan, who were born and appointed to the court on the same day. I was in the company of Tim Hogan when he said, "Joe, I was thinking about what is going to happen when your term as chief judge is over," which was a few months off. He said, "I think I'm going to just secede in favor of letting Porter take the whole term." I said, "No, don't do that. You are 66 years old; you will have four years between the two of you—one take two years and the other take two years. As far as who takes the first two years and who takes the second, who came into this world first?" He said, "I did by a few hours." So I told him to take the first two years and to have Porter take the second two. And that is what happened. It was a simple, common sense thing to do. Simple, common sense is the solution for many things. And, another strange thing, they died within a few weeks of each other.

**Were you and Hogan active in the Democratic Party together?**

A. Yes, until we got on the court.

**I heard that F. Lee Bailey practiced before you. What was he like? He has the reputation of being a great lawyer.**

A. That was before they legalized gambling in Ohio. F. Lee Bailey represented the man who was the head of the largest outfit that was taking bets on numbers. The trial lasted about three weeks. I would say that Bailey had the quickest reaction in making an objection during the examination of a witness than any lawyer I have witnessed. He was on his feet right away. He presented me with some books on the law. We got well acquainted. Then, Mr. Bailey was invited to be a speaker at the Sixth Circuit conference up at Mackinac Island. I remember him seeking me out and us spending some time deciding what he would talk about. I don't

pretend that he was any great friend of mine, but he knew how to get along with people.

**Do you remember if he won or lost that case?**

A. He won. They acquitted all the defendants. He contributed some to the decision. But I was surprised. They shouldn't have been acquitted.