# THE ORAL HISTORY
# OF
# JOHN DANIEL TINDER

# OF THE
# UNITED STATES COURT OF APPEALS FOR THE
# SEVENTH CIRCUIT

AS TOLD TO

COLLINS T. FITZPATRICK
CIRCUIT EXECUTIVE OF THE SEVENTH CIRCUIT

(This interview began April 22, 2015 and concluded on October 22, 2015. Judge Tinder, with the assistance of his former law clerk, Jason M. Basile, reviewed and revised his comments, submitting the revision on March 1, 2018)

# TABLE OF CONTENTS

# FOR THE ORAL HISTORY OF JOHN DANIEL TINDER

CTF: Today is April 22, 2015, and I am doing the oral history of Circuit Judge John Daniel Tinder.

CTF: Judge Tinder, can you tell me a little bit about where the Tinders came from, as far back as you know.

JDT: Yes. As my siblings and I were growing up, we learned a lot about my mother's side of the family because we spent a lot of time with her parents, Dan and Hanora (Nora) Foley, and her aunt, Nora's sister, Mary Sheehan, all of whom were born in County Kerry, Ireland and had subsequently immigrated to the United States. The Foleys were a large and extended family, and we enjoyed many visitors and stories from Ireland.

My father's side of the family was a bit of a mystery to us because my paternal grandparents, Albert and Ethel Tinder, divorced when my father was probably nine or ten years old. In fact, our sense of it was that Albert abandoned Ethel and their two sons. To my knowledge, my father never talked about his father or ancestry, and though I don't recall being told not to

ask, we just didn't. So, there was never much information for us about that. Only recently, some members of my family, principally my sister Ellen, began digging around and we have learned quite a bit of information which indicates that our branch of the Tinder family arrived in America in the mid 1700's.

The beginning of the line is a James Tinder who was born in Scotland in about 1732. He came to America, to the Virginia colony, in the mid 1700's and at some point, served with the British and colonial troops, in what is often referred to as the French and Indian War or the Seven Years War. And we know that, as a reward for his service, James was given some acreage in Louisa County, Virginia. Records indicate that he later sold the Louisa County property and purchased land in Orange County, Virginia, which he farmed until around 1791. During this time, James' oldest son, James Jr., fought in the Revolutionary War from 1778-81. In 1791, James Sr. and his wife Sarah sold their Virginia property, and migrated over the Wilderness Road (developed by Daniel Boone) through the Cumberland Gap. They

settled in Woodford County, Kentucky, with their younger children, including their son Elijah, who had been born in Virginia in 1777. At the age of 24, Elijah married Anna Martin in Woodford County in February, 1801. James died in 1810 in Woodford County, and Elijah and Anna remained there, farming and raising their 7 children, until about 1816, at which time they moved to Shelby County, Kentucky. In 1833, they moved to Hendricks County, Indiana, where, along with most of their children, they became some of the earliest settlers of that County in the relatively new state of Indiana. In fact, my siblings and I visited the site of their Hendricks County farm a few years ago where a "Tinder Pioneer Cemetery" is maintained. Elijah, Anna and several of their children are buried there.

CTF: So you don't know much about Elijah's wife's side of the family?

JDT: About all that is known is that she was born in Virginia to Samuel and Lucy Martin in 1777 who had emigrated there from Germany. I have not been able to

determine whether she migrated to Kentucky with the Tinders or exactly how she came to Woodford County, Kentucky.

CTF: So Elijah comes to Indiana and at some point he is married to Anna. Who were their children?

JDT: The children were Joel, Jessie, Lydia, Jeremiah, Dicea, Martin and Susan. So, that's the next generation.

CTF: Did most of them stay in that area then or did they spread out going West?

JDT: Most stayed in the Hendricks County, Indiana area but Dicea eventually made her way to Missouri and Susan moved back to Kentucky.

CTF: Which one of Elijah's children was your ancestor?

JDT: Joel, his eldest, born in 1801, married Eliza Hufford in 1820 during the Tinders' Shelby County, Kentucky

days, and in turn, they had 3 children, the eldest of whom was William H. Tinder. William moved to Hendricks County, Indiana with his parents and in February 1843, married Catherine Kennedy. They had 12 children, their third son being Simeon M. Tinder, born in October 1847. Simeon married Rachel Stewart in Hendricks County in 1873, and their marriage also produced 12 children. Albert Corneilius Tinder was the fifth-born in 1881. To cut to the chase, Albert married Ethel Randall, my grandmother, in 1912 and my father, John Glendon Tinder was born in 1917. They had a second son, Marion, a couple of years later.

CTF: So Elijah, Joel, William, Simeon and then Albert.

JDT: Right.

CTF: Did you ever find out what happened to Albert when he left the family?

JDT: Yes, a little bit. Albert married another woman after he left my grandmother and he had another child in this marriage, a son named Jack. We would occasionally hear about Jack Tinder.

CTF: So Albert stayed in the Indiana area.

JDT: Yes. My older sisters have said that very rarely, but occasionally, Albert would show up at something like a baptism or some sort of family event, but would sort of stand off in the background. I have no recollection of ever having seen him or met him. And I have no recollection of my father ever even speaking about him. Albert died in 1962 when I was 12.

CTF: So Albert leaves and your grandmother is left to raise your dad and his brother.

JDT: Yes, and Albert also had 2 other children from a prior marriage, so when he left Ethel, he left 4 children for her to raise. I think they divorced in about 1927. My

father was about 10 at the time so this would have been about 1927.

CTF: Did they live in Indianapolis at that time?

JDT: They did. Until my dad was about 10, they lived in the northern part of Marion County, near the county line actually. This was a rural part of the county. The six of them lived on a farm, a small farm. Albert was making a living as a sewing machine repair guy. He traveled around doing sewing machine repairs.

CTF: Your dad gets an education but he comes from what I would assume was a poor background, since your grandfather abandoned the family right at the beginning of the Depression. What did your Dad tell you about life growing up?

JDT: It was a lot of work. After his father left, his mother Ethel needed to get a job, with four children to support. It is my understanding that she worked at a motor

vehicle license branch in Indianapolis, some sort of clerical job. That type of job might have required some political connection because license branches were controlled by the political parties in Indiana for a long time, but I don't have any information about whether she was involved in politics or how she came to get that job.

So they moved into the part of the city that is known as Fountain Square, to what you could describe as a blue collar neighborhood. They lived in St. Patrick's Catholic Parish and that is where my dad finished the rest of elementary school. Even at a very young age, after moving into the city, my dad had a variety of jobs. All of the kids had to pitch in. For example, my dad delivered ice. At that time, they had iceboxes, and he hauled large blocks of ice up stairways to peoples' apartments to load up their iceboxes. He carried newspapers. He did odd jobs, whatever might provide a little money here and there.

And he worked before and after school. But this was nothing new to him—he had farm chores before and

after school when they resided on the farm. He was a good student and thereby earned the opportunity to go to the top all-boys Catholic high school in the city, Cathedral. (Cathedral was operated by the Indianapolis Catholic Diocese but the faculty was staffed by the Holy Cross Brothers of Notre Dame. Single sex high schools were common then in the Catholic school system rather than an exception.) He worked around the school to earn part of his tuition, as well carrying ice and every other odd job he could find. He one time worked part time delivering coal. There were a lot of coal furnaces in those days. It was tough work.

CTF: After Cathedral, where did he go?

JDT: He got a job at what was called the U.S. Rubber Company. I think they manufactured principally tires, and he worked the night shift there which must have started at 10 P.M. because he also kept his ice delivery job, and he would head off to that when his factory shift ended at 6 A.M. On top of that, in March of 1935, he

began attending law school classes in the evenings before starting his shifts at the Rubber Company. I know it sounds like something out of an Horatio Alger story, and it is hard to imagine that a young man could work that hard and be that determined, but that is just what people did then, just to get by. Those were hard times.

At that time, a high school graduate was able to enter law school, certain law schools, without an undergraduate degree. So, that is what my dad did, right after graduating from Cathedral. He started attending a night law school in Indianapolis. It would have been considered more of a trade school than an academic institution. It was then called the Benjamin Harrison School of Law and subsequently, has been incorporated into what is now the Indiana University at Indianapolis McKinney School of Law. It was a separate entity at that time, exclusively a night school and had principally faculty who practiced law during the day and taught at night. There were a few full-time faculty members, but most of the courses were taught by practicing attorneys. It's the same school that Bill Steckler and Cale Holder

(later District Court judges in Indianapolis) attended and my dad was a contemporary of theirs at law school. It was very common then to go directly to law school without college in between.

CTF: Particularly in Indiana, where a law school education wasn't even required.

JDT: Right.

CTF: You could still "read the law," much as Abraham Lincoln had done, to prepare for admission to the bar. A person had the opportunity of self-study and apprenticeships with experienced lawyers as an alternative to law school.

JDT: Yes. My dad did a little drafting of pleadings and observing with a practicing attorney in Indianapolis but there was not a whole lot of time for that, especially since it didn't pay. My impression is that my dad was a very good student. He was described in the Cathedral

yearbook as a leader in the "intellectual group" at the school, and was the literary editor of the school newspaper, acted in plays and did a fair amount of writing. In addition to authoring essays and short stories, he even tried his hand at poetry. It does not appear that he had either the time or talent for sports, though throughout his life, he was an avid fitness buff.

CTF: Was he a published poet?

JDT: Yes, well, published in the school publications, as well as some local literary publications. He had a talent for writing.

CTF: What kind of poetry? What kind of writing?

JDT: I've read a couple of essays he wrote that were really kind of dramatic. I remember one in which he wrote about Christmas for a Russian family living in the Communist regime. And it was very stark. I wouldn't quite label it as Kafkaesque but it was real descriptive

and interesting, thoughtful. He was writing about something that he really knew nothing about, but it seemed pretty good to me, especially since it was written by a 17-year-old who had never been further from Indianapolis than Chicago. It demonstrated imagination and creativity.

As for his poetry, I'm not much of a critic in that department, but it seemed to be pretty good to me. I know he won a few prizes for it.

He graduated from high school when he was 17 in 1934, right in the depths of the Great Depression. There was a requirement that you had to be 21 before you could be admitted to the bar so he stretched out his law classes so that he graduated a few days after his 21st birthday. About a month after that, he took and passed the Indiana bar exam so that he was admitted to the practice of law in September 1938. On the recommendation of the Dean of the law school, my dad introduced himself to an Indianapolis solo practitioner named Godfrey Yeager, and they worked out an arrangement through which my dad and Mr. Yeager's

secretary shared a desk in the lobby area of Mr. Yeager's office, and that was the start of his law practice.

Mr. Yeager's office was in the Knights of Pythias (K of P) Building, which was located right across the street from the federal courthouse until it was demolished in the 1960s. It was a remarkable triangular high-rise structure. For most of my years in that courthouse, a photo of my dad and the secretary sharing the desk, a photo of the K of P Building and a doorknob engraved with the K of P emblem that was salvaged from the building were on display in my office. They served as a reminder to me of my roots in the legal community, and that despite holding the esteemed title of federal judge, I wasn't far from where my father had made his start in the profession.

But as of 1938, the effects of the Great Depression were still being felt in central Indiana, and to show you how cautious my dad was, he kept his night shift job at the rubber company for the first two years of his practice, in case the law business did not work out for

him and to supplement what his practice would bring in.

CTF: So, he was a lawyer when World War II broke out?

JDT: Yes, he was.

CTF: Was he drafted or married at that time?

JDT: No, he was not yet married. He had gotten involved in Republican Party political activities at the precinct and ward level, which eventually helped him obtain a part-time job as a Deputy Prosecutor, and when he worked his way up to a salary of $150 a month at that, he resigned his factory job and focused his attention on building a law practice. But Pearl Harbor was attacked in December of 1941 and six weeks later he enlisted in the Army Air Corps with the dream of being a fighter pilot. The only problem was that he had never even been in an airplane. After experiencing his first few plane rides, he quickly realized that he was prone to air

sickness, so after graduating from Officer Candidate School, he was sent to the Air Intelligence School.

CTF: Was he in the European theater?

JDT: No. His training led to a series of assignments throughout the Pacific during the war with the newly formed 7th Air Force Bomber Command.

CTF: Where was he stationed?

JDT: His duty stations included Hawaii, the atolls of Funafuti, Nanomea, Tarawa, Eniwetok and the island of Saipan. He was involved in Pacific campaigns for about two years and his day-to-day work involved analysis of photos and information about bombing runs and battles. I don't think he was involved in hand-to-hand combat. He was more in the backroom but I don't think it was a luxury trip, by any means. And although he retained a few memorabilia items from his service, including a few medals and insignias, I never heard him speak about his

war time experiences. This was sort of in the same category as his father and his father's family—it just wasn't something we talked about. This phenomenon was discussed extensively in connection with the explosion of interest in what Tom Brokaw wrote about a few years ago in his very popular book, The Greatest Generation. But it was evident that the experience had left a deep impression on my father, and he was justifiably very proud of his service.

Near the end of the war, he took what he described as "the biggest step of all" and proposed to the woman who would become my mother, Eileen Marie Foley. They married in Indianapolis while he was on a brief leave in October of 1944, and my dad was then assigned to spend the next year at an Air Corps training base near Great Bend, Kansas. My mother subsequently joined him there after she learned that she was several months pregnant. As she told it, she did not know a soul, other than my father, at the military base or anywhere in Kansas, for that matter. So, her mother Nora travelled out to Kansas to help her through the rest of the

pregnancy and the birth of their first child, Mary Ann, in September, 1945. We Tinder kids always enjoyed hearing our grandmother tell us the stories of that grand adventure of her time in Kansas and our eldest sister's early days.

After my dad's discharge from the military near the end of 1945, the Tinders returned to Indianapolis to live. My dad resumed the practice of law, and was reappointed as a part-time deputy prosecutor. He also became active in state and national Veterans affairs activities after the War, and held a number of offices in the Indiana and national Veterans of Foreign Wars (V.F.W.) organizations. This also led to more political involvement because one of the strongest Indianapolis political groups in the late 1940s and 1950s was Republican war Veterans. (Cale Holder was also quite active in this group, which eventually resulted in his service as the chairman of the Indiana Republican political organization, which many said ultimately led to his selection as a federal district judge by President Dwight Eisenhower.)

CTF: How did your parents meet?

JDT: My parents knew each other sort of casually before the war. Indianapolis has always been the type of place where so many people know each other. If you don't know another Indianapolis resident, it is likely that you do know someone else who does, as though there are no more than 2 or 3 degrees of separation between us all. And that was even more true in the 1930s and '40s. The Catholic community in Indianapolis especially provided opportunities for kids to get to meet and know each other. There were high school dances, sporting events and things like that. It was quite a network. So, my dad knew my mother, or certainly knew of her, through that network, as she had attended an Indianapolis all-girls Catholic high school, St. John's. I think they even had been on a double date or two, that is, he was with another girl and she was with another guy. At some point in their high school career or shortly after, they had a few dates with each other. But their dating began more seriously once he was in the military and when he

would come back home for his leaves. They dated very seriously then. The development of their relationship in parallel with the war experience seemed to be a common theme for that generation.

CTF: You mentioned the Irish origin of your mother's family. Can you tell me more about that?

JDT: We can trace the lineage back quite well to County Kerry, Ireland because despite the distance, it seems very close to us. Although they each came years apart, both of our maternal grandparents essentially immigrated directly to Indianapolis, with only short stops along the way. To this day we remain in contact with some of our cousins in Kerry and other parts of Ireland. And them with us. Many of us in the Tinder family have visited our Irish relatives and the locations from which our Irish ancestors came. Many of our relatives continue to live throughout Ireland and have visited us here in the States.

CTF: What was your mother's maiden name?

JDT: Foley. And interestingly enough, both my maternal grandfather and grandmother were Foleys. They both were born in Shanahill West, Castlemaine, County Kerry, Ireland, a rural area of western Ireland. The closest place that might be notable is Castlemaine Harbor and the famous beach at Inch. Most every family in the area farmed, with a focus on raising sheep. My grandfather Daniel was born there in 1883. He later immigrated to Indianapolis. The initial work he found was on a railroad, but soon left that to join the Indianapolis Police Department. He continued on the police force for the next 48 years, retiring in 1957 as the longest serving policeman in the history of Indianapolis. (That record stood for a long time but was recently broken by one of his grandsons, my cousin Tim Foley, who served more than 50 years on that same police force before he retired.)

My grandmother Nora was born in 1891, not far from Daniel's family in that tiny community. We don't

know if they ever met while growing up, especially since they were 8 years apart in age, but they might have known of each other and surely their families did. You could say that virtually everyone in the Shanahill West area was a Foley, on one side of the family or the other or both. As we traced back our roots, we confirmed that Dan and Nora had a paternal great-great grandfather in common, so that they were third cousins. I have to admit that this fact made me feel a little uncomfortable when I learned it. But as I have learned a little more about consanguinity and the culture of those times, I came to realize that such a connection was not uncommon or frowned upon, not even by the Church or the law. After all, Ireland is an island so you could speculate that virtually everyone from there has a blood relationship if you go back far enough.

CTF: So they were both born in Ireland.

JDT: They were both born into large families there. My grandfather, Daniel, was the only member of his family

to relocate here. But Nora had several siblings who immigrated to America, including her younger sister, Mary, who later lived in Indianapolis with Dan and Nora for many, many years after she was widowed at a fairly young age.

CTF: When did Daniel leave Ireland? Roughly?

JDT: The best I can tell, Daniel came to the States in about 1905. He made his way to Indianapolis because he had 2 aunts who lived in Indianapolis. And I don't know much about his work on the railroad but, as I mentioned, he became a member of the Indianapolis Police Department, which for a young Irishman was a pretty good job. He was a Patrolman, and was assigned to the horse patrol. Back then, it was somewhat common for the police to conduct their patrols by horse. And of course, it allowed a young policeman to look very stylish as he went about his work. This job allowed Daniel to support himself and send a little money back to his family in Ireland. The economy in Ireland was very

poor, and money and clothing, etc. sent from the States was a godsend. And of course, whenever he could, Daniel traveled back to County Kerry to visit with his family. And, as you might expect, word that he had a good, steady government job in the States got around the small Irish community very quickly.

As the story is told, Dan was known to brag a little around Castlemaine about his job and the life that he had back in Indianapolis. In the meantime, Nora had immigrated to the States, probably about 1910, and had landed in the Chicago area, working as a housekeeper for a family there. On one of Dan's visits back to Castlemaine, he ran into to Tadgh Sean (Tim) Foley, Nora's father, at some sort of gathering. As Dan was telling Tim how well he was doing, Tim responded "Well, my daughter Nora is over in the States. You need to look after her." And Dan said, "Well I'll do that. I'll do that."

CTF: Was Nora in Indianapolis?

JDT: No, Nora was in Chicago. She moved to Chicago at about the age of 18 or so and was working as a maid or housekeeper for people there. Poverty in Ireland was immense at that time and a job anywhere was an improvement. So eventually Dan made his way to Chicago to look in on her and he would travel up there from time to time for visits. After several trips to Chicago, Daniel finally said, "You know, Nora, the cost of this going back and forth between Indianapolis to Chicago is pretty high, why don't we get married and you move to Indianapolis?" And she did. They married in 1912. Apparently, Nora thought being married to an Indianapolis policeman sounded a lot better than having to clean up other people's messes as a maid. So, that's how she got to Indianapolis.

CTF: Did Dan have any other connections to draw him to Indianapolis besides his aunts?

JDT: He had no other connection. He knew no one else. Eventually some of his cousins also immigrated there,

the O'Briens, and they were from County Kerry as well. So, those relationships were what drew him to Indianapolis and kept him there. The Foleys raised their kids Catholic of course, in the working class parish of St. Philip Neri on the near east side of Indianapolis. They had 5 children, 3 of whom lived to adulthood.

CTF: Now I'm assuming, John, that the Tinders who came over in the 1700s, being from Scotland, were Scotch Protestants.

JDT: That is my understanding.

CTF: And I would guess that the Foleys made the Tinders Catholic.

JDT: Well, that works right up until my dad's father married Ethel. I think her maiden name was Randall. My understanding is that she was Catholic. And she was going to raise her boys Catholic. And she did.

The Tinders who came to Kentucky and eventually Indiana were, we think, Baptist because one of James Tinder's sons, Elijah Tinder's older brother, James Jr. became an ordained Baptist minister and was known as the Reverend James Tinder. The Tinders probably followed a minister to Kentucky with his congregation, which was very common. A minister would move his flock westward in search of opportunities, growth and religious freedom. So, the Tinders were Protestant, probably Baptist, based on the affiliation of Reverend James with that church, until Albert married Ethel. I don't think Albert ever converted, but her boys were to be raised Catholic and they were. So, certainly the Foley influence weighed in heavily but my maternal grandmother, Ethel, and her sons were unquestionably Catholic.

CTF: So, you mentioned your sister, Mary Ann. Do you have other siblings?

JDT: Yes, 4 others. My next sister, Patty, as we called her, or Pat, as she now prefers, was born a couple of years after Mary Ann, in 1947. She was born in Indianapolis after the war was over and my family was settled back there. The same is true for the rest of us. I was third born in 1950. My brother, Jim, is next in 1952, then my sister Ellen in 1956 and last, but not least, my youngest sister, Susan, was born in 1958.

CTF: Why don't we put your siblings in here with their spouses and kids. This would be a good place to do that.

JDT: Okay. So Mary Ann is married to Richard Wagner and they have four daughters, Carmen, Katie, Collette and Kristin. My sister Patty is married to Terry Stephens. She has three children from a prior marriage to John O'Donnell, Timothy, Stacia, and Ted. My brother Jim is married to Mary Hibner and they have a son, Ben. Ellen is married to Mike Dumm and they have 2 sons, Sean and Jerry, and a daughter, Ashley. Susan is married to

Bill White and they have a daughter, Erin and a son. Grady. That's the rundown. Jan and I have no children.

CTF: Do they all live in the Indianapolis area?

JDT: All of my siblings do. Several of the next generation have branched out, though. Mary Ann's daughter, Carmen (Wagner) Mendoza, and her husband Steve and their 3 sons live in the Cincinnati area. And her daughter, Collette (Wagner) Myers, her husband Todd and their son and daughter live in Lexington, Kentucky. And her youngest daughter, Kristin and her husband, Adam Shupak, live in Ponte Vedra, Florida. Ellen's son, Sean Dumm lives in Minnesota. And Susan's son, Grady White, lives in Southern California. All of the rest of us are in central Indiana.

CTF: What was growing up like? What sports did you do? What jobs did you have?

JDT: For the first 11 years of my life, we lived on a 40-acre farm in what at that time was quite a remote area of northeast Marion County, Indiana. It was at the corner of 91st Street and Masters Road. Our farm was actually adjacent to the farm where my dad spent the early years of his life. Our farm was operated on a crop share rent arrangement. A nearby farmer would come in and plow and plant it, usually rotating soybeans and corn, and he and my dad would split the expenses and profits, if any. But the farmer did the actual farming. Our farm was surrounded by other farms for what seemed to be several miles. My parents purchased the farm after my Dad returned from the war. I think the house we lived in was already built on the property when they purchased it, with about an acre or two carved out of the farm for the residence.

We, or I should say, my Dad, had a very large garden. One of our least favorite chores as kids was to keep the garden weeded and watered. We thought of the garden as being about 10 acres in size but in reality, it was probably only about an eighth of an acre. For a

while, my parents raised some chickens and another one of our chores was to take care of the chickens, pick up the eggs, clean the hen house and keep the place in order. We weren't so good at that so after a while, the chickens became a series of Sunday chicken dinners for us but the garden continued on through the rest of our years there. Because our farm was so remote from schools and other activities, our lives pretty much revolved around the farm. It was always a logistical challenge for our mother to get us to and from any after school or weekend activities so we had to be pretty selective about what we could do for sports and other extracurricular activities. There weren't any nearby neighbors to carpool with, with just a few exceptions. In fact, because the nearest Catholic school was many, many miles from our home, my parents helped found a Catholic parish (St. Lawrence) about 5 miles from our farm so that we could attend a Catholic school.

CTF: Did all 5 of your siblings live in the house on 91st Street?

JDT: Yes. All six of us. It was a two-bedroom house. It was about a 1200 square foot house, two bedrooms with one bathroom. And there were our parents of course, two adults, and six kids. It was a tight fit but we made it work.

CTF: So how did the bedroom situation work?

JDT: Well, the older girls got the bedroom. We created an area between the garage and the house that had been a breezeway into what was used as the bedroom for Jim and me. And then as Ellen came along and then later Susie, I think they shared what had been a dining room. I don't know how we got it done, but probably not too long after Susie was born, we moved into a larger house within the city limits. Our new house was on the Northeast Side of Indianapolis but much closer to the activity of the city, schools, a shopping center, things like that, than the farm had been.

CTF: Did the farm stay in the family?

JDT: Yes. We did keep the farm. My dad continued that cash renting procedure for a number of years.

My dad was involved in a fair amount of political activity and there was some speculation that he moved within the city limits because he had an interest in running for mayor. Ultimately, he never did run for mayor, but he did run for city council and was successfully elected. He was prosecutor before that.

Jan Carroll[1]: Oh, so he was prosecutor while on 96th Street?

JDT: Yes. 91st Street. Well that sort of plays into one of the great excitements I wanted to tell you about. While we were living on 91st Street on the farm, my dad was Marion County prosecutor from 1954 - 1958, and it was a pretty high-profile office at that time.

CTF: Was he elected?

[1] Judge Tinder's wife, Jan M. Carroll, participated in the first part of this interview.

JDT: Yes. Prosecutors in Indiana are elected in each county. At least at that time, the county Prosecutor was considered to be the chief law enforcement officer of the county. And with the state capitol and state governmental offices being located in Indianapolis, that made the Marion County Prosecutor a powerful figure. By all accounts, my dad was a very vigorous prosecutor. Rather than waiting for the police to decide law enforcement priorities, he started a number of initiatives that shook things up a good bit including public corruption investigations that ultimately led to the successful conviction of a very large part of the governor's close staff, his executive assistants and other members of his circle of advisors. These people were finding where various roads were going to be built before the locations would be publicly announced, and would purchase the properties that would need to be condemned for the highway construction, using "straw men" purchasers and phony names. They would later sell the property to the state at an inflated cost. Governor Craig was never indicted but several of his close aides

were convicted and imprisoned in what was known as the “Indiana Highway Scandal.” Many in Indiana political circles said that the Highway Scandal was reason for the abrupt end to Governor George Craig’s promising political career. And in fact, one political pundit said, "Craig is the only governor who left the state as soon as his term was over and didn't come back until the statute of limitations ran out.” I don’t believe that because I know that extradition of even a former governor would not be that difficult. Besides, my dad once told me that if there had been enough evidence to indict the Governor, he certainly would have done so. His record for aggressive prosecutions certainly supports that view. Governor Craig did move to Virginia after his term was over, but he later returned to Indiana and resumed the practice of law. In fact, he tried several cases in front of me when I was a District Judge and we got along very well. We never spoke about the Highway Scandal, or about my father.

CTF: Is that where he got the nickname of "Honest John Tinder?"

JDT: Right. Through that work. And another one of his initiatives involved going after illegal gambling. There was no gambling allowed in the state. There was quite a bit going on and it was suspected that it was being operated by organized crime and so he went after that hot and heavy.

CTF: This is a long way from Indianapolis, but clearly French Lick and West Baden were both hotels with casinos I assume.

JDT: Right. And, if you recall, the French Lick operation was owned by a mayor of Indianapolis, Tom Taggert, at one time, so the gambling ran deep in the state and the community and it stepped on a lot of toes when he went after gambling to the point that one of the major bookies hired a guy to put a hit out on my father.

We had a large haystack on the farm, situated about 150 yards from the house. That is where the hitman hid. Somehow the police got wind of the fact that this was supposed to happen and they were able to actually catch the guy, the hitman, up in the haystack. He had a straight-line view into the kitchen of our house, and he had a couple of rifles up there and so, fortunately, that was interrupted.

To show you a kid's view, at that time I was probably about six, and it was a very exciting thing for me because for the next 6 months or so we had a sheriff's deputy or two at our house around the clock, so for that period of time, we always had somebody there with us to throw a football or baseball around. I don't think I had any sense of the seriousness of the situation at the time. Of course, cops are exciting to any young kid, and while I had no real sense of the danger of it, I did have a sense of excitement.

Jan Carroll: Did you know about the arrest of the shooter?

JDT: Yes. At the time I knew about it and one of the things that impressed me was that after the case was over, the police gave one of the guns, a rifle, to my dad. And so, he had the gun. I think my brother may still have it.

CTF: Did they convict the bookie?

JDT: They did convict the bookie but it was a surprisingly minor sentence. I think he ended up getting just a 6-month sentence, or something like that.

CTF: Wow.

JDT: The conspiracy laws weren't very strong in Indiana then.

CTF: What about the assailant?

JDT: Since he didn't actually fire the weapon, he ended up getting maybe a year sentence or something. It was a

relatively minor sentence ultimately, but I think the bookie ended up doing time on other things, like maybe some tax problems and so on. But it certainly was an exciting time. My dad's name was in the paper day in and day out, in fact, his staff would collect the clippings of the print media coverage of the office and we kept them for years and years in scrapbooks.

CTF: Why didn't he run again?

JDT: The prosecution of the corruption sent a lot of Republicans to jail and devastated the Craig administration.

But in any event, my dad, though he was a loyal Republican, had stepped on a lot of Republican toes and certainly did a good deal to clean up some corrupt activities. The party bosses were a little bit out of sorts with him you could say. The Republican Party was very dominant and it was one-party control so you had to be the right branch of the Republican Party.

His backing came from many returning veterans. They formed the Republican Veterans' Organization, and that was a very powerful part of the Republican Party, a very powerful political force. But as they aged, the younger folks coming up kind of displaced the Republican vets and the vets didn't carry the same weight they once did. And sometimes just doing the job of running the Prosecutor's Office put my dad at odds with politically influential people. For example, he learned that one of his deputy prosecutors, a guy named Keith Bulen, wasn't performing up to standards, so my dad fired him. Keith Bulen later became a very powerful figure in Republican circles, on local, statewide and national levels. Even at the time of his firing, Keith was one of the young, up-and-coming Marion County Republican leaders who were displacing my dad's war veteran crowd.

This takes me on a little side tour of Indianapolis Republican politics. The Republican mayor when my dad was prosecutor was a guy named Alex Clark. He and my dad were both out of the Republican Veterans'

Organization, close friends and so on. And Clark had one term as mayor and I think he was defeated by a Democrat. He returned to the practice of law and was very successful at law and then decided in 1967 that he would get back into politics and run. He was always a political figure on the side, but he actually ran for mayor again. Republican fortunes had been improving and my dad kept some involvement in politics and was chosen by Alex Clark to be his campaign chairman for the primary election that was coming up.

Contemporaneous with that, always being oblivious as to what was really going on, I was in high school and my government teacher, seeing that I found ways to waste time if I wasn't so busy, said, "Look, Tinder, you ought to get involved in some political campaign. Volunteer for somebody. Go stuff some envelopes. Get involved in a phone bank. Do whatever. You'll enjoy it." And so, I don't know whether it was through his steering or whatever, I volunteered to do some "envelope stuffing" type of work for a candidate who was running in the Republican primary for mayor.

Richard Lugar had served on the Indianapolis School Board for a period of time, but he was still very young, and you could say that he was not very well known in Republican circles, at least not among my father's political pals. So, Lugar was this young upstart who was going to take on the experienced former mayor, Alex Clark, in the campaign. And, by the way, Keith Bulen was Lugar's campaign manager.

Well, I liked the idea of working for a newcomer to politics who was campaigning with promises of new ideas for government, shaking things up. This sounded like somebody I wanted to support so I put in a few evenings stuffing envelopes, delivering yard signs and things like that. And so that weekend I was talking to my dad and I said, "Hey, I volunteered for a campaign." He said, "Really. What campaign?" I said, "Well, for mayor." He said, "Which candidate?" I said, "A guy named Lugar." He said, "Hmm, you know I'm the chairman of his opponent's campaign."

Of course, Lugar went on to win that election, serving 8 years as Mayor of Indianapolis and later,

serving 36 years in the United States Senate. But for the rest of my dad's life, he always referred to Lugar as "your Mayor Lugar" whenever he spoke to me. "Your Mayor Lugar just did this. Your Mayor Lugar just did that." Of course, he had great respect and admiration for him. But it was my dad's way of reminding me that I gone my own way in choosing political sides.

So, the Prosecutor's years put my dad in the public eye, and he was often supportive of Republican candidates, but he was not really influential in political circles. As time went on, I suppose those whose toes my dad had stepped on had either gone on to other things or were less resentful when he successfully ran for the Indianapolis City-County Council some years later, in the 1980s. He served 2 terms on the Council but never sought to run for a higher office, such as Mayor.

CTF: Was he an at-large councilman?

JDT: No. He was elected from a district located on the northeast side of Indianapolis.

CTF: He left the prosecutor's office and did he then practice privately?

JDT: He did. And in fact, even when he was in the prosecutor's office at that time you could maintain your private practice. He spent very little time at it while he was prosecutor but he did have a civil office and a few cases. With 6 kids at home, he needed to keep his practice going to keep food on the table. When his 4-year term as Prosecutor was completed, he returned to the practice of law.

CTF: Getting back to you John. What are the sports that you – obviously I would guess baseball since I have seen the Los Angeles Dodgers baseball card of you.

JDT: Well we lived pretty far out in the country. With the large farms consisting of many acres each, it wasn't as though we were in a neighborhood. There weren't a lot of kids out there on the farms. One of my sisters had a friend who lived about a half-mile away, but there

were no other kids who lived anywhere near us, so really my brother and I were our own companions, each other's companions. As it turns out, he was a much better athlete than me but I thought since I was older and maybe a little taller at that time, I thought I was better. But history proved that I peaked early and he continued on after that. We played baseball, football, basketball. With the Catholic Youth Organization, or "CYO", you could play quite a few sports in grade school. We moved from the country to the city when I was in 6th grade and my opportunity to play organized sports increased a lot after that.

My mother was a little hard pressed to get all six kids to their various activities and we lived a good half hour's drive from any of those activities. With all of us being different ages, my brother and I weren't on the same teams, and my sisters were doing Girl Scouts and other activities and so while we were in the country about the only sport we could play would be baseball for the early part of the summer and then when we moved

to the city, I was able to play basketball, football and other sports.

We did a lot of bike riding. We always had dogs. I loved hiking long distances with those dogs. My mother would basically put my brother and me out of the house early in the morning after we got our chores done and give us a sack lunch and say, "Come back after dark." So, we would just often do whatever was available and had kind of an ideal childhood. You could hike everywhere. Everything was safe.

CTF: How did you get to school?

JDT: There was a school bus that would wait down at the end of the road because it had difficulty making it down the small lane to our house. We hiked down to the bus and with all of the pickups of other children along the way, it would be about an hour drive each way. But when we moved to the city, I could ride my bike to my new school, which was only about a mile from our new house.

CTF: You didn't go to high school where your dad did?

JDT: No. The Jesuits decided to build a high school in Indianapolis in the early 1960s. Cathedral was still then the premiere all boys' high school but the Jesuits decided to develop a school there too.

Jan Carroll: Is Cathedral operated by the Christian Brothers?

JDT: I think it is operated by the Holy Cross Brothers. Brebeuf was built in a remote area of Indianapolis, Northwest Side of Indianapolis, in the middle of cornfields, from scratch. They started with a single class of all freshmen. And then took a second class the next year and I was in the third class. The Jesuits were known for providing a good education, working you hard and I was a pretty good student in grade school and so I wanted to give it a try. I never even considered going to Cathedral.

CTF: How many were in your class?

JDT: About 125. I'll always remember the Sunday we went to visit Brebeuf for the first time. My parents took me out there for a school tour, an open house, and on our way back we are listening to the car radio and it's when Lee Harvey Oswald gets shot in the basement of the Dallas police station. It's being broadcast live on the radio while we're driving back from Brebeuf and we're listening to this trying to figure out what's going on. It was a complicated and confusing thing to listen to. That entire period surrounding the JFK assassination and funeral was such a confusing period, especially to me as a 13-year old. That is a real vivid memory for me. It probably wasn't the best time to choose what high school to attend, but I did.

It was a great high school. Very challenging academically, lots of opportunities for sports, because it was a relatively small school, so I played football and basketball, but I didn't get any bigger. I was about 135 lbs. so my football career ended after the first year and I

didn't get any taller after my second year of high school, so that was pretty much the end of my basketball career. But I had lots of involvement with intramurals and CYO. I had a variety of odds and ends jobs to make a little money to help with tuition and books and clothes.

CTF: Were you involved in any other extracurriculars?

JDT: Yes. I did some theater. I was in a number of plays. I didn't really have much of an aspiration for that but we always did our plays with various girls' schools, so it was a great opportunity to meet young ladies. That made it much more interesting than it would have been otherwise. I was also involved in the Young Republican Club, go figure. That was a fairly active organization and we were involved in the various election campaigns and also there were conventions and things like that so you met people from other schools. Oh, I wrote for the school newspaper. I think that's about it.

CTF: So you graduate from there and you go to IU.

JDT: I did.

CTF: Was IU in Indianapolis in existence at the time?

JDT: It was but it was not really a cohesive university. I don't know that you could get a full degree there. You could take hours in certain subjects but I don't think they had a full degree program. It was years after that when IU combined with Purdue to form a really freestanding campus.

CTF: We're back on the record after a lunch stop. We were talking a little bit about schools and I think I had just started to ask you about IU and what it was like going there.

JDT: It was certainly my own free choice to go there. My parents encouraged me to look at other schools and the college "counselor" at Brebeuf said that only two schools should be considered: Notre Dame and Xavier. I had applied to a number of other schools, some private

schools, but IU was incredibly reasonably priced and just far enough away from home that I thought it would be a place that I would enjoy being. As it turned out, I really did.

I had a wealth of interesting experiences at IU, and good opportunities for academics. My high school education had been sufficiently thorough that I found college not to be as challenging as maybe some others did. And so, I was able to do pretty well in school, and also have a pretty enjoyable time. I was involved in quite a few activities, intramurals, and even rode in the Little 500 Bike Race one time.

CTF: Was that for your fraternity?

JDT: Well, actually it was for a dorm. This was during my freshman year and I didn't join a fraternity until I was a sophomore. It came about almost on a lark, I guess you could say.

The Sunday before the qualifications for the Little 500, there were four of us sitting around in our dorm

lounge somebody said, "Hey, let's try out for the Little 5. This dorm doesn't have a team entered. So let's do it." We found some bikes and went to a nearby spot where no one could see us practice. Each team was required to have four riders. There were two tricks to qualifying for the bike race. The first was for each of four riders to be able to ride a fast quarter-mile around the cinder track. That wasn't so hard. The more complicated thing was that only one bike could be used so that each rider had to hand the bike off at nearly full speed to the next rider on the team because the four laps were run sequentially, with each rider completing one lap. The process of handing the bike off was called an "exchange." We tried a few exchanges until we got the basics down, at least for the most part. The first rider would ride his lap, then drop the bike off to the second, who would do his lap and then drop it off to the third, who would then ride a lap and hand it the bike to the fourth and final rider. It was customary that the fastest rider on the team would be designated as the fourth rider so that he could make up any time that was lost on the first three laps and

exchanges. But if you think about it, the first rider only needed to drop the bike off on the exchange and the fourth rider only need to pick it up from the third rider. The second and third riders had to be able to both pick up the bike on an exchange and to drop it off to the next rider. Well, an awful lot could go wrong with an exchange, and a lot of falls and crashes happened during that process. I tried and tried to learn how to both pick up and drop off in an exchange, but I just couldn't figure out how to make a drop off. And, frankly, I wasn't great at picking the bike up from another rider, especially at a fast speed. My efforts at learning the exchange had unfortunately left our bikes and my teammates more than a little banged up. But, even though I was the slowest of our four riders, we decided that the only hope we had of completing the necessary four laps in qualifications would be if I would ride the final, anchor lap so that I would only have to pick up the bike on the last of the three exchanges. That is all we did to prepare and we put the bikes away for the week to wait for qualifications on the following Saturday. We got to the

track early that morning and saw all of the other teams, I think there were about 40 of them, mostly from fraternities, outfitted in their matching uniforms. We were wearing gym shorts and T-shirts, and even those didn't match. The fastest 33 teams would qualify, and each team would get three qualifying attempts. Of course, on our first two attempts, our first three riders rode some great times but I dropped the bike on the exchange both times. So we came to our last attempt near the end of the day, and the stadium which had been full at the beginning of the day was now nearly empty. By some miracle, I was able to hold on to the bike on our final attempt and made it around a full lap without falling. Although I had a very slow time, our other three riders were so quick that my slow lap didn't keep us out. We qualified 32nd out of 33 teams. Between the qualifications and the race about three weeks later, we didn't do much practicing. We just went out a few times, mostly for fun rides. By qualifying for the race, though, we were given matching biking outfits and equipment, and we painted our helmets some outrageous color.

Despite our lack of training, we were able to move up to maybe 28th or 29th for the finish or the race. So it was great fun. And we enjoyed it. So that probably wouldn't have been uncommon for the type of activities that I would do. I did things on larks. No real organized plan to get through.

Eventually, when I joined a social fraternity the following year, that put me into contact with people who were involved in student government and got very interested in that. I got involved in various issues. The late '60s and early '70s was a very politically active time, there were anti-war protests, and there was a lot of interest in student governance, student involvement in university decisions, and so forth, so it gave us a lot of issues to mess with. To get our hands dirty.

CTF: Were you elected?

JDT: No, I never ran for any campus offices. I was appointed to be the treasurer of the student government.

I was in the business school and I guess people just assumed I knew how to keep track of things.

CTF: Speaking of business school. You had, at one point, thought of becoming an accountant.

JDT: That was my target.

CTF: Until you took your first accounting class.

JDT: Exactly. I thought, gosh, accountants seem to have a nice life. They don't have to use shovels or axes. They get to work at a desk and have pencils with erasers. And it looks like pretty civilized work and they know where the money is. They know about business and so I thought that would be something I would want to do. So, I enrolled in the business school and took my first accounting course and realized looks were a little deceiving. It was hard work and it was not so interesting to me.

Fortunately, the business school had just started an honors program and my grades qualified me for inclusion in that new program so I got involved in that. A great benefit of it was that I only had to take the bare minimum number of business courses and was able to use many, many electives in any school in the university, so that started me on a real exploratory self-directed course where I ended up taking courses in psychology, economics, religion, history, sociology and so on. Just about everything. I took a very wide range of things, but none of them I suppose were very deep but it was a real enjoyable way to see a lot of the university.

CTF: A real liberal arts education.

JDT: Sort of self-created liberal arts program with a business degree. But not really a business specialty.

CTF: What were the issues that you remember about the student government?

JDT: Well the state had just reduced its funding to the university which necessitated an increase in tuition and that was a very, very hot topic. Many students and their families needed to pay their own schooling expenses and it had long been a tradition for Indiana University that the state funded the majority of the university expenses, which resulted in pretty low tuition. The Indiana legislature and executive branch began moving away from that model in the late '60s, and started reducing the portion of university budgets that would be funded by the state. Consequently, tuition began to rise pretty rapidly. It was the start of the shift away from state funded higher education, a trend that is continuing today. There was a lot of resistance from students to the increase in tuition and other school expenses.

Another friend of mine was also interested in student government and politics. He and I formed kind of a lobbying effort and began attending higher education commission meetings where they were dealing with university funding and various legislative sessions where university funding would be involved,

and so we were presenting the students' perspective to those organizations, and meeting legislators. All that was quite an interesting experience. I don't know how successfully it worked, as I say the trend of diminishing funding of universities by the state has continued, but it certainly made us feel like we were doing something useful.

And, of course, the Vietnam War was extremely controversial at that time. There were many, many demonstrations, debates and speeches and arguments about that. Issues grew really rapidly. On a campus of maybe 34 or 35,000 people it didn't take much to get something moving pretty quickly.

CTF: John you have always been around politics. Your father ran for office. You talked about working for Richard Lugar and his mayoral campaign. You are in student government. Did you ever want to run for office?

JDT: No, I didn't. I tended to help others who were interested in that. I never really saw myself as a candidate. I suppose the closest that I might have ever come to becoming a candidate was when I was United States Attorney.

The then Marion County Prosecutor, Steven Goldsmith, had served I think three very successful terms as prosecutor and in fact, I had been on his staff during his first term. As of the mid-'80s, he was near finishing his second term and began to hint that he was not going to run for a 3rd term. This came up kind of late in the election cycle and there was a sudden interest in trying to find someone to run for prosecutor and my name was mentioned in certain circles. A few people contacted me and suggested I consider running, but as I sat in my United States Attorney's Office with authority over criminal cases in 60 counties and not having to run for that election, very quickly I decided to take a pass on that suggestion. So, that was probably the closest I have ever come to becoming a candidate. I never really thought about wanting to put myself out there as a

person who would stand for office. On a number of occasions, I worked for others who were candidates, but I was not really a political operative. I would work on policy papers, issue papers and things like that or kind of brainstorming but I never managed a campaign, or managed a candidate, but I did do some things in the background.

CTF: You are graduating from Bloomington, when did you make the decision that you wanted to go to law school?

JDT: Well, probably not until second semester of junior year. And as I mentioned, I had kind of created this self-guide, sort of an unfocused liberal arts education and so I wasn't getting an accounting degree. I wasn't getting a finance specialization or marketing or anything that had any job potential in it, and so I started to think about what might be next. So, the law definitely became a consideration.

My parents were pretty supportive of the idea of giving each of us kids a chance to get exposed to a variety of things and make our own choices as to what we wanted to do. As I mentioned, my oldest sister became a pharmacist which led to a very successful career. There was no pharmacy background in our family or anything related to that but it was something she got interested in so she went after it.

My dad gave me a chance to sort of tag along with people in different businesses. He introduced be to a stockbroker. I spent a day or two observing that environment. I also worked part-time and summers in retail merchandising at a couple of local department stores. And I spent a few other days observing other businesses and a government office. I had a summer internship at the Mayor's Office in Indianapolis during the summer before my senior year. And of course, I would from time to time visit my dad's law office.

As a small firm practitioner, he was always working. Always on call, 24/7. He took calls from home or the clients would come visit at home. So, I'd seen that.

As I said, I finally realized that I hadn't focused my undergraduate education in any particular direction and it was about time to decide that some area needed to be chosen, so I thought about law. And it looked like a pretty good idea and so I took the LSAT and did well enough to get into law school and moved on to that.

CTF: Did you ever attend Indiana University Purdue University at Indianapolis Law School, or did you stay at Bloomington?

JDT: I stayed in Bloomington. I finished my undergraduate degree in Bloomington in May of '72 and started law classes there in the first part of June, the very next month. In fact, I still needed to turn in a paper in one undergraduate course at the time I started law school. I finished that paper during the first couple of weeks of law school to fulfill my undergraduate requirements and legitimize my enrollment in law school.

The Bloomington law school had a program at that time which allowed a beginning student to start taking classes in the summer before the other first year students began classes. It was called something like an "accelerated" program. The idea was for the "accelerated" students to complete several courses during the first summer and to then continue taking classes each semester and summer thereafter so that three years' worth of courses could be completed during the third summer of enrollment. This allowed the "accelerated" students to complete their law degrees in about 27 months, nearly a year ahead of the students who started in the fall of that year. I was eager to get finished with school so this sounded good to me. Only about 25 students enrolled with me in the "accelerated" program, but it was an interesting mix of people, many of whom were older than me, and who had had some real-world experiences in the military or some other type of employment before starting law school. This made for some interesting discussions in our courses the first summer, Contracts and Constitutional Law. It also

meant that the 25 of us developed a real closeness since we ended up taking most of our classes together throughout the next two years. We were always a little out of sequence with the students who would start in the fall of '72. Those students would be considered the class of '75 and we "accelerated" students were considered to be in the class of '74, although we were a little behind the students in the '74 class because they had already completed two full semesters of law school. But the closeness that I mentioned probably started me on a path that lead to three job experiences during law school that were very formative experiences in the early stages of my legal career. Please bear with me while I digress a little bit to tell you about those experiences.

I knew one of my fellow "accelerated" classmates, Andy Mallor, from undergraduate school. We had met through a mutual friend. Andy received his undergraduate degree from IU a year ahead of me and worked in Bloomington for a year before starting law school. From day one in law school, Andy was a real guide to me and a great friend. We remain great friends

to this day. As you can imagine, in the relatively small community of Bloomington, Indiana, the legal community was equally small. But Andy was able to get a part-time job as a law clerk at one of the better firms in Bloomington, Applegate and Pratt. Bloomington firms employed quite a few law students as law clerks, and it was great for the firms because the supply of eager law students always exceeded the demand, consequently, the firms didn't have to pay the students very much. But the Applegate and Pratt firm was actually pretty generous with its law clerks. And the office was located close enough to the school that a student could walk to the firm whenever there was a gap between classes or after school to get some work done. That firm was also very good at letting its clerks get involved in all types of cases and legal matters, everything from simple contract drafting to working on federal litigation. Clerkships at the Applegate firm were real prizes for students. Andy was always looking out for my best interests, and as soon as another clerkship opened at the firm, he grabbed me right away and convinced the firm to hire me.

I have to say that going to work at that firm was one of the best things that happened to me during law school. It gave me a real focus on why I wanted to be a lawyer. It was great fun to get to work with Andy on projects, and we got to do some real interesting things, especially for 1st year law students. One of the principals of the firm, K. Edwin Applegate, had recently been United States Attorney for the Southern District of Indiana, and that experience drew a pretty interesting clientele to him. In addition to working on all variety of Indiana law issues, Andy and I got to help Mr. Applegate in his representation of a young man, just about our age, who was being investigated by the Drug Enforcement Administration (DEA) and the United States Attorney's Office in connection with a major drug conspiracy. We got to attend and participate in meetings with the DEA agents, and if I recall correctly, we even got to attend a meeting with the Assistant U. S. Attorney in charge of the investigation. And we weren't even finished with our first year of law school! Later that year, we got to work on an appeal of a gambling RICO

conviction, in fact, an appeal to the Seventh Circuit Court of Appeals. Before starting that clerkship, I don't think I even knew what federal crime was, let alone a U.S. Attorney. But I very quickly dove into this kind of work, and knew that, first, I really wanted to be a lawyer, second, that I wanted to be involved in litigation, and third, that I wanted to find my way into the federal court system. Law school took on a whole new meaning for me, and I think I became a better student because I had a better idea of what I wanted to do after law school. I don't claim to have been a great law student but I definitely became a much more motivated one after I realized I wanted to be a litigator. I think that clerking also helped me be more efficient about how I used my study time.

I continued to clerk at Applegate and Pratt through the summer of '73 and my second year of law school. In the spring of '74, I heard that the U.S. Attorney's Office in Indianapolis would be hiring a law clerk for the summer, and though the job did not pay much, I knew that it was an experience I wanted to have.

Maybe the low pay kept the number of applications down, I don't know, but I considered myself to be very fortunate to get the job. The work was fascinating to me, to be doing research for various AUSA's as well as for Stanley Miller, the U.S. Attorney. I even got to sit in court during several hearings and trials. By working that summer, I was not able to finish my coursework by the end of the summer along with my "accelerated" classmates. However, I felt like I was getting a post-graduate education in federal litigation. Shortly after I started at the U.S. Attorney's office, I learned that the funding for the law clerk position could be extended into October. So, I got to work making an arrangement with the law school to finish the remaining hours to complete my law degree at the Indianapolis law school, and to get the credits there to transfer back to Bloomington to meet the degree requirements. This allowed me to continue at the United States Attorney's Office until the middle of October. I remained in Indianapolis for my last semester but my law degree was awarded by the Bloomington law school in December of '74. I'm a Bloomington law

grad, but I did have a semester's experience in Indianapolis.

When my clerkship at the United States Attorney's Office eventually expired, I was able to get a part-time job through the Indianapolis Law School working as a bail commissioner, my third formative law school employment experience. This was a wonderful job for a law student with an interest in criminal law; in fact, for anyone interested in people. As a bail commissioner, I would spend 8-hour shifts at the jail interviewing people who had recently been arrested and would attempt to verify information they provided by confirming employment, family contacts, and so on. We would also be required to verify the arrestee's criminal record, or the lack thereof, which was no easy task in that era before electronic recordkeeping. After gathering as much information as we could, the bail commissioners would be required to apply various factors that were laid out in a schedule, and determine whether the individual could be released on his own recognizance, or whether a 10%

cash bond would be allowed. Some degree of judgment had to be applied.

CTF: So you were like our federal pretrial services.

JDT: It was a little bit like that but without the level of expertise or experience that U.S. Probation Officers possess. Some of our decisions were reviewed by the criminal and municipal court judges if the prosecutor or defense lawyer disagreed. But many of the release decisions of the bail commissioners, especially on minor misdemeanors, would stand without further review.

CTF: Did you set the dollar amount on the bond?

JDT: For the most part, the amounts were derived from a schedule or a grid. I suppose you could say that the bail amount resulted in large part from a point total, sort of the result of applying an algorithm. For example, if the arrestee had a job, and if you could verify that, and if they lived in the same place for a year or more, they got

so many points and so forth. It all was computed to a certain dollar amount or eligibility for release on their own recognizance. But there was some judgment involved. If there were close calls you could make a determination one way or the other. For arrestees who didn't qualify for a bond amount or who did not have the funds to post a bond, there might be a hearing and the bail commissioner who had interviewed the arrestee would attend a bail hearing and the judge might ask for testimony about what had been learned during the interview or verification process. Or sometimes the commissioner might be assigned to track some additional information down and provide it to the court. The bail commissioner's job gave me a ringside seat on the criminal justice system in Indianapolis. It was a very quick education. To see people in those circumstances, having been recently arrested, needing to evaluate what was true and what wasn't, often in the middle of the night after a late-night arrest; these situations presented some real challenges in decision making. It was also a unique opportunity to observe the police conduct

around arrests and the detention and the environment of a lock up and all that; it was an eye-opener. The other law student bail commissioners I worked with had much more experience than I did, so I learned a lot from them. This bail commissioner program seemed to attract some of the more interesting characters in the law school—real strong personalities. Several of them went on to be really noteworthy lawyers in the community and so it was a good introduction to people who I would later end up having cases with, either as a lawyer as a judge. It was terrific experience.

CTF: Who appointed the bail commissioners?

JDT: The program had an administrator who made the hiring decisions. I don't know how the administrator was chosen. It may have been a joint decision by the law school and the supervising judges. I think the program may have been partially funded by a federal grant, administered by the school or the courts. The

administrator of the program was a lawyer who also taught courses at the law school.

Jan Carroll: Now was your cousin Tim Foley on the police department at the time?

JDT: He was. There was kind of a tradition of police and fire department service on my mother's side of the family. My maternal grandfather, Dan Foley, joined the Indianapolis police department in the early 1900s after immigrating to Indianapolis from Ireland. He remained as an Indianapolis policeman for over 50 years, retiring as the longest serving officer on that department.

CTF: 50 years?

JDT: Over 50. He served into his 70s. His record was only surpassed a couple of years ago by my cousin Tim when he served a couple of years longer than my grandfather. Tim rose through the ranks from patrolman all the way to Deputy Chief. Along the way, he earned a

law degree and was very involved in the training, development and modernization of the department.

CTF: So you do the bail commissioner work and you also get hired back at the United States Attorney's Office.

JDT: I continued to work part-time as a bail commissioner after law school graduation, while I was studying to take the Bar examination in February of 1975. I think I continued to do that until I got my bar exam results later that spring. Immediately after getting admitted to the Bar, I went to work briefly in my Dad's office, really just doing sort of odd-and-end things, while I was applying for various jobs, including the U.S. Attorney's Office. My hiring there was a very fortuitous event. I knew the people in the office. It was a fairly small office. I think there were only seven or eight Assistant United States Attorneys at that time. I knew each of them from my work there as law clerk the previous summer. It was a bit of a transition period for that office because, Stanley Miller, the United States

Attorney had announced that he would be leaving to return to private practice. His replacement, Jim Young, had been nominated by the President, but he was still going through the confirmation process at the time, so the head of the office was in the process of leaving and a new one was coming in. Stanley Miller was a friend of my father and our families had known each other for many years. In fact, Stanley's father, Bill and his uncle Jake were both Indianapolis lawyers who shared office space with my father. Jake and my dad were very close, probably best friends. I think they first met through the Republican War Veteran's organization. Our families would celebrate holidays and special events together. I have no doubt that my selection as a law clerk at the U.S. Attorney's Office was the result of the closeness of our families. But my dad was also friendly with the lawyer who was being appointed to succeed Stanley…

CTF: Who was that?

JDT: Jim Young, from Franklin, Indiana. Jim had served a term or two in the Indiana Senate and had been counsel to Governor Doc Bowen. I think Jim Young had become acquainted with my father through Republican politics or through the state legislature. Jim interviewed me even before his nomination was confirmed and he was comfortable with hiring me, so, as I understood it, he told Stanley to start the paperwork process of hiring me, and I would start about the same time Jim Young took office. In fact, I think the authorizing paperwork for my hiring was signed by the acting-U.S. Attorney, John Hirschman, during a gap between Stanley's departure and Jim's Senate confirmation. I felt pretty lucky, like I slipped in during a gap in the process when no one was paying close attention. I got hired as a quite inexperienced recent law grad to be an Assistant United States Attorney! This was not something that happened every day. By the way, Stanley Miller and Jim Young later served on the Indiana Court of Appeals together for many years, along with Sue Shields.

CTF: You had worked in that office and you had been a bail commissioner so you had some experience.

JDT: I had a little research and writing experience but I had only been in courtrooms as a spectator. I don't know if I would have hired myself, but I am certainly glad they did. In the course of being a clerk there I worked with some of the AUSA's in connection with trials so I had been in courtrooms with them. I had helped prepare exhibits and documents for trials and hearings. I had helped prepare a few witnesses for testimony. But I had never been in charge of a case from start to finish. I was a real rookie. However, as an AUSA, I got some terrific on-the-job training. Some of the more experienced AUSA's, specifically Sarah Barker and Charles Goodloe, took me under their wings, allowing me to sit "second-chair" on a few trials to learn the basics of trying a case. They were great mentors for me.

CTF: So what were some of the bigger cases that you remember from being in the United States Attorney's Office before drugs and guns became big?

JDT: Keep in mind that President Nixon declared "War on Drugs" in the early 1970s, so drug prosecutions were becoming a bigger part of the US Attorney's work. One of the trials I got to work on as "second chair" with Sarah Barker was the prosecution of a pharmacist for operating what today would be called a "pill mill." Not only was he filling a lot of legitimate prescriptions, he was also essentially selling drugs out of the pharmacy back door and covering them by creating phony prescriptions. Later, I had "first chair" responsibility for prosecuting several drug conspiracy cases, some involving marijuana, some involving LSD and pills, and others involving heroin. One of the more interesting drug cases I prosecuted involved a pharmaceutical rep for a major legitimate drug company. This sales rep was trading large quantities of his antibiotic samples for controlled substances, which he was then re-selling on

the black market. And firearms cases were also part of the mix but by no means were we prosecuting nearly as many of those types of cases as you have seen in the last decade.

During the mid-'70s, I think that the number of AUSA's in the Southern District of Indiana was only about 10. In fact, the office was small enough that most of the AUSA's, myself included, handled both civil and criminal cases. You would also be responsible for your own cases from cradle-to-grave, starting with the intake through a report from an agent or an arrest, all the way through the grand jury and trial, as well as writing the appeal brief and arguing the case before the Circuit Court of Appeals. The criminal cases included the whole range of federal crimes, from something relatively simple like postal theft or forgery, to street crimes such as bank robberies, mail or wire fraud, as well as the occasional political corruption matter and other more complex cases. I even tried several murder cases, one of which occurred at Fort Harrison, which was then federal property, and others which took place in the U.S.

Penitentiary at Terre Haute. On the civil side, some matters were fairly straightforward, such as government loan collection cases, but could be fairly complex such as constitutional challenges to federal regulations, EPA enforcement actions or medical malpractice. All in all, the AUSA's during that period were real utility players; our caseloads were a real legal potpourri. If you liked a wide variety of litigation challenges, you liked being an AUSA in a small office, and I certainly did.

You mentioned gun cases. One of the most widely publicized cases that I was involved in started not too long after I became an AUSA, and the allegations involved drugs, guns and explosive devices. Charles Goodloe was the lead attorney but I got to help out as "second chair" throughout the investigation and several resulting trials. (I did get to argue the appeal on my own, though.) I don't know whether I was much help to Charles but I do know that the experience I gained by working on this matter was the equivalent of a post-doctoral program on federal criminal litigation. This

investigation started when the local ATF (Alcohol, Tobacco and Firearms) office got a call from the Anderson, Indiana police department about an explosion that had occurred at an Anderson plumbing supply company. ATF investigated the explosion and quickly determined that it had been caused by an explosive device that had been thrown into the building during the middle of the night. Working with the Anderson Police Department, the ATF identified two or three kids, juveniles, as the suspects. One of the boys was arrested and began cooperating with the ATF. He told them that he and his pals had been obtaining drugs from an Anderson physician who would join them on what you could describe as "commando raids" to fire guns at houses and do various kinds of mischief, like dumping trash at houses that the doctor would select. One of the guns that the doctor would shoot with the boys was a fully automatic machine gun. According to the juvenile, the doctor had hired them to place the explosive device at the plumbing company because he had some sort of dispute with it. Frankly, the story the

co-operator was telling sounded more than a little fantastic so the ATF (with the approval of AUSA Goodloe) convinced the juvenile to become an informant and wear a "wire" and to meet with the doctor to obtain incriminating corroborative conversations. Over the course of the next week or so, several late-night meetings between the doctor and the informant took place and some incriminating recordings were obtained. But then, shortly after the informant had stated to a family member that he would meet with the doctor on a particular night, the ATF stopped hearing from the informant. The police searched high and low for the informant without success. Several weeks passed and not a trace of the informant could be found. Until a headless male torso floated to the surface of a retention pond near Anderson.

CTF: A headless body?

JDT: Yes. According to the medical examiner, it appeared that the head had been removed with very

sharp tools, perhaps surgical instruments. But unsuccessful efforts had been made to attempt to remove the body's limbs. So, through fingerprints, the police were able to identify the body as our informant. Speaking of the fingerprints, early in my involvement of the investigation, while I was visiting the investigators' office, I naively asked one of the investigators whether he was sure that the body was our informant. The investigator responded: "Of course I'm sure. It was proven by the fingerprints. Better yet, I can prove it by the fingers." He opened his desk drawer and pulled out a box containing the 10 fingers, each preserved in alcohol in a separate container. He actually had them right there! I'm sure you can appreciate that as a rookie lawyer, I was pretty dumb struck at that sight and I began to wonder what I had gotten myself into.

Our investigation accelerated rapidly after the discovery of the body, with surveillance, interviews and searches as well as lots of grand jury testimony. The doctor who was under investigation hired a very high-profile defense attorney, F. Lee Bailey. Bailey was widely

known at that time, sort of a celebrity figure. He was just finishing up his representation of Patty Hearst on the Symbionese Liberation Army robbery matters so he was very much in the news. He was in big demand all over the country. As you can imagine, the dramatic and unusual facts involved in our investigation alone would have drawn a lot of media attention. When Bailey got into the case, it ramped up the already high media interest a bunch. It became quite a celebrated, newsworthy case. Newspapers, radio and television were all over it. The investigation resulted in several indictments for obstruction of justice, the use of explosive devices, perjury, illegal possession of a machine gun and other charges that I can't even remember now. The trial of the doctor was moved from Indianapolis to Evansville because of pretrial publicity in the Indianapolis area. The Indianapolis media was treating it like the crime of the century. Mr. Goodloe and I ended up spending most of a very warm August in Evansville trying the case against Bailey and his local counsel. Judge Cale Holder was the presiding judge and

the trial had more than its share of courtroom fireworks. In the end, the doctor was convicted of most of the charges and received a nine-year prison sentence. He was never charged with the murder, and to my knowledge, the informant's head has never been found. We never could find enough proof to link the doctor directly with the murder, and we didn't feel we had enough convincing circumstantial evidence to risk a trial on a murder charge. As I mentioned, Mr. Goodloe taught me a great deal throughout this case and in a very kind gesture, he let me handle the appeal in the Seventh Circuit on my own.

The appellate argument was a real lesson to me about what draws spectators to court and what does not. When I showed up at the Seventh Circuit courtroom at the Dirksen building prior to the start of arguments, there were just a few people in the courtroom. Then Bailey showed up and all of a sudden half of the clerk's office, and dozens of other folks in the building started drifting in and the courtroom was suddenly packed. Absolutely packed. Mr. Bailey used – I think he had 15

minutes, and he used all of that in his opening argument. I don't think he had any time left for rebuttal. As I started to walk up to the podium. I could hear the sound of the courtroom emptying. When I finished my argument, walking back to counsel table, I noticed that the crowd was gone. By that time, it was just the lawyers for the remaining cases, the panel, Bailey and me. But we did win the appeal and so a pretty successful prosecution was concluded.

CTF: As a second-year law school student at Harvard, I watched F. Lee Bailey represent Albert DeSalvo, the "Boston Strangler." And, I was not impressed nor were my classmates. I would not have recommended him as a lawyer. However, I would recommend the prosecutor, Donald Cohn, a classmate of Bailey's at Boston University Law School. I think he was good. But Bailey was in my view, all show and no go.

JDT: Well that's a pretty interesting observation and would have been confirmed by our experiences as well.

Bailey was a pretty savvy guy. Good on his feet, but in terms of the nitty-gritty preparation, I think he could be outworked. And as you know, the really successful trial lawyers are not necessarily geniuses in the courtroom. They are drudges in preparation. We felt pretty well prepared and, as I say, we were ultimately successful. But we thought we had a pretty good case. As did the jury.

It was a tremendous experience for me, a kid just out of law school, to be involved in the battle of an important case like this. Of course, I was under the protective wing of a well experienced lawyer, Charles Goodloe. He was very gracious to me but I did cut a few teeth in that case and it was a great opportunity. The whole period of being an AUSA was just an absolute dream job for any lawyer.

I was also getting to work on cases of my own, and I was the principal lawyer from about that point on of lots of different cases throughout the Southern District. I got to try cases in Terre Haute, Evansville, New Albany, and Indianapolis. I had trials before all four of the

district judges, Steckler, Holder, Dillin and Noland. At one stretch, I tried four straight jury cases before Judge Cale Holder. At the end of that 6 week period, I had a tremendous appreciation for how a careful record was to be made, and how a judge can control a courtroom. I should have paid the U.S. Attorney's Office for the education I was getting.

CTF: Were you an assistant or the United States Attorney for the Speedway Bomber?

JDT: No. Let's see. I think those events happened in about 1978 and I was in private practice by then. I started as Chief Trial Deputy at the Marion County Prosecutor's Office with Prosecutor Steve Goldsmith in early 1979. The Prosecutor's Office worked in cooperation with the U.S. Attorney's Office on the investigative side of matters related to the bombings but the prosecution of the principal suspect was done in federal court. I was involved in coordinating the back and forth with the U.S. Attorney's office on the

investigation, but I had no role in the actual prosecution. The principal suspect in that had his finger in a lot of different things, drugs, allegedly murders, money laundering, a whole wide variety of things. So, ultimately, the judicial prosecution ended up being federal. We had some spin off state court things that had some involvement in that, but the principal prosecution was done federally.

CTF: Are there other specific cases that you remember as an assistant United States attorney?

JDT: I remember the people I got to work with most vividly. Shortly after I started in the office, one of my law school classmates, Brad Williams, joined the office. Because I had started at the office a little ahead of him, I got to help bring him up to speed a little bit. We operated on the concept that you would "second chair" a trial or two, then you would do one on your own, and then you would be considered an expert in the area. Just as Sarah Barker and Charles Goodloe had brought me

into their cases, Brad helped me on several trials, and he quickly developed his skills as a trial lawyer. He later served as my First Assistant and then became acting acting-U.S. Attorney when I became a district judge. I also got to work with Ken Foster on a couple of cases as he came into the office about a year after me. Over the years, Ken tried more federal criminal cases than any other AUSA in the Indianapolis office and served many years as a Magistrate Judge. And the other AUSA's were also very helpful to my development as a trial lawyer.

Other than the cases I have already mentioned, the last series of cases that I handled stand out most in my mind. Indiana being in the heart of the grain belt, grain sales is a big business. And grain is sold by weight, but moisture adds weight but not value to the grain. The Department of Agriculture was charged with maintaining the integrity of grain inspection and weighing. Keep in mind that not only does too much moisture in grain inflate the weight; it also poses substantial risks of explosions in grain elevators when grain containing too much moisture is stored. Higher

moisture also increased the risk of mold ruining the grain. Anyway, several farmers and grain dealers figured out that if grain inspectors and the folks who weighed the grain at the transfer points would accept bribes, they could get them to fudge on the moisture percentage of grain being sold. It may not sound like much, but a difference of even a percent or two in the moisture content could result in thousands of dollars difference in the price of a load. Likewise, even a small moisture difference increased the risk of mold and explosions. This grain fraud had been going on for quite a while so we prosecuted several cases, hoping to clean up the business and serve as a deterrent. They were tough cases, in part because the farmers and grain dealers were well respected members of their communities, and even the local law enforcement officers were skeptical about whether our prospective defendants would have been involved in something so unseemly as bribery. But after a fairly intensive investigation, including a number of undercover

transactions, much like drug investigations, we were successful at getting some convictions.

So, I had a wide range of both civil and criminal cases. I remember handling a couple of medical malpractice cases related to a veteran's facility here. I had, along with a lawyer from the EPA, the responsibility for civil enforcement of some anti-pollution requirements at a major energy company. On the criminal side, I got to work on the wide variety of cases that I mentioned earlier, all at a relatively early period in my career. Another great aspect of being an AUSA in a small office was that you got to handle the cases from start to finish, all the way from when the investigating agent came in for advice at the start of an investigation, all the way through the argument in the appellate court. The experience was the equivalent of getting a graduate degree in litigation.

CTF: I can't remember whether it was the Public Defender's office or whether it was the Marion County Prosecutor's Office next.

JDT: I left the U.S. Attorney's Office at the end of the summer of 1977. My dad made it pretty clear that he was going to end his litigation practice when he turned 65, and at this time he was in his late '50s. He wanted to sort of transition into more of a probate practice. He had been writing wills for people as part of his general practice since around 1938 and many of those clients were aging. He felt that a probate practice would be the kind of work which would allow him to have a more predictable schedule than litigation would. His goal was to transition his practice from principally litigation and corporate work to probate by the time he reached 65. He kept copies of the many wills he had written in a tall metal file cabinet that he referred to as his "retirement plan." By the way, he never charged for writing a will, on the hope that he would later be chosen as the lawyer for the will's executor. (This turned out to be a very good plan because he did, in fact, have a very nice probate practice from age 65 until his death at age 80.) I wanted to spend as much time working with him as I could before he moved out of litigation and corporate work. I

knew that he could teach me a lot about lawyering and I also hoped to have a shot at transitioning some of his clients to me as he moved into a probate practice.

So, I left the United States Attorney's office to enter a law practice with my dad. I was hoping to keep involved in criminal litigation at least in part, and to get to know a larger segment of the criminal bar in Indianapolis. The criminal defense bar in federal court was kind of small in numbers. The work there was, for the most part, either more complex than state criminal cases, or in the case of Criminal Justice Act (CJA) appointed counsel cases, not too lucrative.

Consequently, many criminal lawyers did not practice in federal court. I think the same is true today. I had gotten to know the folks who practiced federal criminal law, but that's a fairly small bar. I didn't know many of the lawyers who practiced in the Indianapolis City-County Building, the building that housed almost all of the Indianapolis and Marion County public offices and courts. While I was trying to develop my civil law practice in conjunction with my father, I obtained an

appointment as a part-time public defender in one of the criminal courts so that I would get experience in the state courts, as well as in order to get to know the judges and lawyers in those courts. I was also hoping to become better known by a larger segment of the bar. I continued as a public defender for a couple of years. Although it was described as a part-time job, it required carrying a pretty heavy case load. There were five public defenders in each of the criminal courts. I think on average we would have about 50 or 60 cases assigned to each of us at any given time. The charges ran the full gamut of criminal offenses: theft, armed robbery, rape, murder, and so on. As you can imagine, handling a caseload like that, plus trying to develop a civil practice, kept me extremely busy. Over the course of that two years, I probably tried 30 jury trials, including several murder cases, in addition to handling dozens and dozens of guilty pleas and sentencings. But it did put me into contact with lots of the people who were active in litigation in Central Indiana and that was a good thing. I also enjoyed the challenges posed by many of the cases I

was assigned. Public defenders get some tough cases. I remember a few in which my clients were caught in the act and added a confession to the evidence against them. It was often a challenge to find a decent defense to present for them. In many ways, I think that broader exposure helped raise my profile so that when a new Prosecutor was elected in 1978, I had an opportunity to switch back to the prosecution side, and to do so at a high level of the administration of the Prosecutor's Office. I enjoyed the defense side, and met some clients and their families who were decent people but had fallen into difficult circumstances. Others weren't so nice but I still felt that providing an effective defense on their behalf was good lawyer's work. Overall, though, I think my personality was more suited for the prosecution side.

The Democratic Party swept the post-Watergate election in Marion County, Indiana in 1974, winning essentially all of the county judgeships as well as the county Prosecutor's Office. When I left the U.S. Attorney's Office, I had actually hoped to obtain a part-time job as a deputy prosecutor, rather than as a public

defender. But when I applied for an opening, it was made quite clear to me that I had the wrong political stripes. The judge who appointed me to the public defender spot was one of the few remaining Republicans on the Marion County bench. When the election for Marion County Prosecutor was held in 1978, the Democratic candidate (Andy Jacobs, Sr., a former Congressman and the father of a very popular long-time Congressman, Andy Jacobs, Jr.) was widely perceived to be the favorite. His Republican opponent, Steve Goldsmith, was a relatively unknown lawyer whose background was exclusively in civil litigation at a major Indianapolis law firm. Steve was an energetic and creative campaigner, pulling off a major upset win. (I can't claim to have had a major role in his campaign. I did a little volunteer work on get-out-the-vote types of things and worked on drafts of a couple of position papers, but my small efforts were not significant in the overall campaign.)

Steve was a very good trial lawyer, but, by his own admission, he had no criminal law experience

whatsoever. As he began assembling his office staff, he was looking for lawyers who had some criminal experience, especially on the prosecution side. I was hoping to shift from the defense side to the prosecution side and maybe land a job as a part-time deputy prosecutor. I thought the case load would be a little more manageable than the heavy load of public defender cases, and that would allow more time for the development of my civil practice. I submitted an application to the "transition team" for the incoming Goldsmith administration, hoping to end up as a part-time deputy prosecutor in a misdemeanor court, or if I was really lucky, in one of the felony courts. But, to my surprise, things ramped up quickly from there. I eventually had two or three interviews with Steve, and he spent most of the time asking me about various policies and ideas he had about the Prosecutor's Office and law enforcement, and very little time talking about my background. Near the end of my final interview, Steve said, "John. I've been trying to find someone to be my Chief Trial Deputy, that is the number two person in

the office. I've talked with lawyers with lots more experience than you, and so forth, older lawyers, but nobody seems to want to take the job. So, would you consider being my Chief Trial Deputy?" That kind of stunned me. But I quickly said yes and joined his "transition team."

Along with Steve, about six of us went about the business of helping him put his office together. It was a very exciting time. A newspaper article written about the office leadership group in those early days of the Goldsmith administration referred to us as Steve's "brain trust." We were a group of young, energetic, up-and-coming lawyers who wanted to change the world, at least as far as we could within the context of a Prosecutor's Office. The team included Greg Garrison, John Beeman, Bobby Small, Leah Mannweiler, and Deborah Daniels, all of whom went on to great success in the Indianapolis legal community. And there I was, about 4 years out of law school, and I was going to be second in command of the largest prosecution office in Indiana. My employment as Chief Trial Deputy was

supposed to be part-time, by my choosing so that I could continue to develop a civil law practice. At least that was the theory. As it turned out, I was spending 60 or 70 hours a week on Prosecutor's Office work and maybe, if I was lucky, five or ten hours a week at the civil practice.

CTF: Do you remember in particular any big cases?

JDT: I'll try to answer your question by talking about some of the programs that were emphasized by the office first, before mentioning particular cases. A great deal of my time was spent developing the office procedures, hiring deputy prosecutors, developing training programs and working with the various law enforcement agencies to smooth over difficulties that occasionally developed.

Steve was a very innovative Prosecutor. He created many areas of activity for the office that were new and revived or re-energized the efforts of the office in a lot of areas that had been neglected. For example, he developed very aggressive programs to establish

paternity on behalf of children in need of support, along with creative and innovative ways to collect that support. (This was a legal responsibility of the County Prosecutor, but in prior years, it had not been a high priority item. Maybe because it didn't draw much attention in the way of media coverage.) He also developed an extensive drug education program for the school systems, getting people from law enforcement, drug rehab and the Prosecutor's Office involved. He created a program to ramp up prosecutions of violent felons eligible for "third strike" sentence enhancements. He developed synergistic relationships with the various federal, state and local law enforcement agencies so that we could work in a cooperative way on major prosecutions and priority crime problems. (The prior administration had a somewhat testy relationship with various law enforcement agencies.) The rights and needs of crime victims were emphasized. The list goes on. It was an exciting time to work in prosecution and Steve was a real dynamo who inspired us to work long and hard to improve the performance of the office. Steve had

had a lot of very good ideas. His central theme or concern in developing and emphasizing programs for the office was whether our programs would improve the lives for the citizens of Indianapolis. Steve also insisted that the office be as transparent as we could be in our work so that the media coverage of our prosecution efforts was extensive. Steve served three very successful terms as Marion County Prosecutor, followed by two equally successful terms as Mayor of Indianapolis. He is a widely-regarded expert and prolific author on various subjects like the efficient delivery of government services, social innovation, urban redevelopment and many other subjects.

With respect to big cases of the Prosecutor's Office during that period, a series of death penalty cases would probably be at or near the top of that list. I think we had about 10 death penalty murder trials while I was Chief Trial Deputy. Some arose from murders of police officers, others were the result of killings during the course of other felonies, such as robberies or rapes. I was personally involved in four death penalty trials but had

some supervisory responsibilities in connection with the rest. Violent crime prosecutions were a very high priority of the office.

Drug distribution prosecutions were also a high priority. Crack cocaine was starting to take off in Indianapolis so that was a focus of a lot of our attention. The "third strike" habitual offender program we developed became very effective at getting enhanced sentences for violent offenders. We developed some expertise in fraud investigations, including some health care fraud prosecutions involving physicians overbilling and fraudulently billing. We prosecuted a series of public corruption cases (which was dubbed the "Chemscam" investigation) regarding local and state officials who were accepting kickbacks for purchases of supplies, mainly related to road maintenance materials. We also investigated questionable purchasing practices by the state prison system and the Department of Administration. We had a series of insurance fraud cases in which a ring of individuals staged auto accidents to collect phony claims from the insurance companies. The

individuals convicted included not only those involved in staging or faking the accidents, but lawyers, insurance adjusters, chiropractors and auto repairers. To enhance sex crimes prosecutions, deputy prosecutors were assigned to work with detectives during the early parts of investigations rather than only after a charge was filed. This resulted in a big increase in the conviction rate for sex crimes. I could go on and on but I will stop here.

CTF: How many assistants did you have in the office?

JDT: In Indiana, they are called "deputy prosecutors." I think it was in the range of about 100. There were several divisions of the office, covering various courts and investigative areas, such as the juvenile, misdemeanor and felony courts, sex crimes, homicide, grand jury investigations, and so on. Each major area was headed by a supervisor, who in turn reported back to Steve through me.

CTF: Were you involved in the prosecution of specific cases or were your duties supervisory?

JDT: Both. Probably 60 to 70 percent of my time was spent on supervisory matters, such as developing and enforcing office policies, training, interacting with other prosecution offices and law enforcement agencies. I would spend a lot of time 'troubleshooting,' for example, when a supervisor or line deputy would have trouble on case, or with a defense lawyer, or maybe even with a police investigator on a case. And I had final approval responsibility on all of the plea agreements on major felony cases. And I was not responsible for a regularly assigned caseload. Instead, I was able to use the remainder of my time to work on specific cases that either Steve or I would pick to be helpful to the office. For example, Steve wanted to participate personally in the prosecution of some cases. Consequently, I tried his first criminal jury trial with him, a serious rape case. I also participated in the trials of our first few "third strike" habitual offender trials to sort of get that

program started. It was as though I had license to go into any part of our office and jump into any sort of case that I wanted. I tried to pick cases that would provide some example to the newer lawyers in our office, or maybe to the judges and opposing lawyers, to demonstrate that we were serious about policies we had announced.

An example of this involved paternity cases. In the first few months of the Goldsmith administration, several paternity cases were heading to trial which involved DNA evidence. That was a pretty new development for paternity cases—in fact, we didn't have any lawyers on staff who had ever tried a DNA case. I suppose because I was Chief Trial Deputy, it was expected that I would know how to try a case with DNA evidence, so I entered appearances in those cases. In preparation for trial, we worked on protocols for the admission of the DNA evidence and I did my best to act like I knew what I was doing. Fortunately, the respondents in those first few cases admitted paternity when we showed up prepared for trial, so we will never know whether I would have been successful at that. In

short order, DNA evidence became the gold standard for establishing paternity and I turned my attention back to criminal cases where I felt more comfortable.

I suppose you could say I was sort of a utility player in that sense that I was allowed to go from case to case and area to area without being limited to any one aspect of the office. I also worked on "odds-and-ends" sorts of things that didn't fit into any ordinary category. For example, in 1980 or so, Joseph Paul Franklin, the man who shot Vernon Jordan (as well as Larry Flynt, among others) committed a couple of sniper killings in Indianapolis around the time of the Jordan shooting. After Franklin was arrested in Utah, I got involved in an effort to get Mr. Franklin extradited back to Indiana for trial on murder charges in Indianapolis. As a result of my involvement, Franklin started writing to me, and he was very opposed to the idea of coming back to Indiana. However, we had to stand in line behind several other states where he had also committed heinous murders, usually with a racist motive. We never did complete the extradition. But that was the sort of unusual matter that I

would be involved in that didn't fit into any neat category.

I would also try to provide assistance to the various deputy prosecutors when they would run into unusual problems, especially on legal issues. I got involved in several emergency mandamus proceedings in the Indiana Supreme Court when defense lawyers tried to get prosecutions or investigations stopped, or when our office felt a judge was acting without authority, or refusing to act when required to do so. I also recall being involved in the preparation of a response to a petition for certiorari to the United States Supreme Court on a double jeopardy issue in one of our cases. So, if a problem would arise, and it didn't fit anywhere else, it would come to me.

We also had a lot of cooperative investigations with federal law enforcement. I would often be designated as a liaison for those. There was a lot of back and forth among federal, state and local investigative agencies, and the Prosecutor's Office would frequently be in the middle of that. The war on drugs was in full

force by then and there would be a lot of overlap with federal investigations and decisions being made as to who would take which cases. To a large extent, federal authorities were drifting away from investigating street crimes, focusing more on fraud, money laundering and corruption matters so we were doing more of the bank robbery prosecutions than previously, and we found that we had a full plate. The lawyers in our office kept quite busy. It was really an exciting time. I felt very fortunate to get to work with many of the already well-experienced prosecutors, as well as with a lot of the up and coming younger lawyers. Many of these men and women went on to become very prominent litigators and judges. There were lots of trials during those years and lots of excitement.

CTF: When do you first become aware of the possibility of becoming United States Attorney?

JDT: Shortly after the 1980 Presidential election, the then United States Attorney, Virginia Dill McCarty,

announced that she was going to leave the office. Senators Lugar and Quayle formed a Merit Selection Commission to recommend potential nominees for the position. My first thought was that Steve Goldsmith would be an obvious choice for U.S. Attorney so I checked with him and learned that he was not going to apply, so I did. But ultimately, my good friend Sarah Barker received that appointment. I did take some comfort in the rumors reported about the Merit Selection process that, though unsuccessful, I had been considered to be among the final three of the dozen or so applicants. I took that as a positive sign, and continued with the interesting work in the Prosecutor's Office for about another year. But in 1982, my dad turned 65 and began implementing his plan to become exclusively a probate lawyer as a sort of "semi-retirement." I then left the Chief Trial Deputy position to concentrate on a civil practice. I did a little federal criminal defense work but not a whole lot, just a couple of CJA appointments and one or two private cases, but the vast majority of what I

did for the next two years was a civil litigation and corporate practice.

My dad had developed a very sizeable client base through the years, representing some families and businesses including a life insurance company that did business in 40 states, the largest residential construction company in Indiana and a fairly large Ford dealership. Fortunately, a number of those clients stayed with me after my dad moved on to a probate practice. I was able to develop some additional clients and kept pretty busy in the private practice. I affiliated with what was then considered a medium sized Indianapolis firm, about 15 lawyers, Harrison and Moberly.

Upon the death of District Judge Cale Holder in August 1983, Sarah Barker's name quickly became very prominent in speculation about who be appointed to succeed Judge Holder. Senators Lugar and Quayle re-activated their Merit Selection Commission, and Sarah, along with Sue Shields and Randy Shepard ended up as the finalists for the judicial nomination. Obviously, Sarah ultimately received that appointment, so my

interest in the United States Attorney's Office was renewed, so I again checked with Steve Goldsmith to see if he intended to apply this time—and he was not. The Commission began receiving applications to replace Sarah as U.S. Attorney in January of 1984. I once more made it to the final three in this process, and fortunately, this time I was able to get the appointment.

As a little side note, one of the other finalists was a lawyer and former-FBI agent named John Craig. He was the son of a former Indiana Governor, George Craig, who I mentioned previously in talking about my father's prosecution of the Indiana Highway Scandal cases.

CTF: What are some of the cases you remember from being United States Attorney that were big cases?

JDT: Collins, I have a thick file of news clippings from those years, 1984-87, stories about a lot of the cases. It is a little too late to be brief in my comments but I will talk about just a few of the investigations that stand out in my mind as prominent.

I reviewed news clippings recently so some of them are real prominent in my mind. Without question, the single most closely watched matter during my tenure, from a media perspective, was the investigation of voter fraud we conducted following the 1984 Congressional election in the district known as the "Bloody 8th." The Congressional district was in the southwestern part of the state, much of which is quite rural, with the exception of Evansville. It was called the "Bloody 8th" because the Congressional races there were often knockdown, drag-out affairs, viciously fought between the Republicans and Democrats. The seat would often switch back and forth between the parties from election cycle to election cycle. In 1984, a Republican challenger, Rick McIntyre was running against a Democratic incumbent, Frank McCloskey. The pre-election polls showed the race to be running neck and neck. The final result was, I think, the closest ever in the history of Congressional elections. On election night, the initial vote count showed McCloskey to have won by about 70 votes out of 240,000 or so cast. A subsequent

recount, which was certified by the Indiana Secretary of State to the House of Representatives showed Republican McIntyre to have won by about 400 votes. But the House, with a Democratic majority, conducted its own recount, finding that the incumbent McCloskey had retained his seat by the razor thin margin of four votes. Many political commentators trace the current state of acrimony in Congress to the fight over the determination of this election.

As often is the case in southern Indiana, there were allegations of vote fraud in the election, in the form of vote buying. So the U.S. Attorney's Office started an investigation of the allegations, working with the assistance of the FBI and the Election Crimes Branch of the Public Integrity unit of the Department of Justice. All through the investigative process, the media and political operatives were breathing down our necks. Congress was still trying to determine which of the candidates to seat as the winner, and some hoped that massive fraud would be exposed. In the end, an indictment was returned and eight defendants pled

guilty. But it might have been seen as ending with more of a whimper than a bang. We could only prove that a small number of voters were paid to vote a straight Democratic Party ballot, and the payments could not be linked to the Congressional campaign. When one Republican Party County Chairman found out that his Democratic counterpart was paying $35 a vote, he laughed and said, "I can get votes for $10 here." In the end, the seating of Congressman McCloskey was not overturned, and, in fact, he was re-elected by thousands of votes during several subsequent elections. But we hoped that shining the light on the vote buying practice made for more honest elections in the years thereafter.

Another matter that was followed very closely by the national and international media was the investigation of the Eli Lilly Company's handling of its introduction of an arthritis medication, Oraflex, into the marketplace. Oraflex was touted to be a near miracle drug for the treatment of arthritic conditions. And, as you know, Lilly is one of the largest pharmaceutical distributors in the world, as well as one of the major

central Indiana employers. Our investigation was able to show that Lilly had been criminally deficient in its reporting of adverse reactions, including deaths, during foreign clinical trials of the drug. Both Lilly and its chief medical officer pled guilty to various charges of misbranding and failures to provide adequate warnings and reports. The drug was also the subject of substantial civil litigation against Lilly. Lilly fought our investigative efforts vigorously, but in the end, we felt that we obtained a good result. We felt that the entire pharmaceutical industry was watching and learned more about the importance of accurate reporting and caution when introducing a new drug into the marketplace.

Another important series of investigations involved banking compliance with currency reporting requirements. Money laundering is the lifeblood of illegal drug distribution and other criminal conduct, so we developed an investigative task force to monitor the compliance practices of Indiana banks. We found that some banks were not doing a very good job, especially

one bank based in Indianapolis, Merchant's National Bank, which is now part of PNC. Our investigation resulted in the successful prosecution of that bank on a currency transaction reporting violation and the bank was given a huge fine and placed on probation. The bank couldn't be put in prison but we were able to get a probation sentence which required the bank to enact some rigorous reporting and compliance requirements. Our hope was that this result served as a deterrent warning to other Indiana banks.

CTF: What about officials of the bank?

JDT: We were able to bring charges against some of the individuals that had been allowed to deposit and withdraw currency without accurate transaction reporting, including the head of what was then a large local chain of grocery stores. (That grocery chain was subsequently merged into a national grocery chain.)

None of the bank officers were charged in that matter. As I recall, we could not prove the individual

involvement of any high-level officials of the bank, rather, just sloppy overall procedures.

However, we did have a very successful prosecution of the president of one of the other Indianapolis based national banks for misapplying millions of dollars of bank funds to secure his personal indebtedness. Of course, this prosecution was also followed closely by the media. A little bit of a firestorm developed in that case when the defendant was given what we considered a "slap on the wrist" 60-day sentence. That controversy heated up when that short sentence was later cut, without any advance notice to our office, to 39 days. The Chief Judge of the District, Gene Brooks, was the sentencing judge in question. The defendant was home before we even knew he had requested a sentence reduction. So, you could say that I caused a public flap about that. This was about the time that the Sentencing Guidelines were being implemented, although this was a pre-guideline sentence. Frankly, I used this case a talking point to demonstrate why the Guidelines, which would have recommended a much

longer sentence for this type of "white collar" offense, were important to put in place, and I was publicly critical of this sentence, especially the surprise reduction. Chief Judge Brooks and I later had a difficult conversation in which he let me know that he did not like being criticized, especially when it appeared in newspapers. However, despite that dust up and a few other disagreements while I was U.S. Attorney, Gene and I became pretty good friends when I was on the district court. In fact, I was a eulogist at his funeral some years later.

CTF: What was the name of this bank?

JDT: American Fletcher National Bank; it's now part of JP Morgan Chase.

I will mention just two other investigations that stand out in my mind from that period. Public corruption investigations are perhaps, sadly, a specialty of a U.S. Attorney's responsibilities. We had several of those during my tenure. One that was tough for me as a

prosecutor was the investigation of an elected state court Prosecutor, Gerald Surface, of Wayne County, Richmond, Indiana. Gerry had a reputation as a tough Prosecutor, and had been active in various law enforcement organizations and conferences. I had become acquainted with him during my prior work as a Deputy Prosecutor as well as through cooperative projects with the U.S. Attorney's Office. Unfortunately, Gerry had developed an arrangement with a Richmond criminal defense lawyer through which he received bribes for favorable treatment of the lawyers' clients on drunk driving charges. The defense lawyer got ensnared in an income tax investigation, and spilled the beans on Gerry in exchange for favorable treatment on his tax matters. Gerry was ultimately convicted for accepting bribes, not only losing his job and law license, but getting a pretty healthy prison sentence, so you can imagine that this scandal received a ton of media attention and rocked law enforcement in central Indiana.

But striking even closer to home was an investigation regarding a variety of matters in the

Bankruptcy courts of the Southern District of Indiana. Allegations about questionable practices in the bankruptcy courts triggered an extended FBI and grand jury investigation, and a long series of newspaper articles dogged the investigation for months. The investigation began in August of 1986 and continued even after I left the office to join the court in September, 1987. Probably the most significant case to come out of that investigation was the prosecution of a long-time Bankruptcy Judge, Nick Sufana. He pled guilty to accept a gratuity from an auctioneer who did a lot of business with his court. I think it was a "loan" of something like $10,000 that was never to be repaid. Judge Sufana did have to serve some time in prison. Newspaper articles also alleged improprieties by Bankruptcy Judge Mike Kearns, District Judge Gene Brooks and the bankruptcy Clerk, Sam Conner, but no charges were ever filed against them. Several lawyers were convicted of criminal conduct in various bankruptcy matters, including falsification of documents and embezzlement from bankruptcy estates. And several debtors were convicted

of bankruptcy fraud as a result of the investigation. There were major personnel changes in the bankruptcy courts, though, with early "retirements" by Judge Kearns and Sam Conner, and practices of the court were drastically altered to bring about substantial changes in the way bankruptcy trustees were to be selected, how fees were to be awarded, how bankruptcy estates would be liquidated, as well as a variety of other changes. Around this same time, bankruptcy courts throughout the country were undergoing drastic changes, including shifting the selection of bankruptcy judges from the authority of district courts to the Circuit Courts as well as the implementation of the U.S. Trustee system. Many of these changes were intended to eliminate the concerns about "cronyism" that were at the heart of our investigation.

I don't intend to overlook the great work done by the staff of the U.S. Attorney's Office while I was there on many, many other subjects, but these are big things that stand out in my mind.

CTF: Well, thank you, John, we will wrap this up for today and we will resume later.

**SECOND PART OF INTERVIEW:**

CTF: John, today is October 22, 2015, and we are in the Clerk's Office in Indianapolis continuing your oral history.

When we left off, we were talking about your position as United States Attorney from 1984 to 1987 and some of the cases that your office handled. Do you want to elaborate a little bit about being the U.S. Attorney?

JDT: It was a terrific time to be U.S. Attorney because U.S. attorneys in the field were really well supported by the Department of Justice and the Attorney General in particular. Ed Meese, the Attorney General, was extremely interested in what we were doing in the field, "outside the beltway," so to speak. He and the Department were very supportive of us in terms of resources and allowing us to have independence in our judgments about what was appropriate for our various

districts. There are 94 U.S. Attorneys, and my experience was that they were a fairly cooperative and collaborative group of people. I was able to develop an especially good relationship with the U.S. Attorney in the Northern District of Indiana, Jim Richmond, as well as U.S. Attorneys in Northern District of Illinois, Chicago, first Dan Webb and then Tony Valukas. We were able to coordinate efforts, for example, in prosecuting drug organizations and financial crimes because those often were not limited to a single jurisdiction.

Through the efforts of the U.S. attorneys collectively, we formed various organizations in each of the states under an umbrella called "Law Enforcement Coordinating Councils" through which we would have regular meetings with all levels of law enforcement agencies. This would include federal agencies, state police, the various metropolitan and local police departments and sheriffs' departments. State court and federal prosecutors also participated. We tried to help coordinate the effort of law enforcement so we would move, as much as possible, in the same direction. When

we would run into problems that overlapped various jurisdictions, we would try to find ways to allocate the best resources available to those problems, that is, to get the "most bang for the buck." Obviously, some things were better suited for state court prosecutions and others for federal, but we found that communication improved tremendously through those coordinating efforts. We encouraged the development of "task forces," staffed by local, state and federal investigators, along with the sharing of information. In some circumstances, we even cross-designated prosecutors, so that some state court deputy prosecutors would help prosecute federal criminal cases, and vice versa for AUSA's in some state court cases. I know these practices continue even today where you find various levels of law enforcement working in tandem as opposed to in conflict. And I know that we didn't invent the concept but we certainly emphasized it. Consequently, we didn't seem to have to spend much time being concerned with "territorial" disputes.

CTF: What about contacts with the U.S. Attorneys in Southern Ohio, Kentucky and Southern Illinois?

JDT: We had good lines of communication with those districts, too. There was just more overlapping activity, from my perspective, among the Southern and Northern Districts of Indiana and the Northern District of Illinois. Maybe that is because of how the various federal agencies are structured, with the larger regional offices being in Chicago, and the Indiana offices being based in Indianapolis, for the most part. By the way, our Organized Crime Drug Enforcement Task Force (OCDETF) group had to look to the Chicago U.S. Attorney's office for authorization and funding because that is where the regional headquarters was based. My contact person there was AUSA Ann Williams, now Seventh Circuit Judge Williams (who retired from the court while this oral history was being edited), so I was in frequent communication with her during those years and became good friends with her, which carried over through our district and appellate court years.

One of the aspects of being U.S. Attorney that was most interesting was serving on the Attorney General's Advisory Committee. The Attorney General maintained an advisory group of 10 U.S. Attorneys from throughout the country. I was fortunate enough to be selected to serve on that for about two years. As a result, I would be in Washington a couple of times a month for various committee and subcommittee meetings. It also put me in regular communication with U.S. Attorneys throughout the country on a pretty regular basis. Some of my fellow U.S. Attorneys from those activities are still in the news from time to time, such as Rudy Giuliani, Bill Weld, Jeff Sessions and Asa Hutchinson and Frank Keating. And it also got me involved with other things like the Sentencing Commission as it was formulating the Sentencing Guidelines. The Commission would turn to the Attorney General's Advisory Commission Committee for advice or our perspective on different issues. I also worked on a committee made up of U.S. Attorneys, state's Attorneys Generals and local prosecutors which addressed a variety of issues of

mutual interests among the various prosecution offices. Cook County State's Attorney Richard Daley was a member of that committee so I got to know him a little bit before he became the second Mayor Richard Daley. Through these committee activities, I got a broader exposure to law enforcement prosecution issues on a national basis than I would have as an individual single U.S. attorney. So that was a great perspective for me.

CTF: When you came to the U.S. Attorneys' Office initially when you were a law student and then as you were hired as an assistant United States attorney, I think you mentioned there were only seven or eight attorney positions. You also just mentioned that under Attorney General Meese, there was a lot of support. So when you became U.S. Attorney, how many assistant positions roughly were there, and were they increased while you were the head U.S. Attorney?

JDT: Yes. I'm going to guess there were about twenty AUSA's when I became U.S. Attorney, the bulk of whom

were on the criminal side, with probably four on the civil side. By the time I left, the total number had grown to about twenty-five. Still not a large office but a very active office. They were all based in Indianapolis, but we covered not only the Indianapolis division, but also the Terre Haute, New Albany and Evansville divisions.

CTF: Now when you started, and I assume that the Southern Indiana office was like it was at least in Northern Illinois, people would come in pretty young, work for about four years, and then usually go to something else, most likely private practice. But now it seems at least in Chicago, that there are a lot more career prosecutors.

JDT: Yes. That was certainly the case when I began as an AUSA in '75, it was sort of expected that a lawyer would be there several years, maybe four or five, and then move on. By the time I became U.S. Attorney in '87, that was still probably the dominant position but you were beginning to see an increase in the number of "career"

AUSA's, that is, lawyers who expected to remain as an AUSA or at the Department of Justice (DOJ) for the remainder of their careers. I'd say at the point that I arrived as U.S. Attorney in '84, probably one-third to forty percent of the lawyers in the office considered themselves career people and that percentage has increased even more by now. I would estimate that about eighty percent of the lawyers in the Indianapolis office consider themselves to be career AUSA's.

CTF: You are in a good position to comment on this, and that is, the U.S. Attorney, when there are positions turning over every four or five years, has a much greater impact on the office through the hiring process than when you come in as U.S. Attorney for four years, or maybe eight years, you are sort of maintaining what's already there. You don't have an impact on the personnel that a U.S. Attorney did back in the 70's. Is that good or bad?

JDT: Well it's a correct observation. U.S. Attorneys then were known by their hires, you know, who you brought into the office and what did they do while you were there as well as after you left. One of the things I take real pride in from my years as U.S. Attorney is that I was able to hire some very good attorneys as AUSA's who have gone on to do some very remarkable work. With the turnover diminishing, it does lower the impact that any individual U.S. Attorney can have on the future of an office. It seems, though, that the quality of the applicants continues to be very high and the choices that U.S. Attorneys are making for the few spots that do turn over, tend to be very good choices.

Although I appreciate the great work done by career prosecutors, I think a U.S. Attorney ought to be able to have a substantial influence on staffing the office. Administrations do have different priorities and different focuses. Career employees are not always flexible and welcoming to new shifts in priorities. And I think that a fatigue can set into an office. For example, if a lawyer spends 15 or 20 years prosecuting nothing but

drug cases, that lawyer can be in a real rut. They may know all there is to know about drug cases, but after a point, it is hard to find any more novelty or creativity in that. It's hard to see if progress is made when you are really doing the same thing, the same types of cases, "buy and bust" cases. Even more complex cases can get a little repetitive after a while. So, I think there is a lot to be said for moving career AUSA's to different types of assignments after a reasonable period of time. I also think it is a good thing if there is a reasonable amount of turnover in those offices, from time to time. Plus, those are the offices that produce the really good lawyers, really good courtroom lawyers, good litigators. I think it's good to sort of share that wealth of talent and experience with the private sector. Less experienced litigators can learn by example from former-AUSA's who have spent a lot of time in courtrooms. So, that's just my personal preference but I understand the attraction for any lawyer to latch onto an AUSA spot and keep it for their career because you are always in the federal courts. You have the best of resources. You have

the best investigators. As an AUSA, you are able to utilize your skills to seek justice. That's a great way to be a lawyer. I understand that. But to allow for more up-and-coming litigators to have the AUSA experience, to bring fresh perspectives and to facilitate the implementation of different priorities and different philosophies of administrations as they come along, I think it is useful for a U.S. Attorney to hire some new AUSA's from time to time. I am not suggesting, by any means, that there should be a wholesale turnover in the offices when U.S. Attorneys change, and those jobs should not be treated like political patronage. One of the reasons that federal prosecutions are widely respected by the public is that the AUSA's and even the U.S. Attorneys, for the most part, are perceived to be independent professionals, not influenced by political affiliation. I just think it is good to have a mix of career and shorter term AUSA's.

CTF: I tend to see a similar parallel in the federal judiciary with regards to career clerks and elbow clerks who are just there for one or two years.

JDT: And I don't disagree with that either, Collins. There is a stability with career law clerks so, for example, a judge doesn't have to spend the time getting a new clerk oriented every year or two years. But over time, a little staleness or lack of enthusiasm can develop. I had a wonderful career law clerk for about 18 years, Meg Kent. However, I always kept at least one of the law clerk spots open for a rotating law clerk so that we would have that involvement of new ideas, new blood, so to speak, every year or two years. When I was on the circuit court I would have three rotating clerks along with Meg, so I was in favor of a mix. You are right, there is a real similarity there. It's good for our system to have people come in with a new perspective and new ideas and just a new enthusiasm.

CTF: Let's talk about your appointment as a district judge. How do you go about being in line to get the position?

JDT: In late 1986, District Judge James Noland announced that he was going to become a senior judge at the end of the year. This had never happened in the Southern District of Indiana, and it caught a lot of us in the Indiana legal community by surprise. His decision would allow the President to appoint another district judge. Having been appointed U.S. Attorney in 1984, I had been through the FBI background process, and had been through the Merit Selection process used by Senators Quayle and Lugar—they used the same process for U.S. Attorney appointments as for judgeships.

CTF: The same commission?

JDT: It was the same type of commission. It would be reconstituted when a new group of appointments would be considered. The personnel would change from time to

time, but the process was the same. Each of the Senators would appoint three individuals to the commission, and the Governor, the Chief Justice of the State and the President of the Indiana State Bar Association would each have the opportunity to appoint one individual. Ordinarily, the Chief Justice and the bar association President would appoint themselves. Sometimes the Governor would serve personally but other times, the Governor would appoint another individual in his place, usually his counsel. The commission would accept applications and would conduct interviews, and then recommend some of the applicants to the Senators for their consideration. In turn, the Senators would then make recommendations to the President regarding who should be nominated. It was widely understood that the President would be very likely to follow the Senators' recommendations.

I had been through that commission process for the U.S. Attorney appointment twice, unsuccessfully in 1981 but successfully in 1984, so I was familiar with that process. Several friends suggested to me that I should

consider applying for the judgeship, especially since, in connection with the U.S. Attorney appointment, I had been confirmed by the Senate fairly recently.

My first response was that I was not interested. I really enjoyed being U.S. Attorney. I was having a great deal of professional satisfaction and fun and had not even completed my third year in the job yet. I was hoping to continue as U.S. Attorney for at least a couple more years, and then I expected to return to private practice. Like in most areas, former U.S. Attorneys in Indianapolis generally did pretty well as lawyers after returning to practice. And, frankly, the idea of becoming a judge had never crossed my mind. I always thought I would be a lawyer; I never saw myself as a judge. So, initially, I was not interested in applying for the Noland vacancy. But as surprising as Judge Noland's announcement was, an even more unexpected announcement was made two or three weeks later. Judge William Steckler, who had been appointed district judge in 1950 by President Harry Truman, announced that he would also become a senior judge at the end of

the year. All of a sudden, there were two vacancies on the district court. So, I began to think about this more seriously. As I thought about it, I realized that prior to Sarah Barker's appointment as district judge in 1984, the last time a Republican President had appointed a district judge in the Southern District of Indiana had been in 1954 (Cale Holder).

CTF: And he was the first Republican.

JDT: I don't know the entire history going back to 1816, but the point was that Republican appointments to the court were rare in my lifetime. As I thought about whether I would have a chance to get nominated, it seemed to me that the present circumstances presented a pretty unique alignment of the stars: a Republican president in the White House (who had appointed me U.S. Attorney) and Indiana, with two Republican senators and a Republican Governor, each of whom had apparently allowed or approved of my appointment as U.S. Attorney, and I had already been through the Merit

Selection Commission process. I knew some of the people who were likely to be on that commission, or at least knew of them, and they knew of me. As I sized up the situation, a very large factor to me was that there were now two openings rather than just one. I had the notion that when there is a single opening, there might be an obvious choice for that one spot and it probably would not be me. But if there were two spots, maybe I could be the second choice of some of the decision makers. I began to think that there might actually be a chance that I could become a district judge. It also occurred to me that if I passed on this opportunity, there would be no assurance that another district judgeship would be available in the foreseeable future. None of the other three judges in the district appeared to be likely prospects for retirement in the foreseeable future. Gene Brooks and Sarah Barker were years, probably decades, away from retirement eligibility and my sense was that Hugh Dillin would never give up his seat as long as there was a Republican in the White House. When I ultimately decided to apply, I did so with the idea that if

there were ever going to be a chance to be a district judge, this is probably it. So, I reconsidered my position and decided to take a chance. It would be hard to predict that there would ever be better timing for me. If I got the appointment, it would be terrific; and if I didn't, I was still U.S. Attorney, and had an opportunity to do that for several more years. It seemed like a good risk to take. And it was, because Larry McKinney and I were the two lucky people who got all the way through that process. (By the way, Judge McKinney died while this interview was being edited so I will say a little bit about him later on before I conclude my comments.)

As a little side note, Bill Lawrence was one of the other finalists in that Merit Selection process. 20 years later, he succeeded me on the district court, and there were no other appointments by Republican Presidents to the federal bench in the Southern District of Indiana during those intervening two decades.

One other side note: Hugh Dillin was very active in Democratic Party politics prior to his nomination to the federal bench by President John F. Kennedy in 1961,

and he was viewed by some, especially Republicans, to have held Republicans in low regard even as a judge. He was also known to be a somewhat gruff character. Frankly, a lot of lawyers, especially younger lawyers, were scared to death of him. I don't know exactly why, but Judge Dillin was always very kind to me. In fact, even prior to the public announcements by Judges Noland and Steckler, Judge Dillin paid me a visit to let me know what was going to be happening and he said it "would be a good time for me to get my ducks in a row." When I eventually joined the court, Hugh was very gracious in his welcoming of me.

CTF: And those were the days when there wasn't a controversy over the appointment of the judges to the extent at least that it is now.

JDT: The confirmation process in the Senate does seem to have grown more contentious over the years. Even then, though, things could come up that would doom a nomination. And a nomination could be stalled or

stopped because of political disputes which did not involve the nominee at all. Keep in mind that in 1987, although the President was a Republican, the Democratic Party was in the majority in the Senate by a margin of 55 to 45. Additionally, 1988 was going to be the final year of the Reagan presidency, which can make it harder to get through the Senate. As a matter of fact, my confirmation hearing was in the last group of nominations that were heard by the Judiciary Committee prior to the start of the Robert Bork Supreme Court nomination hearing. It was expected that the Bork hearing would be contentious, and that the confirmation of even district court nominees might get more difficult after that. I was quite eager to get through in that last group before the Bork hearing began because all bets would be off after that. And history has shown that to be true, even for a district court nominee, you can run into all kinds of stumbling blocks that have really nothing to do with one's background or ability to serve in the role. It was a good time to sort of sneak in under the wire.

CTF: What are some of the cases that you remember being particularly important as a district judge?

JDT: Well, I had a twenty-year run on the district court, involving thousands of cases, and I never really thought through what, let's say, the top ten most important cases were. When I think about cases I think are important, I realize that there are multiple ways to define "important." Of course, every case is important in the moment in time that I was working on it. But that's not the type of "important" you're asking about.

There is "important" in the sense that the case is a landmark, such as *Brown v. Board of Education* or *Roe v. Wade*, affecting the way that people think for years to come. I had consequential cases that affected the litigants and the law, to some extent, but I don't think I had any such landmark cases. There is "important" in the sense that the case attracts media attention at the time. I did handle some of those, a few of which I'll discuss. There is also "important" in the sense that the case had a particularly strong impact on me personally, or

particularly guided my development as a judge. I'll discuss a few of those as well. And it should never be forgotten that most, if not all, cases are vitally important in the lives of the litigants, as well as their loved ones and associates, the litigators, and others.

Throughout the years, civil rights cases involving claims of excessive force presented interesting challenges. One of the very first jury trials I presided over in early 1988 was a thirteen-day jury trial involving the shooting of a former IU football player named Denver Smith by the Bloomington police. It was a very tough case. Denver Smith, an African-American, had aspirations of making it into professional football and he had worked really hard at building himself up physically through weight lifting but also, allegedly, through the use of steroids. And on a particular day had, I guess what you could say, gone off and was sort of raging through the various areas of Bloomington. He was a very muscular fellow and the police had six officers surrounding him trying to wrestle him to the ground. During the course of the 90-second encounter,

Smith gained possession of an officer's nightstick and struggled with another officer over possession of the officer's gun. The officers ultimately shot him four times, killing him. The question was whether there was civil liability under Section 1983 for the use of excessive force and there were very hotly contested issues. There was a great deal of media interest in the case, and the incident exacerbated racial tensions in Bloomington and around the state. There were marches led by the Black Student Union through campus. The U.S. Department of Justice and the FBI led probes into the shooting. This was a major community issue much like some of the police shooting controversies underway today in 2015. Everything about the case generated controversy. Even the contentions about steroid use were hotly contested and not proved conclusively.

Ultimately, the jury found in favor of the police officers in the excessive force trial, but it was a very tough case. I think it was a case that law enforcement agencies throughout the area followed and hopefully learned a very tough lesson from all of that. One of the

officers involved in the incident, Steve Sharp, later became chief of the Bloomington Police Department and then was elected Monroe County Sheriff. In a 20-year retrospective on the case, the plaintiff's lawyer in the Denver Smith civil case credited Sharp with developing policies and procedures to prevent that kind of incident from happening again. It is heartening to think that maybe something positive came out of that tragic case.

Coal mining was big business in west central and southwestern Indiana in the 1980s and '90s, especially strip mining. It was a business that generated a lot of litigation. One of the coal mining cases I had in my early years on the trial bench arose out of strip mining practices in western Indiana, near Terre Haute. In 1989, the members of a community in Blanford, Indiana sought a preliminary injunction against a major coal company that was doing strip mining nearby because it was producing tremendous dust that would blanket the community. The company was using dynamite to loosen stone ground, and they were doing it at all kinds of hours of the day and night without warning to the

community and otherwise presenting what the community contended was a nuisance. The dynamiting was causing cracks in homes and other structures and causing things to fall off of walls and out of cases and so forth. The mining company contended that its practices were legal, and any curtailment of its mining activities would result in lost jobs in the community. It was a very hotly contested hearing. I granted a preliminary injunction and narrowed the times in which certain activities could be done and so on. Ultimately the parties settled while it was on appeal. That was a very challenging case.

So often cases provide guidance to other parties. There was a lot of strip mining going on in southwest Indiana and, if the vein of coal took the company toward where there was a gathering of residents, inevitably there would be that kind of friction. Possibly that litigation provided example to other coal companies and other residents on how strip mining needs to be done so that it doesn't disturb nearby residents. According to one news report, the parties to a similar strip mining

dispute in a different community used my injunction as a starting point for negotiation.

Another business that generated some controversial litigation for me was the landfill business. Governor Evan Bayh was a fairly new governor and was the first Democratic governor in Indiana in many decades. One of the issues that was very important to his administration was some legislation that he had gotten passed by the Indiana Legislature to preclude the importation into Indiana of trash that was generated in other states.

There was really quite a big business in landfills here, with the deposit of large quantities of trash that principally came from the east coast, where landfills were much more expensive. The cost of bringing landfill materials from the east coast to here was cheaper than disposing of it on the east coast, so Indiana was an importer of trash and that was bothersome to the Bayh administration and to many others, of course. Newspaper editorials throughout the state complained that the out-of-state trash contained medical waste,

syringes, and other unsavory items that presented a threat to the health and safety of Indiana residents. The importers of that trash challenged the law under the Commerce Clause as being an inhibition on interstate commerce and that challenge came to me.

It caught me a little bit by surprise how much public interest there was in the subject. Every time a pleading would get filed or a hearing would be set or something would move in the case, my office would get hundreds and hundreds of phone calls to the point that we had a separate line installed with a recording device so that the callers could get information about the case. This was before long before we had the electronic dockets of today, and the internet was in its infancy, and not in wide public use. Today, an interested citizen can look up lots of information about cases from the comfort of their homes. But that was not true then. Because of the hundreds of phone calls we were getting at our office, we had a special phone line installed so that if a call came in about the trash case, we could refer them to the recordings on the special line right away because it was

consuming an enormous amount of clerical time just to keep up with it. Every time there was a hearing on the case, the courtroom would be packed.

One of the interesting aspects of the case to me, the process of the case, was the attorney general represents the state on such matters in defending this legislation. The attorney general was a Republican, Lynn Pearson, and the governor, Evan Bayh was a member of the Democratic Party, and there was some suspicion that the attorney general's staff was not defending this legislation with sufficient enthusiasm (and skill), so the governor's Counsel would attend virtually every hearing or conference we had in the case. The governor's Counsel was a young lawyer named David Hamilton, whom I knew from being in practice and of course he was associated with my wife from their practice at Barnes & Thornburg.

David was well known to be a very smart lawyer. I knew he was looking over the shoulder of everything that was being done in that case. Despite the strong states' rights arguments of the defenders of the law, I

concluded that the legislation did in fact violate the Commerce Clause. If nothing else, my decision gave newspapers the opportunity to write headlines like, "Dumping on Indiana," and "Tinder Ruling Stinks." But rather than appeal the decision, the state ultimately revised the legislation. Next time around District Judge Larry McKinney drew the challenge to it. He found that the revised legislation did not violate the Constitution, but that was reversed by the Seventh Circuit.

CTF: That's what I recall.

JDT: So that was a case of great controversy and interest. In fact, the first time cameras were ever allowed in a federal courtroom in Indianapolis was during a hearing in that case before Judge McKinney.

Another case of great media interest was a lawsuit by an internet media company seeking to do a live pay-per view broadcast of the execution of Oklahoma City bomber Timothy McVeigh. McVeigh was scheduled to be executed at the U.S. Penitentiary in Terre Haute,

Indiana on April 19, 2001. Federal regulations allowed up to 10 media representatives to be present for executions but prohibited any cameras or recording devices. The plaintiff company contended that the restrictions violated its and potential viewer's First Amendment rights. The plaintiff media company filed the lawsuit less than two weeks before the scheduled execution date. I conducted an expedited bench trial two days before the scheduled execution date, and I issued my opinion the following day, on April 18, 2001.[2] I held that the regulation did not violate the First Amendment. This case attracted a tremendous amount of attention because of the interest in McVeigh and the terrible crime he committed.

This reminds me of another case that had an even faster schedule; it had to be finally decided on the same day as the case was initially filed. I think this case was in the spring of 1998. A senior in high school, who was a pre-operative transsexual (male to female), had begun

[2] *Entertainment Network, Inc. v. Lappin*, 134 F. Supp. 2d 1002 (S.D. Ind. 2001).

wearing blouses and make-up to school and wanted to wear a dress to prom. The school system refused to allow the student to wear a dress, arguing that there was too great of a risk of violence and concern over which bathroom the student would use. The prom was on a Friday evening, and the ACLU filed the case on behalf of the student that Friday morning. I conducted a hearing on the matter on Friday afternoon. In an oral ruling, I decided that the student had a First Amendment right to wear the dress, and the school system had made an insufficient evidentiary showing to justify abridging that right. When I adjourned court, the student still had a few hours to get ready for the prom. Local news covered the story pretty heavily, and reported that the student in fact attended prom in a dress and there were no incidents.

Even though I made quick decisions in both of those cases, neither decision was appealed. Maybe that should have been a lesson to me.

A case of significant public interest that took far longer to adjudicate involved the prosecution of the El Rukn street gang in Chicago. For nearly a decade, state

and federal authorities worked to put the huge El Rukn gang out of business. An AUSA in Chicago named William Hogan, Jr., led the prosecution efforts, which culminated in the indictment of more than 60 people who were accused of being in the top echelon of the gang. After considering severance motions, Chief Judge Marvin Aspen had divided the defendants into six or seven groups for trial because it would have been physically impossible to conduct a single trial for all of the defendants as well as the fact that certain groups of defendants either fit together, in some instances, or could not be tried together in other instances, based on the evidence that would be presented at trial. As the last of those trials was being completed, there were still three defendants who had not been included in the trials up to that point for various reasons, such as they had been ill or had not yet been arrested before the other trials had commenced. Frankly, I think the rest of the Chicago district judges had had their fill of El Rukn cases, so Marv asked for an out-of-district volunteer to preside over the trial of the three remaining defendants. It

sounded pretty interesting to me, and Marv convinced me that the trial could be completed in about two weeks. So, I volunteered for it and I sat by designation in Chicago for that trial. By the time we started picking a jury for the trial, one of the defendants had to be dropped from the trial because of scheduling problems, so I thought that with just two defendants left, maybe it wouldn't even take a full two weeks to finish the trial. Well, it didn't quite work out that way. After a two-month trial in Chicago in the spring of 1992, a jury convicted both defendants. I then imposed a life sentence for each defendant for aiding in the planning of about a dozen murders.

As if this wasn't dramatic enough, then came the motions for new trial. In another trial of other El Rukn members, one of the prosecution's star witnesses, a former high-ranking gang member and a key witness in my trial as well, testified that he and some other cooperating witnesses had been allowed to use drugs and have, let's say, unsanctioned conjugal visits while in federal custody at the MCC in downtown Chicago.

Motions for new trial in my case and other cases alleged that the prosecutors hid these improper benefits from defense attorneys. After numerous post-trial evidentiary hearings in my case, I granted the motions for new trial for both defendants. Many other convicted El Rukn defendants had their motions for new trial granted by other district judges. Whether the lead prosecutor in all of the trials, William Hogan, knew of the improper benefits was never established as far as I was concerned. But the salacious allegations and widespread negative publicity resulted in Hogan going from being a star in the Justice Department to getting fired. However, Bill fought hard to clear his name, and two years after being fired, he was ordered reinstated to his post at the U.S. Attorney's Office by an administrative law judge who found no evidence of wrongdoing on Hogan's part. And as for the two El Rukn defendants whose new trial motions I granted, they were again convicted in a trial presided over by Judge Zagel, again sentenced to life imprisonment, and those sentences were affirmed by the Seventh Circuit in 1999, ten years after the original

indictments. The first trial had taken such a large chunk of time out of my Indiana docket that I just couldn't justify staying on for another eight weeks in Chicago.

On a personal level, it was an interesting experience to spend almost two months in Chicago trying the case, learning a little bit about the gang structure in Chicago and experiencing a little of what it is like to be a trial judge in the Chicago federal court system. One funny thing that happened during trial was when my wife visited so that we could celebrate our wedding anniversary. The trial was being heard by an anonymous jury (for the safety of the jurors) so rather than knowing their names, I only knew their jury numbers. The jurors adapted to the numbering system very well because when they heard that my wife and I were celebrating our anniversary, they sent a card to us through the bailiff, signed with only their numbers, not their names. I never did learn their names.

I had a number of cases while on the district court back home in Indiana that involved some serious misdeeds, but also some pretty colorful facts. For

instance, I presided over a case of a defendant whose crimes resembled those of Bernie Madoff and whose lifestyle resembled that portrayed in the movie, "The Wolf of Wall Street." Four years after being disbarred, a former lawyer named Kenneth Payne opened an investment company in Indianapolis called Heartland Financial. With a small team of associates, including another disbarred lawyer from Colorado, Heartland Financial heavily advertised in publications targeting senior citizens. Soon Heartland had developed hundreds of investors and had millions of dollars in investments. Heartland was run as a traditional Ponzi scheme, with early investors being given supposed returns from the funds of later investors. Meanwhile, Payne lived a lavish lifestyle, buying houses, cars, and boats, and giving large gifts of jewelry and cash to scores of exotic dancers. His large house on Geist Reservoir in Indianapolis was described as a "24/7 party," with a dance stage installed in the basement and a steady stream of exotic dancers arriving every night. The job duties of Payne's personal assistant included visiting strip clubs in the Indianapolis

area with pockets full of cash to recruit exotic dancers for these nightly soirees. Payne also used some of the money to start a hotel/casino in Belize, among other foreign ventures. By the end, Heartland Financial bilked investors out of over $60 million, with many of those investors being older people who lost their life savings or nest eggs they had been counting on for retirement.

When he caught wind that authorities were investigating, Payne fled the country and led federal Marshals on an international chase that seemed to end when Payne disappeared in Amsterdam. And he might have gotten away with it, except apparently old habits die hard. Marshals covertly followed two exotic dancers as they boarded a flight from Indianapolis to Cancun, Mexico. The dancers led the Marshals to Payne in Cancun, where he was arrested and found with a false passport and a stash of loose diamonds. During his arrest, Payne faked a heart attack, and while he was alone with a doctor and two local police officers in Mexico, he offered the Mexican police $25,000 cash in exchange for his release. The offer was refused, and he

was extradited to the U.S., where I drew the case. After much pretrial maneuvering, Payne pled guilty to mail fraud and money laundering, and in 2002 I sentenced him to 17 years in prison and the sentence was affirmed.[3] I sentenced Payne's associate, the disbarred lawyer from Colorado, to six years in prison. But that was not the end of the case. For almost a decade, a receiver attempted to locate and recover the misappropriated assets so they could be dispersed to the defrauded investors.[4] The receiver did an admirable job recovering assets, especially given how much had been spent internationally, but unfortunately, as is often the case in frauds of this type, investors only received about nine cents for every dollar invested.

Another memorable trial during my district court years involved an indictment against an Indianapolis area truck driver who was alleged to have contacted the Iraqi Intelligence Service shortly before the U.S. invasion in 2003, and offered to sell the names of CIA agents

[3] U.S. v. Payne, 62 Fed. Appx. 648 (7th Cir. 2003).
[4] See, e.g., Knauer v. Jonathon Roberts Fin. Group, Inc., 3348 F.3d 230 (7th Cir. 2003).

working covertly in Iraq. When I first saw the charges, I wondered whether the U.S. Attorney's Office had been dipping into drug evidence because the whole thing seemed kind of far-fetched. But as the case unfolded, I began to realize that things were not always as they appeared. Although the defendant did actually work as a truck driver, he had originally come to the United States with the covert sponsorship of the former Soviet Union to conduct spying on behalf of the Russians. And when he wasn't driving his truck, he was communicating throughout the world with various people in the intelligence business, and he had traveled to Iraq and other places for very high-level meetings with those in the Iraqi intelligence structure. Fortunately, the deal was never consummated. The defendant was a bit of a character, and he had a difficult relationship with the attorneys who were initially appointed to represent him. He adamantly insisted on representing himself at trial, and he presented defenses probably better suited to a novel than a courtroom. He first claimed to have an identical twin who committed the offenses while

working for the CIA. He claimed that his twin had recently died in a hostage rescue mission in Chechnya, and a paperwork snafu resulted in his identity being confused with his twin's identity. He claimed that the evidence found at his house, including multiple passports, Social Security cards and other documents supporting a dozen different aliases, all belonged to his twin. This story didn't play very well at trial in the face of the government's evidence, which included testimony from a woman he was married to in Russia in which she clearly identified him as the person charged in the indictment. The defendant then changed course mid-trial and admitted that it was in fact him who went to Iraq and met with Iraqi government officials, but the defendant insisted he was participating in a covert CIA mission. Unfortunately for him, the CIA did not back up his claims. The jury was not persuaded by his defenses and found him guilty. I sentenced him to 13 years in prison, and the Seventh Circuit affirmed his sentence.[5] This case certainly did nothing to change my view that it

[5] United States v. Shaaban, 252 Fed. Appx. 744 (7th Cir. 2007).

is rarely, if ever, a good idea to represent yourself in a criminal case.

Another memorable case involved a series of interlocking body-shop businesses that spread across at least four states, and led the Seventh Circuit to later say, "[i]f there were a Fortune 500 listing for chop shops, this conspiracy would be on it."[6] That case involved 25 defendants, who operated a large car theft and chop shop conspiracy. I presided over multiple trials over the course of a year, during which I learned more about the chop shop business than I ever thought possible.

There is one more case I would like to discuss. Recently, I was asked to do a law school presentation about the experience of being a judge so I decided to do that by discussing a case that I handled on the district court, *Judith Harris v. Mutual of Omaha Companies*.[7] I chose this case because I have thought about it a lot over the years, and I suppose that is one way to define a case's importance. It is also in some ways a very typical

[6] United States v. Griffin, 148 F.3d 850 (7th Cir. 1998).
[7] Harris v. Mut. of Omaha Cos., No. IP 92-1089-C, 1992 WL 421489 (S.D. Ind. Aug. 26, 1992).

case, that is, typical of the challenges that a trial judge may face in any given case on any given day.

*Harris* involved an insurance dispute over coverage of a treatment for advanced breast cancer called high dose chemotherapy and autologous bone marrow transplant ("HDC/ABMT"). The plaintiff, Judith Harris, a 50-year-old mother of four, had been diagnosed with breast cancer near the end of 1991. By early 1992, she had undergone many cycles of chemotherapy, and her oncologist estimated that she had only a 20-40% chance of living beyond five years. She was told that she was an excellent candidate for HDC/ABMT, a very invasive—and expensive—procedure that her oncologist thought would increase her chances of survival beyond five years to 65%. Ms. Harris agreed to undergo the treatment. The only issue was how to pay for it.

Ms. Harris had a health insurance policy that covered the cost of cancer treatment, except that it excluded coverage for any treatment that is "investigational or experimental." The insurance company declined to cover Ms. Harris' request for

HDC/ABMT on the grounds that it was experimental. Ms. Harris filed suit seeking to compel coverage, and I drew the case.

Obviously, time was of the essence, and for Ms. Harris, the stakes could not have been higher. I heard the trial on the merits 11 days after Ms. Harris filed the case. The case had attracted a fair about of media attention, and, in fact, parts of the trial were televised, which was permitted because the district was part of a Judicial Conference experiment on cameras in the courtroom.

The insurance company presented dozens of scholarly articles and testimony asserting that there was a consensus among medical experts that HDC/ABMT treatments for breast cancer required further study. However, Ms. Harris' oncologist testified that HDC/ABMT had become the standard protocol for local patients with advanced breast cancer, and that all breast cancers therapies are subject to on-going efficacy studies. Although the case was about the construction of dry

language in an insurance policy, the evidence and arguments were very emotionally charged.

I issued my written, final decision five days later. The standard of review was limited; Ms. Harris could only prevail if I found that the insurance company's decision was arbitrary or capricious, that is, that there was no rational basis for the decision on the evidence presented in the record. The evidence showed that there was no consensus of opinion among experts regarding HDC/ABMT's safety, efficacy, or efficacy as compared with the standard means of treatment, which is how Ms. Harris' insurance policy defined "experimental." Therefore, I concluded that the insurance company's decision was not arbitrary or capricious.

At the end of my opinion, I encouraged Ms. Harris to appeal. She did so, and her appeal was heard by the same panel that heard a similar case from the Northern District of Illinois, in which the district judge had ruled that there was no persuasive evidence that HDC/ABMT was "experimental or investigational," as defined in a similar insurance policy, and ordered the insurance

company defendant to pay for the plaintiff's treatment.[8] My decision denying benefits to Ms. Harris was affirmed, and the other court's decision awarding benefits was reversed.[9]

Ordinarily, after a case was finished, I would not hear about how things developed after that. This case was an exception for me, though. I continued to read about the HDC/ABMT controversy and how it played out in courts for several years. (This particular issue may have struck a special chord with me because several of my staff members suffered from breast cancer around the time that I had the Harris case.) Those two Seventh Circuit cases were a part of a much larger canvas of disputes concerning the coverage of HDC/ABMT that spread across the country. During the 1990's there were at least a hundred published court decisions on this issue, and a majority of courts ordered the insurance companies to pay. And when the plaintiff's lawyers could get the cases heard by a jury, the insurance

[8] Fuja v. Benefit Trust Life Ins. Co., 809 F. Supp. 1333 (N.D. Ill. 1992).
[9] Harris v. Mut. of Omaha Companies, 992 F.2d 706 (7th Cir. 1993); Fuja v.

companies often fared much worse. Less than a year after my *Harris* decision, a highly publicized verdict from a California jury awarded the plaintiff $89 million related to the insurance company's denial of coverage for HDC/ABMT. After this verdict and the wave of anti-insurance-company publicity surrounding it, many insurance companies began to voluntarily pay for the treatment despite their stated belief that it was excluded under their policies.

Later, the General Account Office conducted on study on this issue and found that, during the decade of the 1990's, an estimated 42,680 HDC/ABMT procedures were performed on breast cancer patients, at a total cost of $3.4 billion. The controversy within the medical community surrounding the true benefit of the procedure, however, never subsided throughout the decade, due to the lack of any definitive results from statistically robust, randomized controlled clinical trials. A significant part of the reason for the lack of such controlled studies is the fact that breast cancer patients understandably preferred to receive HDC/ABMT rather

than enroll in a clinical trial in which they stood a chance of being assigned to the placebo control group. And given that fact that insurers began paying for the treatments outside of studies, nine out of ten patients chose to receive the treatment outside of a clinical trial. By the end of the 1990s, randomized controlled studies finally had been conducted, and scientists concluded that patients undergoing HDC/ABMT did not survive any longer than those that received conventional chemotherapy. To make matters worse, patients who underwent HDC/ABMT suffered more serious side effects, such as infection, diarrhea, and vomiting. In short, scientists slowly came to the consensus that HDC/ABMT causes more harm than good for breast cancer patients. It is staggering to think that that it took over 42,000 breast cancer patients receiving HDC/ABMT at a cost of over $3.4 billion before it was determined that the treatment did more harm than good.

I did learn that after the appeal concluded, Indiana University decided to provide the HDC/ABMT treatment to Ms. Harris at no cost to her. But I also

learned that she only lived about two years beyond the treatment, ultimately dying of cancer related problems.

As one of the judges who struggled with this issue, I didn't think that the courtroom was the best place for this important health care policy debate to play out. The real dispute was a policy question: who should fund this important research, insurance companies or cancer researchers? People like Ms. Harris, who were struggling with a terrible disease, deserved a better process. Frankly, all the people who paid health insurance premiums also deserved better. But in almost all cases, judges don't have a choice in the matter. Judges have to decide the cases that come to them to the best of their abilities, based upon the often-imperfect evidence presented and the binding precedent. Being a judge is a wonderful job, but it can also be a very difficult job when cases like *Harris* come up. And as soon as you finish with a gut-wrenching case like *Harris*, you have to immediately move on to the next case in line. Because there is always a next case. And for the litigants, the stakes of the next case will likely be just as high as they

were in the last one. And those litigants deserve thoughtful, impartial and expeditious consideration just as much as the prior litigants.

*Harris* was an insurance dispute, and I handled hundreds of such disputes on the district court. In some ways, *Harris* was a typical case, but in many ways, there are no typical cases. Each case has the potential for presenting difficult, unique and challenging questions but each case requires a result. Each case puts the judge to a test, intellectually, legally, emotionally, logically and practically. And that is why it is important for a judge to approach each case as a singular and unique event. And maybe that is why I have been so long-winded in answering your simple request that I name a few important cases!

CTF: John there's not many people who come to the bench with more actual trial experience across the board than you had. You were both a federal and state prosecutor and you handled civil and criminal cases. You did that as defense counsel as well. Your whole life

from law school on was as a trial lawyer. How long do you feel that it took you get up to snuff in being a district judge?

JDT: That's a terrific question because it was one that I really hadn't thought a whole lot about being a judge before I made the switch. The moment I took the judicial oath, I was handed a caseload of about 500 cases, many with trial dates fast approaching, and more with motions in need of rulings. I had always been on the other side of the bench, in front of the bench, as a lawyer, on one side or the other. I hadn't given a whole lot of thought about what it meant to sit on the bench and to be a judge. As an advocate, as a lawyer, you're always pushing for one side or the other and you're taking sides, you're not trying to be balanced about it. You're trying to show that your side is right and the other side is wrong. But as a judge, you must be neutral, you must start each case without shading toward one side or the other. So, I'm sure there was a startup period or learning curve where I sort of felt my way through that but, I'd like to think

throughout the 28 years I worked as a judge, I never really thought of myself as a judge. I've always thought of myself as a lawyer who in this particular case is playing the role of the judge. I tried to approach things in a professional way and a judge has to be balanced and has to hear both sides. You don't want to be seen as a "prosecution" judge or a "defense" judge. You want the judge to hear both sides. That's how I tried to approach it. I didn't feel I was necessarily entitled to sit up in front because of any great qualities I had. It was just a privilege to be the lawyer who is working in the role of a judge in individual cases, trying to keep a balance and openness to hear all sides in every case. After you have had your 10th or 12th case involving possession of a handgun by a convicted felon, there are some patterns that seem to fall into place, but you still need to hear both sides. Approaching judging in that way was, for me, the comfortable way to do it.

I had some terrific judicial role models from my time as a litigator. Both within the federal and state courts. I had tried cases in front of Judges Dillin, Holder,

Steckler and Noland. I had had hearings in front of Judge Brooks. I had tried cases with Sarah Barker when she was an AUSA, so I had real good experiences and role models in the judges with whom I served on the district court. In fact, I had tried a couple of matters in front of Larry McKinney when he was on the state court. Larry has a wonderful demeanor. Very open. Very casual and friendly.

CTF: Very funny.

JDT: He was one of the truly naturally amusing people of the world. I would describe him as sort of a cross between Garrison Keillor and Dave Letterman. So, it was very difficult to ever get the better of him when trading jokes. But maybe I did so while we served together on the district court. We both heard cases in the Terre Haute division of the court, about a 70-mile drive from Indianapolis. We decided to buy an inexpensive robe together to keep there so that we wouldn't have to carry one back and forth. It was my job to purchase this robe.

Well knowing that Larry is a Presbyterian, I purchased it at a Catholic supply store. Actually, it was not a judicial robe at all, it was a choir robe! And whenever I would hear that Larry would be trying a case in Terre Haute, I would smile. The thought of a Presbyterian wearing a Catholic choir robe for several days at a time was my small effort at missionary work.

Larry was very funny but at the end of the day, decisive. His demeanor, personality and intellect made him person who I think was born to be a judge.

Judge McKinney died during the editing of this interview and I have to note what a good friend I lost when he died. We started on the district court within a couple of weeks of each other, and attended the same "baby judge" training programs together. In fact, during the first four or five months of my time on the district court, Larry was very kind and welcoming to me by letting me and my staff share his offices with him and his staff. Since we had never had any judicial experience, it was a great introduction for us to the work of a court. Larry was a terrific mentor to me. As the years rolled on,

we travelled to many of the judicial and Circuit conferences together, and we shared a lot of great times at baseball games, in golf carts and over adult beverages from time-to-time. I was very flattered when Larry chose me to MC the only program he ever allowed to be presented in his honor, that is, a celebration held when he had been a trial judge for 35 years. The theme I chose for my comments was "Larry McKinney is a great guy." And that was true in every sense. His death was a great loss to the Indiana legal community and especially to our federal judicial family.

I also want to mention that as I came up in the state court system of Indiana as well, I had cases in front of Judges Patricia Gifford and John Tranberg in Marion County criminal courts who were just top-notch judges, and with others from other counties, like Paul Johnson from Boone County and Jerry Barr from Hamilton County who demonstrated to me a great deal about being a judge. I also had a few experiences before appellate courts and the Indiana Supreme Court, as well

as the Seventh Circuit, so I could observe patterns and models to emulate.

I'd like to think I tried to approach each matter as though I was the lawyer in that case who was getting the privilege of serving as the judge in that case, and not as though I had some God given right to be the judge. I hope that helped in the way that I was perceived of as a judge. I know that there was a steep learning curve when I began trying cases and making rulings as a brand new, 37-year old district judge. No doubt those folks who suffered through my first several rulings and trials could tell you more about how steep that curve was. But I tried to give everybody the appropriate opportunity to make their points, listen to both sides, and make the rulings that I thought were appropriate and explain them so that the reasons for the decisions were clear. Whether it was correct or not, I'd leave to the higher courts, but I tried to give the reasons why I reached decisions, and that's how I approached it in the beginning, and I hope that is how I continued to approach cases through the rest of those 20 years.

CTF: We'll ask more about the district judgeship, but let me jump to another question. The question that I asked Circuit Judge Phil Tone was, would he have resigned if he was still a district judge? And I'll tell you his answer after you give me yours.

JDT: That's interesting. When I left the district court to become a circuit judge, I gave up a heck of a lot of authority, control and power.

CTF: And relationships.

JDT: And relationships. You are much closer to the lawyers when you work on the district court. They are in your courtroom on a regular basis, and some are there so frequently that you get to know them well. You are much closer to the court staff, the clerk's office and your colleagues on the district court. As the five of us on the district court each faced similar case management issues and the business of operating a court, we all had mutual interests. You have administrative and personnel

responsibilities as a court. Although the Chief Judge of the district carries the laboring oar on those things, each of us felt the need to share in the responsibility, and to support our Chief. You might say that at least for the administrative sake of the court, we all needed to row in the same direction. Although each of us operated our own courts as we saw fit, we had a real sense of common purpose. We were very collegial and very good friends. In terms of power and authority, a district judge sets the schedule. You decide what case goes to trial, when, how long you'll go during a trial day, when you take breaks and so on. Even with motions, such a summary judgment motions, the district judge is in virtually complete control of what order the cases are undertaken and when the rulings will be made. You run the show.

I describe the difference between being a district and a circuit judge in this way: as a district judge, I was the engineer of the train. I decided when things would be done, how far we would go in a day, and the court wouldn't even start until I showed up. As a circuit judge, I became a passenger on somebody else's train. An

appellate judge always depends on at least one other judge to get a case decided. An appellate schedule is always set for groups of judges, such as panels, instead of for an individual judge. I know that scheduling of appellate judges is probably a nightmare for the Clerk and Circuit Executive, but an appellate judge does not shape the schedule of the court; instead, the appellate schedule shapes the schedules of its judges. A district judge gives up a lot of independence to join an appellate court.

There are other aspects to the differences, too. On the district court, a judge can discuss a case with the law clerk, but when it comes to the point of deciding an issue, the judge is all alone. Often, the matters presented to a district judge are matters of first impression. There may be some decisions in similar areas, or analogous in some ways. The cases controlled by clear precedent can be few and far between. So, it can be a little lonely to decide a case under a new statute or theory. You get pitches from the lawyers on their positions and rarely are they in agreement and you will have to make the

call. You can't really turn to anyone else to run the idea by them or to discuss the consequences of the case. It's all on you. On an appellate court, there is some shared responsibility in a decision; perhaps it isn't as lonely a decision-making process. You can be lonely in dissent but you always have company in the majority.

On the other hand, many of my colleagues on the circuit court had been together for several decades before I arrived. Sometimes when we discussed issues, I felt like I was entering conversations that had been ongoing between my colleagues for several decades already. For example, I remember a post argument conference on a case where the question was whether the facts were sufficient to support a reasonable suspicion for a stop. My fellow panelists seemed to immediately go to points that they had debated in cases years ago. They welcomed me into conversations like that, but I had to catch up to where they were in these long running discussions. I felt that we had a similar shared purpose in the administration of the circuit court as I had experienced on the district court. While we

might experience disagreements on points of law, we all tried to make sure that the court processes would work in the best interests of the court. And I could not have asked for better colleagues on the circuit court. It is a very collegial court, in every sense of the word. And it was evident to me that the members of the court like and respect each other. That is a pretty remarkable thing when you consider the number of people and the variety of personalities on the court. But there is a large distance between the bench and the lawyers in an appellate court. The Seventh Circuit Bar Association is very supportive of the court but the direct interaction between the bar and the bench is less frequent than on the district court. I think a circuit judge leads a little more isolated life than a district judge, especially a circuit judge whose principal office is not in the Dirksen Building.

But would I have stayed if I was still a district judge? I might have had to think about it a little bit longer, but I think I would have left regardless. In 2015, after 28 years in the two court systems, I had reached a point where I was ready to come at things a little

differently, to maybe regain a little more control over my own schedule and try to provide something to the legal community and the general community in a different way than as a judge. I probably still would have left if I had still been a district judge but will never know the real answer because in 2007, I walked away from the district court reluctantly. I left a lot of very good friends on the district court. My colleagues there and the rest of the district court staff remained very friendly and helpful towards me but it's not the same once you become a circuit judge.

CTF: Phil Tone's answer to me was, "I don't know."

JDT: Being a district judge is terrific. Chief Justice Roberts' 2016 year-end report discussed at length the tremendous volume and variety of the work of the nation's district judges. He gives a great description of how daunting and lonely the work of a district judge can be. He wrote that trial judges "are the first to encounter novel issues, and they must resolve them without the aid

of guiding precedent. Because they work alone, [trial] judges do not have the benefit of collegial decision-making or the comfort of shared consensus. And because of the press of their dockets, they face far more severe time and resource constraints than their appellate brethren."[10] You can also gain an understanding from his report about why the job can be so personally satisfying and professionally rewarding. I can't describe the work of district judges any better than the Chief Justice did, and I agree with him that they deserve tremendous respect.

One of the most surprising things to me when I became a district judge was how many of my decisions would be the final decisions in cases, that is, how few decisions would be appealed. That is true for all district judges. It is remarkable and, of course, that makes each decision all that more important. When I went through the circuit nomination process, one of the things I was required to do, I think by the Senate Judiciary Committee, was to compile a list of all of the cases in

[10] 2016 Year-End Report on the Federal Judiciary at 7.

which my district court decisions were reversed by the Court of Appeals. I had not been keeping track of that over those 20 years; I would follow the mandates of the Circuit Court when I was reversed but it wasn't as though I was keeping a running tally. I had to do a little research for the Judiciary Committee to come up with all of the reversals. As I was working on the district court, it did not seem that I was being reversed very often. I was gratified to learn from researching back that the number of reversals was actually fairly small. In fact, I think I had only been reversed about 20 times over all those years. Of course, many cases settle, some are abandoned by the plaintiffs, many decisions are not appealed, and so on, so I am not saying that I was affirmed in all but 20 cases. But the point is that most federal litigants accept the decisions of the district judges without appealing, so very early on, a district judge realizes that, in most instances, the district court is one of last resort. That emphasizes why it is so important for a district judge to take great care in trying to come to the correct decision. So, it's tremendous what district judges do on a national

basis. They are, for the most part, very adept decision-makers and they get the business of the courts done. It also emphasizes why it is fulfilling work to do.

CTF: One of the interesting statistics that I had heard from Stuart Cunningham who had been the Clerk of the Northern District of Illinois, is that – we don't keep statistics, but he did, on reversal rates of the trial judges, District Judge Prentice Marshall had a much higher reversal rate than District Judge Julius Hoffman which seems strange. The reality is that many more people appealed Julius Hoffman's decisions than they did Pren Marshall's and that accounted for the discrepancy. The ones that they appealed from Marshall were ones that could go either way with a difference of opinion, whereas people appealed Julius assuming he was wrong because he ruled against them, when often he was right.

One other thing about trial judges. Former Chief Judge Luther Swygert always maintained that it was much more important to have good trial judges than

appellate judges because on the appellate court you could hide somebody. You can't hide in the trial court.

JDT: I think those are really apt observations. As I say, it's all on the district judge in so many of the cases.

CTF: Judge Flaum, I think he was the one that said this, it might have been Swygert, that we ought to pay the district judges and the court of appeals judges the same. I have had the opportunity to argue that position. Obviously, I haven't convinced anybody because it hasn't changed but the idea would be to take the financial incentive out of moving from the district to the circuit court. Why did you leave the district court?

JDT: Well, as former district judges, Judges Flaum and Swygert knew, and I totally agree with this idea, that the work is equally difficult for a district judge as it is for a circuit judge. The move from the district court to the court of appeals for me was sort of like the move from being U.S. Attorney to the district court. It wasn't really

something that I had ever thought of. I can't say that I had aspired to become an appellate judge or a district judge but the opportunity became available when Dan Manion announced that he would become a senior judge and at that point in time I was 57 years of age and I thought that gosh, if I ever wanted to do that, be a court of appeals judge, I doubt that there will be another chance. And, I had been a district judge for 20 years. I had tried virtually every kind of case I could have imagined from minor fender bender through antitrust, patent cases, complex criminal cases, so it looked like a very interesting challenge. Of course, the circuit court's reputation was one that would draw anyone who has an interest in complex legal issues and challenging legal dilemmas and if you're really lucky, there will only be one chance to do something like that. I probably got involved in the process before I really knew that it was something that I would enjoy doing, and I hadn't been waiting for an opening to occur. I think I would have been perfectly content to stay on as district judge. I was just on the cusp of becoming the chief district judge.

CTF: You actually passed it over.

JDT: I did. That was a perhaps a mixed blessing. You get a title. You don't get a better parking spot. You don't get any more money, but you get a lot more headaches of the administrative nature. As U.S. Attorney, you have administrative responsibilities. And frankly I enjoyed being a lawyer much more than I enjoyed being an administrator. I would have been honored to be the chief judge, but I don't feel like I missed much by not being chief judge. My hat is off to all of those who do it. It's important work for all of the other judges and staff but, it's tough stuff that we are not really trained for as judges.

But, the time seemed right to try for the Court of Appeals. I was a little hesitant, though. This was not too far from the end of President George W. Bush's seventh year in office, and so I was a little dubious as to whether a nomination could actually get through the Senate. The Senate was controlled by the Democratic Party at that time, and President Bush was not at the height of his

popularity. But in the end, I decided to take a chance on it and lo and behold, it worked.

CTF: And you didn't have any opposition?

JDT: I did check with a few other Indiana district court judges, including Sarah Barker, Larry McKinney and Bob Miller to determine whether they were going to seek the appointment and none of them seemed interested in getting into the process. If they had expressed interest, I don't know whether I would have pursued it. I did hear about a few lawyers who were interested in seeking the nomination and there are always interest groups that closely scrutinize the process to mount campaigns against nominees who aren't in synch with their interests. But once the nomination was made, I don't think any of the interest groups undertook any serious effort to defeat the nomination. I don't recall anyone in the process trying to throw a roadblock in the way other than I think there were a few disappointed litigants who had written letters or made calls to their senators or

something of that nature. Nothing that resulted in any particular concerns.

CTF: What are the cases that you think were important that you worked on at the Court of Appeals?

JDT: That's like asking you Collins who your favorite child is. I don't know, gosh.

CTF: Well then your answer is all of them.

JDT: All of them. Well, yes. The appeals cases are just such an intellectual buffet. You've got such a wide range of cases from civil through criminal and all these nuances of different aspects of law. You have state law issues from any state in the union. You've got policy heavy cases, constitutional cases, it's pretty hard to pick. It also calls to mind my earlier point that when it comes to selecting an important case, there are multiple ways to define "important." I had about an eight-year run on the circuit court and I don't know that any one case jumps

out at me right away as the one that I want to be known as my signature case. I had a lot of very interesting opinions, at least interesting to me, and I was on a lot of very interesting panels. But since you asked, I'll talk about a few cases from my appellate court experience that highlight the range and variety of interesting and challenging questions that appellate judges get to address.

I did have the privilege of writing an *en banc* opinion in one case involving the Fair Housing Act. The issue was whether condominium owners prevented from hanging a religious object on their door—a mezuzah—could sue their condo association under the Fair Housing Act for alleged religious discrimination. The case raised interesting questions about how to distinguish intentional religious discrimination from a neutral rule that incidentally burdens religion. A divided panel affirmed the district court decision to issue summary judgment in favor of the association. I was not on the panel that issued the original opinion. The decision attracted some attention in the national media,

at least the legal publications. I don't think I can reveal the votes of the judges in our impression conference after the en banc argument, but, of course, the two judges who had been on the original panel were also on the en banc panel. Judge Diane Wood had written a very strong dissent to the original majority opinion which served as a very good guide for me in drafting what I hoped would become a majority opinion for the en banc panel. It took be a while to get it done, but when I finally got my draft circulated we ended up, to my surprise, as a unanimous court.[11] I don't know if that opinion is going to have any great long-term importance, but I thought was a good result and the issues of religious discrimination it addresses still resonate in many of today's legal disputes. It was also an interesting experience to observe some of my colleagues change their minds after a thoughtful and deliberative consideration.

Another noteworthy case involved a claim that Cook County prosecutors wrongfully exercised

[11] *Bloch v. Frischholz*, 587 F.3d 771 (7th Cir. 2009) (en banc).

preemptory challenges based on race in a death penalty case nearly 30 years earlier. It was a troubling case that involved sifting through a lot of testimony and facts. I authored the opinion in which a unanimous panel granted the habeas petition.[12] Granting a habeas petition is a serious decision, especially when the serious crime is so old, and a retrial is likely to be very difficult or impossible, but we decided that the passage of time is not a valid reason for overlooking a violation of the Equal Protection Clause. As it turned out, the defendant in that case was ultimately retried and again convicted. That does not lessen the importance of the habeas result.

Another case that emphasized the importance of guarding against constitutional violations—this time in the federal judicial system—involved the question of whether the police may stop a vehicle only because it emerged from a site suspected of drug activity. I authored an opinion for a unanimous panel holding that the stop was not justified due to the absence of any

[12] Harris v. Hardy, 680 F.3d 942 (7th Cir. 2012).

suspicion related to the vehicle beyond its emergence from a suspected meth site.[13]

Another case I think is noteworthy involved the scheduling of high school basketball games, a subject that is of special significance in the state that inspired the movie "Hoosiers." The Franklin County School Corporation had a practice of scheduling nearly all its boys' basketball games on Friday and Saturday nights, the so called "prime time" slots, while holding most of the girls' basketball games on regular mid-week school nights. A girls' basketball coach and the mother of a girls' basketball player sued, alleging that the discriminatory scheduling practice violated Title IX, which prohibits gender discrimination by educational institutions receiving federal financial assistance. The evidence showed that at the weekend games there were large crowds in attendance, substantial student and community support in the stands, and the presence of the school band, cheerleaders, and dance teams. By contrast, at the week-night games, the bleachers were

[13] United States v. Bohman, 683 F.3d 861 (7th Cir. 2012).

nearly deserted and there were no cheerleaders, pep band or dance team. There was evidence this led to girls being less interested in joining the basketball team, and the perception that the girls' team was inferior and less deserving of support than the boys' team. Moreover, the week-night games led the girls' team members to struggle to complete their homework and perform well on tests the next day. Nonetheless, the district court granted summary judgment for the school district. A unanimous panel reversed in an opinion I authored, finding that the plaintiffs presented a genuine question of fact that the defendant's scheduling practices violated Title IX.[14] The case subsequently settled, and I understand from news reports that the decision sent a message to other high school athletic directors that Title IX requires equality in the scheduling of athletic contests.

I considered many cases involving colorful personalities. The personalities of the litigants were

[14] Parker v. Franklin County Community School Corp., 667 F.3d 910 (7th Cir. 2012).

generally far more apparent when I was on the trial court, since I had so many interactions with them in filings and in-court proceedings. But even on the appellate court, the personalities of the litigants would often shine through from the pages of the record.

For example, I authored three opinions in the long-running litigation between the Fair Trade Commission and Kevin Trudeau, a former used car salesman who made the not-so-great leap to becoming a television infomercial pitchman. If you had a problem, chances are Kevin Trudeau had an answer. For over a decade, Trudeau promoted countless "cures" for a host of human woes that he claimed the government and corporations have kept hidden from the American public. Cancer, AIDS, severe pain, hair loss, slow reading, poor memory, debt, obesity—you name it, Trudeau had a "cure" for it. To get his messages out, Trudeau relied upon infomercials, and that drew the ire of the FTC. For years Trudeau dueled with the FTC in and out of court.

By the time Trudeau's long-running dispute with the FTC reached me, Trudeau's prior violations of consumer protection laws resulted in him being banned by consent decree from appearing in infomercials for any products, except for books (which are protected by the First Amendment), provided that he did not misrepresent the content of the book. Trudeau then appeared in an infomercial promoting his book, "The Weight Loss Cure 'They' Don't Want You to Know About," and described the weight loss program in the book as "easy," "simple," and able to be completed at home. In fact, the program in the book required a diet of only 500 calories per day, injections of a prescription hormone not approved for weight loss, and dozens of dietary and lifestyle restrictions. District Judge Gettleman sided with the FTC, concluded that Trudeau had misrepresented the contents of the book, held Trudeau in contempt, and ordered Trudeau to pay $37.6 million in fines. I authored an opinion for a unanimous panel in which we affirmed the district court's finding of contempt but vacated the sanctions because the district

court needed to explain its math and how the funds would be administered.[15]

On remand, Judge Gettleman reinstated Trudeau's $37.6 million fine, and explained how he reached that figure and how the funds were to be distributed to those who bought Trudeau's book. This time, the fine amount was affirmed.[16]

Mr. Trudeau generated several more appeals for our court during the following years. Even after I left the court, his cases kept coming up on appeal. In what I think was the fifth appeal in the Trudeau litigation, this one involving the attempts of the receiver to collect Trudeau's dispersed assets to reimburse those who had been duped into buying his book, Judge Easterbrook began his opinion: "This decision marks the end of litigation about Kevin Trudeau's frauds—or so we hope."[17]

Even darker personalities emerged from a couple of other noteworthy criminal cases I considered on the

[15] FTC v. Trudeau, 579 F.3d 754 (7th Cir. 2009).
[16] FTC v. Trudeau, 662 F.3d 947 (7th Cir. 2011).
[17] FTC v. Trudeau, 845 F.3d 272 (7th Cir. 2016).

Court of Appeals. One involved a long-term criminal enterprise that included bad cops and drug dealers in Chicago. The drug dealers in the enterprise provided the corrupt cops with information about the location of narcotics and money held by other drug dealers. The corrupt officers used that information to conduct traffic stops and home invasions and seize any drugs and money they found. The cops then sold the drugs with the help of the drug dealers, and the co-conspirators divided the proceeds. None of this was legitimate law enforcement activity. As I noted in my opinion affirming the convictions of all defendants, the facts were very similar to the movie Training Day, in which Denzel Washington portrays a corrupt cop.[18] The brazenness with which these real-life officers violated their sworn duties was really jarring for someone like me, who has spent most of my adult life as part of the criminal justice system.

The other case involved a defendant named Alex Campbell, who recruited young women, who were in

[18] United States v. Haynes, 582 F.3d 686 (7th Cir. 2009).

the United States illegally, to work for him as masseuses and, ultimately, prostitutes. He referred to these women as his "Family." At first, Campbell enticed the women into joining his Family by offering them comfortable places to live, and jobs in massage parlors with no expectation that they perform sexual services. Once he had gained their trust, Campbell required the women to break their ties with their relatives and friends, and confiscated their identification, immigration documents and money. Campbell then renamed them, branded them with tattoos of his name, physically and sexually abused them, and forced them to engage in prostitution for his benefit.

The facts were really harrowing. But as I drafted my opinion for a unanimous panel affirming Campbell's convictions and life sentence,[19] the personalities that really shone through the brightest were those of his victims. Despite suffering horrific abuse for more than a year and Campbell's very credible threat that he would kill anyone who contacted the police, one of his victims

[19] United States v. Campbell, 770 F.3d 556 (7th Cir. 2014).

turned to law enforcement and agreed to meet repeatedly with Campbell wearing a wire. Through her brave efforts, and the brave efforts of the other victims in Campbell's "Family"—five of whom testified against Campbell at his trial—he was finally brought to justice.

The *Campbell* case highlighted the vulnerable situation that faces immigrants in this country illegally. During my time on the Seventh Circuit, I considered a number of immigration appeals that illuminated some of the reasons people are willing to undertake the risk inherent in coming to the U.S. illegally. One noteworthy case involved a Chinese man who was seeking asylum in the United States based upon a fear of persecution in China on account of his practice of Falun Gong. When he first began the practice, he did not know that the exercises he was practicing was a form of Falun Gong, the religion that is considered to be an "evil cult" and strictly prohibited by the Chinese government. Because he was seeing health benefits from the practice and did not believe it to be a cult, he decided to continue his practice after learning of its Falun Gong origin. But after

his teacher was arrested, the police arrived at his front door. He jumped out his back window, fled China, and sought asylum in the United States. An immigration judge found that he did not have a well-grounded fear of future persecution because he was a relatively new practitioner of Falun Gong and might only be subject to the relatively innocuous sounding penalty of "administrative punishment." Writing for a unanimous panel, I pointed out evidence in record showing that administrative penalties in China could include being forced into "reeducation-through-labor" camps and being strapped to beds or other devices for days at a time, beaten, forcibly injected or fed medications, and denied food and use of toilet facilities. We remanded the case for further proceedings.[20]

The United States' prison system does not always meet the standards set by our Constitution, and I authored an opinion affirming a jury verdict in favor of a prisoner who claimed that a prison guard used excessive force on him in violation of the Eighth Amendment's

[20] Qiu v. Holder, 611 F.3d 403 (7th Cir. 2010).

ban on cruel and unusual punishment.[21] The evidence showed that the guard repeatedly goaded an inmate, Vernon Hendrickson, into leveling an insult at the guard. The guard then used that insult as an excuse to slam Hendrickson into a wall and onto a concrete floor, and then press his knees into Hendrickson's back, which the guard knew to be injured. A jury found that the guard violated Hendrickson's constitutional rights, and awarded $200,000 in compensatory and punitive damages. In my opinion for the unanimous panel, I began by remarking that violent prisoners can pose a serious threat, requiring prison officers to use force to maintain order. But the evidence showed that, in this case, the threat came from a rogue officer who attacked a prisoner for no good reason. And in such a case, which hopefully is rare, the law and the courts can play a pivotal role in the cause against prison brutality.

Another case of note involved the False Claims Act, which allows whistleblowers alleging fraud against the government to bring cases on behalf of the

[21] Hendrickson v. Cooper, 589 F.3d 887 (7th Cir. 2009).

government and collect a share of the proceeds. The defendant was ITT Educational Services, a for-profit school whose revenue derives primarily from federal grants and loans, as most of its students receive financial aid paid through taxpayer funds. A former ITT employee, Debra Leveski, alleged that ITT falsely purported to pay its recruiters based on a host of factors while it actually paid them based on the number of students recruited, and she alleged that it paid Financial Aid Administrators based on the number of federally-subsidized loans they packaged. She alleged that both practices were illegal under the federal law. The district court held that Leveski's complaint was barred because the fraudulent scheme she alleged had already been publicly disclosed in an earlier FCA case against ITT, and therefore it provided no new information to the government. The district court also sanctioned Leveski's lawyers $400,000 for soliciting Leveski and, in the district court's view, "manufacturing a frivolous case."

I authored an opinion for a unanimous panel reversing the decision.[22] We found that the prior lawsuit did not constitute a public disclosure because Leveski's complaint alleged two fraud schemes different from the one scheme previously alleged in an earlier lawsuit. The alleged schemes in both cases involved ITT violating the same federal incentive compensation rule, but the details of the schemes were quite different. In short, after the first lawsuit, ITT was alleged to have gotten much more sophisticated about how it tried to skirt the federal rule. To my knowledge, this was the first time an appellate court had considered this particular aspect of the FCA's public-disclosure bar, and afterwards, at least one other circuit court and some district courts in other circuits adopted our reasoning.[23] Our panel also vacated the sanctions award, finding no evidence that Leveski's lawyer violated any ethics rules and commenting that the annals of legal history are full of examples of lawyers playing a vital role in encouraging parties to litigate.

---

[22] Leveski v. ITT Educ. Servs., Inc., 719 F.3d 818 (7th Cir. 2013).
[23] See, e.g., United States ex rel. Mateski v. Raytheon Co., 816 F.3d 565 (9th Cir. 2016).

I have gone on a long while about particular cases but I want to say a few things about the process of reaching agreement on decisions in this circuit court of appeals. Of course, most of the opinions in our circuit are unanimous. Based on my experiences, I think a large part of the reason for that is that the members of this court are very good at accepting suggestions from their colleagues about how to narrow or correct a draft opinion so that it can become a unanimous one. I only felt the need to dissent in a handful of cases in my 8 years on the court. And I was only responsible for another handful of majority opinions that did not result in a unanimous vote. Throughout my time on the court, I was always extremely impressed by how respectful we all were about the views and ideas of each other. Both in the published dissents and concurrences, as well as in internal communications like the back and forth email discussions we had about draft opinions, we always seemed to strive to respect each other's disagreements rather than ridiculing them. That spirit of respectfulness became evident to me when I first came on the court and

I tried to maintain this approach during my time there. After I left the court, Chief Judge Wood wrote a very generous tribute to me in the Indiana Law Review. I was especially gratified that she singled out a case in which I had authored the majority opinion and she dissented, commenting that, "as the dissenting judge on that split, I can confirm without qualification that the tone of the discussion in the majority opinion was at the highest professional level."[24] Given the brilliant and independent legal minds of my colleagues on the court, disputes were inevitable. But I do think it is possible to always attempt to maintain a level of professionalism towards each other and as well as towards the litigants.

The back and forth among the judges is just one of the most fascinating intellectual challenges I think any lawyer can experience. Finding the best course based on the presentation of the lawyers is one challenge, but then finding grounds of agreement and disagreement among your colleagues is even yet another challenge.

[24] Diane P. Wood, "Missing Judge Tinder," 49 Ind. L. Rev. 903, 905 (2016).

CTF: Let's talk about the process. I'm sure in some discussions in the robing room as well as maybe in circulations, you might have gotten the reaction "where did that come from?"

JDT: Yes. In fact, each of the three judges on a panel prepares independently in getting ready for arguments. Unlike some appellate courts, we don't have a memo or memos circulated in advance about the cases prior to argument, and we don't talk about the cases in advance of argument, except in very rare instances, such as whether we will keep the same panel together on a case which may be a successive appeal. So for the most part, ordinarily, we would have no idea about how our colleagues felt about the cases until we started hearing the arguments. The first you hear of your colleagues' views is when you are sitting in the courtroom during the argument and a question or statement will be made by one of your colleagues. If the comment or question is not a matter that you were anticipating, you can be really surprised by it and wonder, "how did I miss that"

or "where is she going with this?" It does happen from time to time. It keeps you on your toes.

Something that the lawyers who are arguing cases may not appreciate is that the questions the judges ask of the lawyers are not only directed to the lawyers, but sometimes they are statements to their colleagues on the bench to let their colleagues know what concerns them about a case or where they may be in a case because it is the first chance they have had to communicate about it. Now that enables us in conference after the argument to have a pretty good idea of where our colleagues are and probably allows us to get to the point with less extended discussion because we have been able to hear our colleagues asking very pointed questions. Our court is a very active court and not shy about letting our impressions be known during the argument session.

I had a preview, of course, of what the appellate process would be like because I sat by designation on the circuit for two days in 1994. The process of allowing district judges to occasionally sit by designation was in place under I think Judge Bauer's chief judgeship at that

time, and that had historically been the case in the Seventh Circuit. But the program was not used for about a dozen years after that, and then resumed a few years ago under Chief Judge Easterbrook. But because I had been able to sit by designation for two argument days, I had a little preview of what the appellate court would be like. I sat on a total of twelve cases over two days. During that experience, there were several cases in which I had not anticipated an approach or line of questioning that a member of the panel had. When I came on some years later as an actual member of the circuit court, I quickly remembered that these surprises would sometimes happen. When I would get caught off guard like that, failing to realize that my colleagues might have perspective that came out of left field to me, I would need to catch up real quickly.

CTF: How difficult is it to be the one that has to give your views first?

JDT: Our custom in the circuit is that in conference we start with the junior judge and then move to the next more senior judge and conclude with the presiding judge who generally is the most senior judge of the three. The only exception to that is the chief judge always presides even if he or she is not the most senior judge. So, the most junior judge, which in most instances was me, speaks first on each case. Now my colleagues would say, "That's great John. You get to set the tone of the conversation." But it also means that you better well have your homework done and make sure you have gotten the right issues identified and that you explain your position in a way that makes sense to your colleagues. So, it certainly enhanced the need for very thorough preparation because I didn't want to get caught short particularly in a group like that. Our circuit is fortunate to have judges who do terrific preparation for arguments.

Occasionally, during argument, a lawyer would say something at argument to the effect, "Well, if you read the brief, or when you read the brief," and I was

always very amused because I knew that every one of my colleagues had not only read the briefs but had read lots of other things as well in preparation for argument. It's a group of judges that come to arguments and the conference very well prepared.

It's a challenge for the junior judge to carry his or her end of the load and I was sure glad to see David Hamilton come along a few years after I came to the Circuit because every now and then, I would get to sit with him so I wasn't the junior judge on the panel. It's a little more comfortable position to be able to say, "Oh, me too." (Laughter.) But of course, that's not how we do it. We each have our own independent views and we are not at all reluctant about expressing them.

CTF: I guess being the junior judge is a little bit like a law student who is going to be asked questions by each law professor in each class.

JDT: Yes, it's like getting called on every day. All day. And it was. Talk about the transition from the district

court to the court of appeals! As a district judge you could sit back and kind of keep your powder dry as the lawyers presented their arguments and then you can conclude the hearing by saying that I'll take this under advisement and then go out and get the thing figured out. When you're the junior judge on an appellate panel, there's no taking under advisement at the impression conference. You need to have a ready answer right there after arguments. So, it certainly kept me on my toes.

CTF: What I would like to do is talk to you a little bit about the judges whom you practiced before as a young lawyer and as your career developed.

Why don't we start with the longtime Chief, Bill Steckler, who at one time was the sole judge in the Southern District of Indiana. What can you tell me about Bill Steckler?

JDT: Judge Steckler was what I guess I would call a prototypical judge. He was the sole judge of the

Southern District from '50 to '54. He became a judge at a very young age, I think about 35, maybe 36 and so, he had only practiced law about 10 years before he became a judge. I think his practice had been mainly in utility regulation. It was not a litigation practice. By the time I came along, he had been a judge more than twice as long as he had been a lawyer. Judge Steckler was, at least on the surface, a very calm, deliberate and careful guy. He was very reserved, and would not often venture out to bar events or other social activities. About the only place you would ever see him would be in the courthouse. He wasn't the type of person that you might run into on the street, like, say, Bill Bauer. Judge Steckler was a very proper and formal guy. You had to go through a very formal process to get to see him. You had to make an appointment. You had to be screened by his long time loyal secretary Dorothy Murphy and the setting would be very formal. The idea of him just bumping into somebody at a bar event or something like that would be unheard of. He was very proper and his hearings would start on time. But you could never know how long the

hearing would go. (Laughter.) He was not really stringent about time limits and there would be a lot of back and forth. If a lawyer would make an argument against you, you had to counter that argument and get the last word in because you had the sense that the judge would go back and forth depending on what he had just heard in some respects. In Judge Steckler's courtroom, though, you felt like you would get a fair and balanced approach. He could be persuaded if you made good points. I never felt as though Judge Steckler started a case with an intention to head toward a particular result. He would hear both sides and would rehear and rehear and rehear. But that you were going to get a fair result, not a predisposed result. On the other hand, as a lawyer, it would drive you a little crazy because you wanted to get the thing done. You wanted to get the answer and move on and Judge Steckler was very deliberate. Very careful with his decisions and very cautious about the results that he would reach. He would be very concerned if his opinion would be appealed and what the outcome on the appeal would be.

Rumor has it that he also kind of kept track of the outcome on appeal of not only his cases but also the cases of his colleagues on the district court. It was said that he kept a copy of all of the opinions in which they got reversed, especially Judge Holder. I had the feeling that Judges Steckler and Holder considered themselves to be, to some extent, rivals. When Judge Holder came on the court in 1954, it was just the two of them until about '61 (when Judge Dillin was appointed) and, of course, Judge Steckler and Judge Holder were from opposite political parties. Maybe there was a little competition between them.

CTF: On Miss Murphy being very formal, I'm always reminded of the story of the guy that comes in with a shotgun to see Judge Steckler and Miss Murphy says I have to check to see if the judge is in and goes in there and talks to the judge. As the judge goes out the back door to get the Marshals, she goes back into her office with the guy. (Laughter.)

JDT: It is a true story. This was, of course, well before we had magnetometers, cameras and the extensive security of today. I don't know what decision Judge Steckler had made that made this fellow so angry, but he just wanted to see Judge Steckler with his shotgun and Miss Murphy calmly treated it like it was something that happened every day. She was able to keep the guy occupied until the Marshals showed up and escorted him off to the lockup. That was Miss Murphy. She was as steady as a rock and always made you feel like she was going to try to help you get to see the judge, but you knew you got pretty carefully screened by her. I think she treated every lawyer just as cautiously as she treated that guy with the shotgun.

CTF: What about Cale Holder?

JDT: Judge Holder had come from a very political background. In fact, I believe he had been State Republican Chairman in the late 1940s and early '50s. I don't know that he was ever a candidate for election

himself but he was involved with a lot of the Republican candidates. He and Senator Bill Jenner were quite, quite close. I guess you could say that they were part of the very conservative faction of the Republican Party. It was a group that was very strong and very loyal to its own. I think it included the Republican War Veterans after the Second World War. Cale Holder definitely was a member of that group.

CTF: And your Dad was very big in it.

JDT: My Dad was involved as a war veteran. In fact, he was elected to the Indiana legislature as a Republican vet shortly after returning from the War and was very active in the V.F.W. I think Judge Holder has also served in the War, and he was active in the American Legion. The story was, if you were a prosecutor, an AUSA, and you had a case in front of Judge Holder, if you were prosecuting a veteran who had been honorably discharged, you were going to have a tough time getting any prison time for that defendant. He did respect an

individual's military service. There's no question about that. However, if the person had been dishonorably discharged, he might not fare so well.

Judge Holder was a very active manager of his docket. The day a complaint in a civil lawsuit got filed, Judge Holder would read the complaint from start to finish, the very day it got filed, and it would get assigned a trial date that same day, the day of its filing. And he held true to those dates in virtually every instance. It was a very actively managed docket by the district judge.

You almost had the sense when you were in court for any sort of hearing or trial that Judge Holder was on the edge of his seat. He was right there ready to pounce on an objection or if you started to stray from what he thought the issues would involve, or what facts were relevant to those issues, even without an objection from your opposing counsel. Every now and then, Judge Holder might shout out, "Stop tracking up my record counsel. We need a good record here for the Court of Appeals and what you are doing there is making a mess

of this record." So you had to be prepared in the U.S. Attorney's Office.

We referred to Judge Holder, in a respectful way, as the Great American Eagle. We felt like he sat up there on a perch with his eyes sort of darting around the room to see everything that was going on and nothing passed his notice. That's what's so great about the portrait that was painted of him which now hangs in the courtroom where he presided. It was posthumously painted but it sort of captures that alert look that he always had. He ran a tight courtroom, ran things on time. If he said the hearing was going to take 15 minutes, it took no more than 15 minutes. It might be done in 10.

CTF: I think he wanted the appointment to the Court of Appeals. I may be wrong in this, and District Judge Lynn Parkinson got it from the northern part of the state, who was a friend of Congressman Charles Halleck, the power of the House.

JDT: There you go. Halleck and Jenner of course had different powerbases and Halleck was in the House and Jenner in the Senate. Some things they agreed on and others they didn't. Apparently, they didn't agree on that appointment. That was before my time. But Judge Holder certainly knew the political background and history of the lawyers who would appear in front of him and the parties, not that he needed to go out and do any research on it. He simply had a wealth of information that he had accumulated in his head over the years. That background was important to him.

CTF: What about Hugh Dillin?

JDT: Hugh Dillin had been a very successful trial lawyer from the Southwestern part of Indiana and a very successful politician, serving many years in the Indiana House of Representatives. He was first elected to the House while he was still a law student at IU in Bloomington. He later became Minority Leader in the

Indiana House of Representatives and after that, the Majority Leader in the Senate.

CTF: Wouldn't he have been angling to become governor back in '61?

JDT: Right. There is a story that at one point he made known or it was understood that he was a potential candidate for governor on the Democratic side when Matt Welsh wanted the nomination for the 1960 governor's race. At some point, according to legend, a deal was cut that Dillin would not run for governor allowing Matt Welsh to do it and then the next federal judicial appointment that came along would go to Hugh Dillin. And, in fact, after President Kennedy was elected, 2 new district judgeships were created for Indiana, one in the Northern District and one in the Southern. Supposedly, a second deal was cut so that the Indiana Senators, Homer Capehart, a Republican, and Vance Hartke, a Democrat, agreed that Dillin would get the

Southern District judgeship and a Republican would get the Northern District judgeship.

CTF: Judge Eschbach?

JDT: Right. That is how Judge Eschbach, a Republican, became a district judge during the Democratic Kennedy administration.

CTF: I had heard that Senator Hartke had been a roommate of Judge Eschbach's during law school.

JDT: Okay. Now that would fit.

CTF: And that President Kennedy had promised that he would appoint some Republicans to the bench but he picked a state that his Democratic ticket did not win in which to do that.

JDT: That's probably the better and more correct version. Judge Eschbach had been the U.S. Attorney

prior to going to the district court and then of course had a great career on the district court and went onto the Court of Appeals. So, he certainly was a role model for me. He was always very kind to me and I think he was a great judge.

So back to Dillin, on your question. After the great successes in practice and in politics, I suppose people kind of wondered whether the sedentary life as a judge would be enough for Hugh, but I've got to say from my experiences, he was a brilliant judge, a brilliant lawyer and maybe one of the smartest people I have ever run into in law. He had an amazing cleverness and could figure things out and how to do things quickly, better than almost anybody that I have ever met. You would never have the kinds of experiences in Judge Dillin's courtroom that you would have in Judge Steckler's courtroom, like the hearing going on and on and the back and forth. We sometimes in the U.S. Attorney's Office, again respectfully, referred to Judge Dillin as "Rifle Shot." He wanted to get right to the point. In fact, he would often say, "Cut out the wind up, give me the

pitch." Things moved along at a good pace in his court, but you better be ready coming in because you would not be able to flounder or meander your way to a result. You had to have your point in mind and you had to get to it. And sometimes if your point didn't agree with his point, he would sure let you know.

I saw him one time, I was prosecuting something like a probation or violation, I guess it was, and the unfortunate lawyer who was representing the defendant on the violation was making some argument to mitigate what had been done, the conduct, and Judge Dillin stopped him in midsentence and said "Sir, if you believe what you are saying, you really ought to quit the profession and go sell shoes." (Laughter.) It kind of mortified the lawyer but that was Judge Dillin.

CTF: I do remember though, that if he did not want to decide a case, that case was put on ice forever. I had to talk to him a number of times. The ones that I am familiar with are the ones that came out of the prison situation.

JDT: Well he had the Department of Corrections case involving several prisons that involved allegations of terrible conditions of confinement and maltreatment and medical practice and so forth and sometimes his cases lingered a long time.

CTF: What about Jim Noland?

JDT: Judge Noland was a very amiable person, very outgoing, liked the company of lawyers, and enjoyed a good story. He had lots of patience and was not nearly as active in the courtroom say as Judge Dillin or Judge Holder. He would be more laid back and let the lawyers make their case and so on. He was very decisive but you felt like you got to make your points. However, he probably started the trend here in the Indianapolis courthouse of trying to make lawyers think real seriously about settling before they would go through the rigors of trial. Judge Noland had a great way of bringing the lawyers aside and encouraging them to try

and resolve things on their own rather than go through a contested hearing.

CTF: Well his conference room was the nicest conference room I've ever seen. It looks like it came right out of Williamsburg, Virginia.

JDT: In fact, I think it was Judge Dillin who would say before they went off to judges' meetings in Judge Noland's office, "Well, I'm headed off to Williamsburg." It had a green felt tablecloth with brass candlesticks and a quill pen.

CTF: A chandelier.

JDT: A chandelier.
In fact, Jim Noland was the kind of guy who just had a knack for bringing people together and he had that ability. There were frictions on the court. It was said that only Jim Noland could get Bill Steckler and Cale Holder to sit down together in the same room. Only Jim Noland

could do that. And long after Judge Noland was chief judge, during Gene Brooks' tenure as chief judge, the judges' meetings would still be held in Jim Noland's conference room because it was known kind of as the place you went to make peace, sort of a neutral ground. That pretty much typifies Jim Noland. A good legal mind. He knew the benefit of parties resolving their differences because the parties could each swallow a little hard but come away with something, rather than the all or nothing results of a judicial decision. Judge Noland in many ways, I think, created a model for case resolution which has certainly been carried on by the magistrate judges in the Southern District.

CTF: My understanding at this time is that there was sort of a split among the judges in this period or whatever you want to call it. Dillin and Steckler lined up on one side, and Noland and Holder lined up on the other, which is kind of unusual since Noland was a Democratic congressman for about 10 years.

JDT: That was the appearance and I think the reality of it. Judge Noland had a political background on the Democratic side and successfully won a congressional seat shortly after the War. But I don't know whether it was his military experience or what exactly, but he and Holder got along much better with each other than Judge Holder did with anyone else on the court.

CTF: It might have been Judge Noland's ability to get along with everybody.

JDT: It could have been. I want to mention one other thing about Judge Noland. Each year, around Christmas, his secretary, Hilda Harvey, would prepare a meal for a judges' meeting held in Jim's conference room, a full holiday meal, served on china and all the trimmings. So, you can see why that conference room was always considered to be a special place.

CTF: You mentioned Gene Brooks. How did the balance of the court work after he joined the court?

JDT: Gene Brooks was appointed as the fifth judge on the district court in 1979 and that sort of gave Judges Dillin and Steckler a little more control than when it was two to two. Gene tended to line up with Dillin and Steckler on most issues. Judge Noland became the chief judge after Dillin, yet he was still able to run the administrative side of the court in ways that were compatible to both sides of that split.

CTF: What about the appointment of magistrate judges? Originally that was clearly a district judge's prerogative.

JDT: For a long time in the Southern District of Indiana, it had seemed to be the custom that a judge's courtroom deputy would become the clerk of the district when the judge became the chief judge. There was also a fair indication that the various magistrate judges got appointed by whichever judge had the most pull.

CTF: And that happened in previous existence with the referees in bankruptcy?

JDT: Pretty much the same process. But on toward the late '70s, early '80s, the Judicial Conference put into place a much more structured method of reviewing applicants for magistrate judges. A much more formal process was required which included screening of applicants by a "blue ribbon" merit selection panel, which would then make recommendations for appointment by the district judges. The applications had to be received in application form and included information that could be verified about the person's legal experiences and such, not limited to or not focused in any way on political background. Then the committee recommends the top three to five candidates for review by the district judges. The judges still make the ultimate decision on the selection but the qualifications of the candidates are pretty carefully tested by the merit selection panels. I think this process reduced, if not eliminated, the sort of political nature of the prior magistrate judge appointments.

I think we have seen a really high quality of individuals as magistrate judges from that point moving

forward to the point that we have seen several of the magistrate judges in recent years appointed to the district courts. I think that there has been a big improvement to the magistrate judge process. And I think it gives the magistrate judges a lot more credibility among the bar and public to know that they have been selected in a legitimate, professional way, rather than just through a political patronage method.

CTF: Before I get to my last question, why don't we talk about a few colleagues from the Court of Appeals. Let's start with Terry Evans.

JDT: Well, gosh, he is greatly missed. Terry and I must – we weren't separated at birth, but boy we had backgrounds that just meshed very well.

He had been a long-time district judge before he went on the Court of Appeals, and in fact, he had been on the Court of Appeals on a number of my cases over the years and frankly, I felt that I was always treated very fairly. He had a great appreciation for those

challenges district judges face that we have talked about and he had a very pragmatic approach. He was trying to get to the right result, a reasonable result and a result that could be understood. Terry was a wonderful colleague to have. As a colleague on the court of appeals, he was terrific because there were so many shared experiences and also the fact that he was a fun guy to talk with and play golf with made him an especially good colleague for me. We enjoyed getting out on the links a little bit and maybe sharing a beverage afterwards. My friendship with Terry was very similar to the friendship I had with Larry McKinney on the district court. I know Terry had great plans as a senior judge to lessen his caseload a little bit to have a chance to do some other things, including spending a lot more time with his wife and their children and grandkids. Unfortunately, that period didn't last long enough. He is sorely missed. He was a great colleague and friend. Frankly, his death was one of the things that made me start thinking about whether I should leave the court when I would become eligible. Terry really enjoyed the

flexibility that being a senior judge gave him, but his plans were cut short by his untimely death. It was part of what got me thinking about how I wanted to spend the time I might have ahead of me.

CTF: I would assume Terry was the better golfer. Is that right?

JDT: Why that's what Terry would have said! Actually, Terry was a pretty good golfer. He certainly was a fun guy to play with. I think if Terry were alive today, he would concede that I probably beat him on the average day, but we will let that rest with Terry in his grave. I won't claim superiority but I certainly enjoyed our competition. On a court, you're not really competing so we made up for it on the golf course.

CTF: What about Dick Cudahy?

JDT: Dick was − talk about encountering such intelligent people in this judicial system, he had such a terrific mind. When I came on the court in late 2007, I guess

Dick would have been approaching 80 about that point. His body aged, but his mind sure didn't. Right up to the end, he always very insightful and could get quickly to the point. His brilliance never prevented him, though, from being a very pleasant person. He was very welcoming to me when I came to the court. On the same day that I learned of his death, I received a note from him wishing me well in my retirement which he signed probably within a day or two of his death. Such a thoughtful guy. When he would disagree with you, he had the most pleasant way of doing it where he would say something to the effect, "Well, John, you might be right, but I think you overlooked this, this and this." And, inevitably, he would be right and I would be wrong. Just a great mind. A huge loss to the legal community upon his death.

CTF: What about Jack Coffey?

JDT: Jack came from a "hands-on" political background, probably much like Cale Holder and Hugh Dillin that I

talked about earlier. But Jack was a very independent guy from what I understand from his role in Wisconsin as an investigative judge earlier in his career.

CTF: The John Doe investigation.

JDT: The John Doe investigation of police corruption in the Milwaukee area. He made some fiercely independent and courageous decisions that put him in hot water with those he challenged. Jack believed in doing the right thing regardless of whose toes he might step on, and I think that independent approach was the key note of his persona. He had strong views, and by God, he would make sure those views got heard.

He was always very nice to me but, of course I heard stories about him being pretty tough on law clerks and judicial assistants. Maybe chewing a few heads off along the way, but on a personal basis, he was very nice with me. I know that there was some friction between Jack and a number of colleagues on the court, but that was before I came to the court.

CTF: Jack would call me, initially when he came to the court, he'd call me and then he would call two other people, and I thought he was second guessing me, and then I realized no, he second guessed everybody and he was looking to get the same answers from everyone. (Laughter.)

CTF: And I can also remember Jack being upset with me and actually at one time telling me that I lied to him and I said, "I didn't lie to you Jack." And I would guess it was not more than five minutes later that he calls back and doesn't say anything about the earlier conversation, and the sun was out, everything was fine. And on the judicial assistants, John, I didn't want to know their names, I didn't want to know their backgrounds.

JDT: You might get attached.

CTF: That's exactly right and I knew they were going to be gone. He was a tough guy to work for. So, I give

Kathy Engel a lot of credit, although she worked in the Chicago office and not the Milwaukee office.

CTF: Before I get to my last question, is there anything else that you want to put in this oral history?

JDT: It's been a great ride. As a young lawyer, I would never have imagined that I would get to do the things I did over the course of my career. I expected then that I would continue to be a lawyer for the rest of my career, trying to make a living doing whatever came my way, as most lawyers do. I had no grand plan. I assumed that I would always focus on litigation but I enjoyed working with clients, most clients, on other types of matters too. To imagine that I would get the opportunities to be a United States Attorney, a district judge and even an appellate judge would have been beyond my wildest dreams. It has been great. I have had wonderful associations with colleagues and staff, and terrific interactions and relationships with the law clerks over the years.

As a lawyer you maybe hire an associate from time to time but the relationship between a judge and a law clerk is a very unique thing where you have this fairly short term period in which you are catching someone just at the very early part of their career and you're watching them and helping them develop their legal skills, yet you are getting a lot of really good advice. You get the chance to see how an issue is viewed by someone who hasn't been grinding their way through the legal experience for years and years. It is very helpful to a judge to get that perspective. And I hope my clerks left their clerkships with significant insight into the litigation process, including a useful sense of how and why difficult decisions are made in litigation.

From that time together, you form really a lifetime experience where it's not uncommon that even today I'll get a call from a law clerk who has been out say 30 years now, and they are thinking of making a change in their career or doing something, and they still want to know what I think about it. Or vice versa. I'll contact them about something just to kind of run things by them. It's a

fabulous part of the experience. Of course, my working relationship with my career clerk, Meg Kent, spanned 18 years, so there was and is an even greater depth there than with the clerks who were with me a year or two. But for all of them, I watch their lives and careers develop and their families grow like they are part of my family. It is a very special relationship.

Working with the jurors was also a fascinating experience. As a trial lawyer you have a short-term relationship with the jurors. As a judge it's just a little bit different. And, I came to learn that while the lawyers, of course, respect the judge, the jurors are *crazy* about the judge. The jurors love the judge because that's their judge and for most of them it's the closest they will ever be in contact with a judicial figure, so the person on the bench represents for them what a judge is supposed to be. They listen to the judge very carefully.

CTF: And the closest they will ever be in contact with their government.

JDT: Right. They probably have never been up close and personal with a congressman or state representative, but here they're in that room with the judge for however long that case takes and that judge can do no wrong in their eyes. And any lawyer who they think is disrespectful to the judge, or who challenges the judge in some way, that does not sit well with the jury.

I always talked to the jurors afterwards, after the trials were over. Of course, I couldn't talk directly with them much during the trials except in giving them instructions. After the trials were concluded, we'd go back into the jury room. I'd take my law clerks back with me. We would sort of let the jurors vent a little bit and then maybe ask them a little bit about the case and they'd have questions for us about what we knew and so forth. Sometimes, I would give the jury the option of giving feedback to the lawyers who had tried the case. If the jury would want to do it, sometimes I would let the lawyers come into the jury room for a while, under my supervision, to hear what the jurors had to say, and to ask them a few questions. It was a nice opportunity for

the lawyers to hear directly from the jurors about their experience and their thoughts on the lawyers' performance. Usually, the only feedback a lawyer receives is the verdict, and that, of course, is more a reflection on the facts and the law, rather than the performance of the litigators. I think the lawyers appreciated the feedback, and the jurors appreciated the opportunity to be heard after so much time being forced to just sit and listen. I don't know if it made any difference, but I hung a framed newspaper article in the jury room that covered the time I served on jury duty on a criminal case in Marion County Superior Court in 1991. It was a short article, but it included a quote from the Superior Court judge saying he gave me the option to get out of serving given my busy schedule as a district judge, but I insisted on serving if the lawyers selected me. I hope that article sent the message to the jurors in my courtroom that I practiced what I preach when it comes to the importance of everyone serving jury duty if called. I also gave a quote for the article in which I joked that while sitting as a juror in someone else's courtroom,

I missed having the ability to call a break anytime I needed to use the bathroom. I suspect the jurors in my courtroom reading that article might have appreciated that sentiment as well.

Anyway, it wasn't uncommon that for long periods of time after the trial that jurors would stop back to see us, or send a Christmas card or a note. In fact, one of the early cases I had, one of the jurors was still in college at the time, and he came back several years later after he got his degree. I helped him get an internship in the Marion County prosecutor's office. He has gone on to become a federal agent and I still have lunch with him a couple of times of year. So, you develop these relationships.

It took me awhile to come to this practice, but I got to the point where after the jury trial concluded, I would pose for a photograph with the jurors and send a copy to each of the jurors. They really enjoyed that. And I enjoyed having that record of the group that had been together. As I say, you have those shared experiences. Near the end of my district judgeship, I had a unique

opportunity to reflect on the importance of juries in our justice system. I had the honor of co-hosting, along with Marion Superior Judge David Dreyer, a Japanese judge who traveled to Indiana to study our legal system and in particular the jury process. The judge was assisting with the implementation of a jury system in Japan. Since World War II, Japan had no citizen participation in the judicial system. As part of a judicial reform project, the Japanese legislature decided to include citizen participation in certain criminal trials by introducing lay judges. Lay judges comprise the majority of the judicial panel in trials of certain serious crimes. They do not form a jury separate from the judges, like in a common law system, but participate in the trial as inquisitorial judges who actively analyze and investigate evidence presented by the defense and prosecution.

Judge Goichi Nishino was conducting research on our jury system to determine what methods might be of use to Japan's new system. Part of the reason this was such a great experience for me was the opportunity to view our justice system through an outsider's eyes. He

was so impressed with the implicit message of the jury system: that no one is above the law, and a jury of ordinary citizens is more powerful than any entity or branch of government. He also seemed baffled by some of the differences between the federal and state trial systems. For example, he wanted to know why Indiana state trial judges define "beyond a reasonable doubt" for jurors, but federal judges do not. I did not have a good answer for him on that one.

As a side-note, Judge Nishino was in town during the entirety of the Colts' playoff run to the Super Bowl in 2007, and he attended the AFC Championship game. This is the first and only time the Colts have won the Super Bowl since arriving in Indianapolis. Perhaps the Colts' ownership should consider inviting Judge Nishino back to Indy next season, since he seems to have been quite the lucky charm for the team!

We haven't yet touched upon one of the best aspects of being a judge—the opportunity to conduct naturalization ceremonies. As a judge, there is no thrill greater than presiding over the ceremony in which new

citizens are administered the oath of citizenship. It is among the most important and uplifting duties a judge has.

My experience with lawyers also has been terrific. I've had some really top-notch lawyers argue in front of me over the years, including a then-young lawyer named Barack Obama once when I was sitting by designation on the Court of Appeals in 1994.[25] (By the way, as you might have expected, Mr. Obama was very good at oral argument.) But just to get to experience lawyers as they struggle through what they need to do in their cases and to have sort of shared experiences when you go through a trial, particularly the tougher trials, it creates a bond between the judge and the lawyers that makes for a great relationship and a little bit of understanding of our respective roles.

I tried to help young lawyers with their trial advocacy skills to the extent appropriate. Often, after a trial had concluded and the time for appeal had elapsed, I would invite a lawyer to chambers to discuss his or her

[25] Baravati v. Josephtal, Lyon & Ross, Inc., 28 F.3d 704 (7th Cir. 1994)

trial techniques. I tried to offer encouragement, positive feedback, and constructive criticism. I learned from my father that the law can and should be a noble profession, and I tried to pass on that lesson to the younger generation of litigators.

Of course, some of my lessons were a little more down-to-earth. A lawyer recently reminded me of an incident many years ago while he was trying a case in my courtroom. He was doing a fine job, except for one habit that was distracting me and the court reporter. I finally asked him to approach the bench, and out of the hearing of the jury, I asked if I could buy the change in his pocket. Every time he questioned a witness, he kept one hand in his pocket, jingling coins. He got the message, and after that, he found some other place to store his change!

One thing I did, which really made the trial process much more fun, was I enlisted the services of my courtroom deputy, Anne Perry, who happened to also be a great baker. She would bake cookies or pies and cakes and things like that and during the course of the

trial, when the jurors would take their breaks, I would invite the lawyers, and the lawyers only, back to my conference room. We would sit around and have some of Anne's cookies or whatever she had baked for that particular occasion. We offered coffee and we would talk about everything in the world except the case. It was surprising how that little process would bring the temperature down. The lawyers who were just spitting mad at each other, after you had sat down and had a cookie or a cup of coffee with the other side, it made the courtroom aspect of it a much more agreeable and civilized process. A number of lawyers have told me that was for them what made the experience a much better experience. So, as I say, it's been a great ride. There are many nostalgic things that tug at me that make me wonder whether I made the right choice to walk away, but I have, and I'm pretty excited about what the next phase will be. I hope there will be other contributions to make and that it will be useful for the legal community and for others. And I'm very grateful to all those who made this possible.

CTF: So let's finish this up with a question I always like to ask. That is, what makes John Tinder tick? What motivates you?

JDT: Well I'm curious about lots of things. It's pretty rare where I stumble across a subject and it doesn't get me interested somehow. And, boy, law is just a great place for somebody with a curious mind because you get deep into a subject whatever it might be. I remember a FERC case we had, Federal Energy Regulatory case. It involved transmission lines and so I started to learn a little bit about how electricity is transmitted and so forth. Absolutely fascinating. I loved digging into that, and when that case is finished, you move on. The next case I remember after that involved how the railroad system developed through the Midwest. There was lots of history involved in that, lots of political and economic decisions and so on. In law, there is an endless array of topics and subject matters. There are areas of expertise that you can dig into and it keeps your mind active.

I like to try and do things correctly. I like to try to reach a good result and a result people can live with. I like it when people treat me fairly so I try to make it a point to treat other people fairly. "Do unto others" is something that was drummed into my head at a really early age and it took. I suppose as I go through this transition away from the court life, I'm asking myself a lot about what makes me tick.

Accumulation of wealth or objects has never been a big motivating factor for me. I take great reward from trying to help other people. One of the things that I'm kind of eager about the future is that I hope I'll have opportunities to directly help people. As a judge you're helping the system and helping the system work right but you're not really helping one side or the other or giving some direct assistance to somebody. That's why the relationship with jurors was always interesting to me because I was actually dealing with real live people in a direct way. We ask jurors to do a very hard job in deciding tough cases. I was continually impressed at how seriously jurors took their jobs, and how they

struggled to try to reach a correct decision within the confines of the instructions they were given. I enjoyed that process tremendously. Don't get me wrong. Working on legal arguments in briefs and hearing arguments from lawyers was interesting as well. But working with juries was something that made the district court very enjoyable for me.

For the years I was a judge, I felt that I was helping the court system in a systemic way, but it was rare that I would feel that I was helping any individuals in a direct way. I do enjoy trying to help people do things that they cannot do for themselves. As a judge, I had to be a neutral; I was trying to provide both sides with a fair forum but I wasn't helping either side. Now I've got an opportunity to put neutrality aside and provide actual help to someone who needs and deserves it. That's a big motivator to me. I don't know exactly where or how I might choose to try to provide help to others. It may be a process of elimination; trying certain things until I find what fits best.

I think those are things that make me tick. Perhaps as I move away from this judicial role that I have been in for so many years, I will learn a little bit more about what makes me tick.

CTF: Thank you very much.

JDT: Thank you.