

REMINISCENCES OF

THE HONORABLE DAVID W. CRAIG

FORMER PRESIDENT JUDGE OF THE

COMMONWEALTH COURT OF PENNSYLVANIA

September 11, 2003

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MR. SCHUCKERS: This is Dan Schuckers, and I am the Prothonotary of the Commonwealth Court. I am in Pittsburgh in the chambers of Judge Dan Pellegrini, and today is September 11, 2003.

Today I am interviewing Judge David Craig, a former President Judge of the Commonwealth Court, who served on the Commonwealth Court from 1977 to 1994, the last four-and-a-half years as the President Judge of the Commonwealth Court.

Judge, thank you very much for being here, and we hope to be able to collect your reminiscences of the Commonwealth Court and give us a little bit of history of the Court so that if anyone wants to, in the future, pick up and do a history of the Commonwealth Court, your participation in the 17 years that you were on the Court would be an absolutely invaluable resource.

First of all, could you give us a

little bit of background before you came to the Commonwealth Court?

JUDGE CRAIG: Before I came to the Commonwealth Court, my practice was focused in Pittsburgh and Allegheny County. I began as a partner in the very fine firm of Moorhead and Knox. One of the partners was Congressman William

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Moorhead, a lawyer and Congressman, who was an outstanding Congressman from the Pittsburgh area.

Moorhead and Knox was a very fine firm. I was with them in the decade mostly of the '50's, and I really learned a great deal with them. I had been article editor of the Law Review of the University of Pittsburgh, and it was a good start for me because it was strong in corporate law and gave me a contact with the business world. That served me well because almost all of my later career was in the public agency area as an officer of public agencies, as an officer of the City of

Pittsburgh and as counsel heavily in the public development law with municipal, county and state.

After the 1950's with Moorhead and Knox, I benefited by the influence of the late Judge David Stahl, a very wonderful judge who had been serving as City Solicitor for the City of Pittsburgh in the '50's. When he was tapped to move on to become Attorney General, and Mayor Lawrence was elected Governor of Pennsylvania --

MR. SCHUCKERS: That would have been 1958, as I recall.

JUDGE CRAIG: Yes. David Stahl, my good friend, went on to be Attorney General.

Apparently David Stahl was influential in recommending to Mayor Barr that I take over -- it was about 1960. I don't have the exact date. But I'm sure at the recommendation of David Stahl to Mayor Joseph Barr, I was named to step in at the top of the City Law Department as City Solicitor. I

enjoyed that job very much, and that, of course, gave me my initial taste for public law and particularly for municipal law.

Working with Mayor Barr was a pleasure. There is a recent book out, and I don't know if you have run across it. It is called *Malice Toward None*. It is a story of the term of Mayor Barr as Mayor of the city of Pittsburgh, and the emphasis is on his non-vitriolic manner of conducting politics, his friendly manner. He is one who said he always enjoyed his work as a Pennsylvania State Senator more than his executive role as Mayor of Pittsburgh. But in both positions he was not one to fight with words or otherwise with his critics and appointees.

MR. SCHUCKERS: As I recall, he had been a state Senator in Harrisburg in the 1950's, I believe.

JUDGE CRAIG: Yes, and a very well-

regarded one. This biography of him is by a newspaperman whose name will come to me in a minute. It really, really describes how well it was. I was given a free hand to make changes in the City Law Department, and it was just a very enjoyable and very stimulating indoctrination into the public role.

When Governor Lawrence's term ended, David Stahl went with him to Washington for awhile. When that was over and David Stahl was able to return to Pittsburgh, it was obvious that it would be a great thing to get him back as City Solicitor. That was a time when we kind of killed two birds with one occasion.

In order to provide a vacancy to bring him back as City Solicitor, I was moved out of the City Solicitor position to take over at the top of the Police and Fire Department as Director of Public Safety. Of course, that was in the middle and late '60's, a very exciting time to be in charge of police and fire and traffic planning and building inspection, and it gave me my taste not only for municipal law but for municipal administration.

MR. SCHUCKERS: Did you enjoy that experience?

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JUDGE CRAIG: Oh, yes.

MR. SCHUCKERS: It was very exciting, I'm sure.

JUDGE CRAIG: It was very exciting. In fact, we were fortunate that with a high-class police department, fortunately, with the unrest in mind and knowing it was coming, we adopted a strong gun control set of rules for our police department, with the strong support of James Slusser, the then police chief.

Pittsburgh had this unusual situation of the Director of Public Safety being a cabinet member of the Mayor but with a very comprehensive administrative involvement with police, fire, traffic planning and building inspection. In each of those departments we had the operating manager also, and Jim Slusser was the operating

superintendent. But he and I worked very closely together, and I was concerned with not just getting funds for the Department but also with its administration. And with the gun control policy we adopted and sold to the police personnel as individuals, it was good enough that we had no gunfire incidents during the so-called riots in the latter part of the '60's.

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I remember walking the streets with a very beloved Catholic pastor, Father Charles Owen Rice. Although we did have a disappointment in the last weekend of the unrest, we did have a number of fires and lootings set in the so-called Hill District of Pittsburgh. But again, no shooting, no gunfire battles, and we probably let down our guard a little bit. Things were going so quietly and so well with protest marches.

So that experience, and of course the strong backing of the Mayor all the way, gave me a viewpoint on municipal administration that was

meaningful, as I later returned to the area of municipal litigation as a lawyer.

I then moved out to a law firm of friends of mine, a law firm in which the partners were the two Baskin brothers: Phil Baskin, who was a city councilman in the city of Pittsburgh; and Seymour Baskin, who later became the president of a very prominent real estate development company, and still is from his now residence and headquarters in Arizona. So ultimately the firm became Baskin, Sachs and Craig, and it grew during the '70's.

MR. SCHUCKERS: Of course, you have a reputation of being one of the outstanding practitioners in the area of zoning law, municipal

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law. Was it during that period of time in the '70's that you really developed your expertise in zoning?

JUDGE CRAIG: Yes. I was Planning Law Consultant to some municipalities and helped draft zoning ordinances. I should say I really

became interested back in the '50's. While I was still with Moorhead and Knox, I was appointed by Mayor Barr as a member of the Pittsburgh City Planning Commission and, ultimately, near the end of the '50's became chair of the Pittsburgh Planning Commission. That also sparked my interest from that standpoint.

MR. SCHUCKERS: Moving up to the late '60's, 1970, when did you first hear about the creation of the Commonwealth Court, which, of course, opened its doors for the first time in 1970?

JUDGE CRAIG: I heard about it right away because of my close involvement with public law and immediately found myself in litigation before the Court.

MR. SCHUCKERS: Did you know many of the original judges of the Commonwealth Court?

JUDGE CRAIG: No, I hadn't known them before they were on the Court.

MR. SCHUCKERS: I'm thinking

particularly of Judge Kramer and the Dean of Duquesne Law School who later became Judge, Justice Manderino. Did you know them before?

JUDGE CRAIG: I had known some of them personally and by reputation, but that was all.

MR. SCHUCKERS: Of course, Genevieve Blatt became a Judge on the Commonwealth Court I think in 1971 or '72. I imagine you had known her previously.

JUDGE CRAIG: Oh, yes. Of course, she was very important to me when I came on the Court also. That common interest in the public administration and public law, with those early memories of the Court, got me off to a good understanding of the Court and a knowledge of its individuals.

MR. SCHUCKERS: Had you argued many cases in front of the Commonwealth Court during the seven years before you became a Judge of the Court?

JUDGE CRAIG: I'd have to check the records on that.

MR. SCHUCKERS: I would imagine you did some zoning cases in the Commonwealth Court.

JUDGE CRAIG: Yes, I had 19 cases in that period. I looked it up on Lexis recently. I

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also was a party to one of the early cases of the Commonwealth Court in my role as Pittsburgh City Safety Director; I was named as a party in a litigation. But all of the other appearances in my name are as counsel, in 19 cases. All of them were municipal land use control cases; one involved 17 different projects. So that represented a fast start that the Commonwealth Court got off to in its major influence not only in municipal law in general but in land use control law in particular.

MR. SCHUCKERS: You were appointed to the Court in 1977. Could you give us a little background concerning Governor Shapp's appointment of you and Judge MacPhail in 1977?

JUDGE CRAIG: Again, I don't say this

to pat Judge MacPhail or myself on the back, but that was an example of a merit selection process that could well be a model. Because I guess of the newness of the Commonwealth Court and when the Legislature, because of the booming business of the Court, increased the size of the Court from seven to nine, and that legislation said that the Governor should appoint two new members not of the same political party, the Governor set up a merit commission. And it was a merit commission. The

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persons on it were people from the fields of education and business. They were not in any way political hirelings or under the political control of the Governor. They were people who had broad experience. So after one breakfast discussion with my wife, I decided to appear before that group, which Judge MacPhail also had appeared before.

MR. SCHUCKERS: Had you been encouraged by friends to do this?

JUDGE CRAIG: Somebody may have mentioned it. Of course, it was very interesting to me, and the Governor made it easy. I didn't have to worry about -- I say "worry". I didn't have to engage in the political process. I'm not putting the political process down. In other words, I didn't have to hunt support at that time around Harrisburg and so forth. I did have some help in the fact that the Governor's house counsel at that time was a former member of our Baskin, Sachs and Craig law firm, so I had a personal recommendation there, and I must confess I have to dig for his name. But that was the Governor's house counsel.

MR. SCHUCKERS: The confirmation process was very short then.

JUDGE CRAIG: Of course, the

benefit -- the reason I say it was an admirable process the Governor had -- is that the Governor's merit commission, that was formed because of Judge

MacPhail and I, recommended to the Governor three persons from each party, and with two positions to fill, it was up to the Governor to pick one Democrat and one Republican from each of those trios. I didn't involve myself and wouldn't have known how to involve myself with the behind-the-scenes process with the Governor, although I think I was fortunate that the Governor's house counsel knew me personally.

So the Governor appointed Judge MacPhail and me, who became immediate friends. We knew we would have to be ultimately campaigning together for election to a full term. It was just a great start, and I remember particularly all the judges on the Court were helpful and collegial in getting my feet set on the path, helping me to pull together a staff and quarters and everything else.

Judge Blatt was not only helpful in those ways, but also I'm personally eternally grateful to her for recommending to me a firm of osteopaths in Harrisburg, still operating, who conduct the finest annual physical examinations, medical examinations, that

you ever could have encountered. I couldn't begin to describe it, for me, a runner and a jogger, where you are given treadmill tests of your circulatory system, things like that, that Judge Blatt recommended to me. Restaurants, doctors, everything.

MR. SCHUCKERS: You started out with a very warm relationship with John MacPhail when both of you went through the process and were warmly greeted by the judges, particularly Genevieve Blatt.

JUDGE CRAIG: Exactly.

MR. SCHUCKERS: Do you have any recollections of Judge Bowman as President Judge and the type of style in leadership that he had?

JUDGE CRAIG: I do very clearly. It was very clear to see why he was initially tapped to become President Judge. He was a very, very fine administrator. He's probably from different political roots than myself, but that made no difference. I guess he was of a Republican extraction, but party never meant anything on the

Court, to my awareness.

It was clear to see he was highly respected, and it was his high rating by all the judges that commenced the process, the habit and the custom in the Commonwealth Court of at least giving preference for

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election of successive President Judges to the judge with the most seniority. It was in a way crediting the selection of President Judges more to the Court's influence on all of us than to the individual influence or political heft of the particular judge. I think that started that tradition.

MR. SCHUCKERS: In retrospect, do you have any strong feelings about Judge Bowman's inclination in that area in terms of the selection of the President Judge being done by seniority? Were you very much in favor of that? You said that was Judge Bowman's inclination. Having clerked for Judge Wilkinson, I know that was always his concern.

JUDGE CRAIG: As I say, the strong

precedent that Judge Bowman set as a respected President Judge, that principle was convincing in not only Judge Bowman's personal ability and skills and dedication and honesty, but also because being the first President Judge he had come to sort of embody and exemplify the collegial and non-political nature of the Court's internal relationships. I really think, without us consciously thinking about it, that became the habit of the Court because it reflected, in the first place, those originals who started the tradition of collegiality and encouraged

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its continuation, and it has meant so much.

MR. SCHUCKERS: One Judge I was always impressed with was Ted Rogers, and he also was an expert on zoning. I wonder if you ever had clashed with him over zoning matters.

JUDGE CRAIG: No. We were geographically too far apart for that. But certainly on those cases, the public development

cases that came before the Court, we enjoyed a lot of joint work on that kind of thing.

MR. SCHUCKERS: He had a substantial background in municipal law also, in Chester County near Philadelphia, and was also an expert in municipal law and zoning matters, land use controls, and I wonder if you had every clashed with him on any of those issues.

JUDGE CRAIG: No, I don't recall that. Of course, I had benefited, too, not only in my experience in the early '70's but also by my internal city administration experience in the '60's. For example, as city solicitor I was involved in managing the whole range of municipal law, not just land use controls, which is where my interest had begun with the Planning Commission in the previous decade.

MR. SCHUCKERS: Going backwards a little. Had you had much experience in the '50's

and '60's arguing in the Superior Court those types of issues, municipal law issues? Because prior to the coming of the Commonwealth Court in 1970, the Superior Court would have had a lot of those cases. I just wonder if you handled many of them in the Superior Court.

JUDGE CRAIG: I'd have to check back on that. I don't recollect that I did. I think my emergence in the area of land use control in the '50's was as a member of the Planning Commission with the City of Pittsburgh rather than as a litigator.

MR. SCHUCKERS: Moving onto the 1980's now. Of course, Judge Bowman passed away in February of 1980, and there was the selection of Judge James Crumlish as the new President Judge. Do you have any recollection of Judge Crumlish as President Judge?

JUDGE CRAIG: Judge Crumlish, frankly, came from a stronger political, with a small p, tradition. But that was valuable because he recognized, as had Judge Bowman, too, and with

the fact that Judge Crumlish had been steeped in

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political experience, that it was important to the continued strength and growth and financial stability of the Commonwealth Court to make sure there was a meaningful and persuasive relationship with the Legislature, and particularly budget committee personnel. So Judge Bowman, Judge Crumlish and then I continued that relationship.

I'm not putting them down, but even though, at one time the Supreme Court itself said we don't have to bother contacting the Legislature, we are an equal branch of government. But after all, the Legislature was the one that made and passed the budgets.

MR. SCHUCKERS: That's right, they always had that control.

JUDGE CRAIG: The Commonwealth Court, being more pragmatic about public administration, established from Judge Bowman and Judge Crumlish and

myself a tradition of making what we hoped would be persuasive and well-documented presentations of our budget needs to the Legislature for the continued strength of the Court, which, after all, is a necessity.

MR. SCHUCKERS: Do you have any memories of any particular cases from the 1980's,

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any cases which were particularly notable in terms of developing public law?

JUDGE CRAIG: Yes. In my own area of land use control, I have felt that the Commonwealth Court, along with the earnest planners and citizenry of the state, has played a meaningful role in shaping the landscape of Pennsylvania and its economic growth.

The Boundary Drive case was one of the earliest. That was in 1984, affirmed by the Supreme Court in '85, and it affirmed agricultural zoning, which is a progressive thing because, after all, the rural

areas were less willing to undertake land use control.

So that Boundary Drive Associates case was very forward-looking in that respect.

Also, it was very important in the '60's -- well, it's always been very important, but in the '70's and '80's, the Commonwealth Court's involvement was in adjudicating the process of the fight against discrimination, against gender discrimination and against racial discrimination.

There was an interesting case I note, the Hartford Insurance case in 1982, where for a change it was the male sex that was discriminated against in being charged higher insurance rates than female drivers.

Probably the insurance business thought that made sense because males drove more and were likely to drive faster and so forth. But the Court decided that it was a discriminatory rather than a sensible policy and, therefore, affirmed the disapproval of that discrimination which the Insurance Commissioner had

disapproved.

Desegregation of public schools was a very important series of cases. The State Human Relations Commission vs. The Pittsburgh Board of Public Education dealt with busing cases in order to achieve proper racial balance among the schools, a challenge that faces the school districts, and the courts see them even today. The decisions by the Court in 1982 and that whole decade have continued to be important in that area.

MR. SCHUCKERS: As I recall, so many of those cases ended up going to Federal Court, and there is a lot of federal litigation throughout the whole country in that area of busing and racial integration of schools. From time to time, cases on that issue would come to the Commonwealth Court. For instance, I think it was 1972 or '73 we had the case of Human Relations Commission vs. The City of Philadelphia School District, and that case has been

going on now for over 30 years.

JUDGE CRAIG: The Commonwealth Court certainly has unique jurisdictional roots in public law. And I'm sure that a comparison among states, although I have never made this comparison, would show that the Commonwealth Court -- particularly with its original jurisdiction aspects, also being an intermediate court, would get, you might say, all the appeals at first blush -- has demonstrated a much more noticeable role of the state courts in the school segregation field, the school integration field, than the other states where it was left to the federal courts to get in there. And in Pennsylvania the Commonwealth Court was, if you will, if not a partner, a co-adjudicator along with federal courts.

MR. SCHUCKERS: Any other cases that jump out at you from the late 70's, 1980's?

JUDGE CRAIG: Could I move from the appellate cases to the original jurisdiction cases?

MR. SCHUCKERS: Go ahead.

JUDGE CRAIG: Which of course gets into another unique aspect of the Commonwealth Court

and one which I think was great, because as an appellate judge who had never served as a trial

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judge, it was a wonderful change of pace for me to have an opportunity to preside as a trial judge. Of course as you know, primarily a nonjury trial judge, to me, is a much more fascinating role as a judge to my taste, although I tried jury cases as a lawyer. So that was very important. Of course in my memo to you, I said, "Am I right in remembering that the Freach case was the only jury trial that the Commonwealth Court has ever had?"

MR. SCHUCKERS: I think we had one other one subsequent to that. In fact, Judge Mirarchi, a Senior Judge on Commonwealth Court, about two or three years ago had a huge case in Philadelphia in a jury trial that lasted I think nine or twelve months. It involved the fact there was a fire in the PennDOT building and the PennDOT building had to be razed, and there was an action by

the Commonwealth against various parties because there had been asbestos and various chemicals in the building. I think it resulted in a jury verdict of around -- I might be wrong -- 90 million dollars in favor of the Commonwealth. I think that's the second case.

But I know what you are talking about. Judge Mencer had a case in 1977. That jury

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trial lasted six or seven weeks, as I recall.

JUDGE CRAIG: Yes, that was the Freach case. I am interested in looking at that trial by Judge Mirarchi. I assume that was before the statutory amendment that largely eliminated tort trials from the Commonwealth Court.

MR. SCHUCKERS: This was an action brought by the Commonwealth and not against the Commonwealth. The Commonwealth had to knock down the PennDOT building because of all the fibers that were in the building and had been released by the

fire. So the PennDOT building could no longer be used.

JUDGE CRAIG: It wasn't a tort case, though?

MR. SCHUCKERS: It was essentially a tort case and it was brought by the Commonwealth, and of course they could bring it in the Commonwealth Court, and that's exactly what they did.

JUDGE CRAIG: You say they could bring it in?

MR. SCHUCKERS: Yes.

JUDGE CRAIG: I'd like to check that in relation to this 42 Pa. C.S. 761. I had

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understood they moved jury trials in tort cases away from the Commonwealth Court.

MR. SCHUCKERS: Any time you were to bring an action against the Commonwealth, you would end up going to the county. But the Commonwealth

would have the choice of coming to the Commonwealth or to the counties, and we always encouraged them to go to the counties because we are not equipped to handle jury trials. This is a time they did it and they stayed.

JUDGE CRAIG: Do you know the name of that case?

MR. SCHUCKERS: I think it is called PennDOT vs. U.S. Mineral. I would be glad to send it to you.

JUDGE CRAIG: No. I can dig it up off Lexis.

MR. SCHUCKERS: Commonwealth vs. U.S. Mineral I think it is called.

JUDGE CRAIG: Then the Morganelli vs. Casey case was a mandamus case where a DA was trying to mandamus the Governor to issue death sentence warrants. There was no factual dispute in that, that was mainly a question of law, and it wasn't a jury case. So it came to our Court en banc as

almost a stated question type of case. Our majority opinion, which I had the honor of writing, did require that the warrant for the imposition of the death sentence issue within a reasonable time before the Governor could enter upon a reprieve. In other words, the death warrant had to issue, and then the Governor can exercise his reprieve, which meant instead of holding it under the table, it meant the Governor would have a death sentence warrant issued, and then he would have to you might say face his responsibility of whether or not there would be a reprieve.

MR. SCHUCKERS: As I recall, Governor Casey, who was very reluctant to issue the death warrants and had very, very strong religious views in that area, during his eight-year administration I don't know if there were any, but there were certainly very, very few if there were any, death warrants issued.

JUDGE CRAIG: Our decision upheld the concept that the Governor could be mandamus to

issue them within a reasonable time. Therefore, he had a duty to carry out his gubernatorial duty and could not distort that duty by personal predilection.

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Then, of course, there was the Justice Larsen case involving an attempt for us to enjoin the Senate from conducting an impeachment trial of a Supreme Court Justice, and we held that we couldn't enjoin the Senate. They had a constitutional power to do that.

MR. SCHUCKERS: Absolutely. I often thought that the whole Larsen situation, which went on for two or three years, is worthy in and of itself of a good Ph.D. thesis or a good book in that area.

Of course, Judge Crumlish turned 70 in 1989, and we had an election for President Judge, and you became the third President Judge of the Commonwealth Court in 1990. I wonder if you have

any reminiscences about becoming President Judge.

Is it something you looked forward to at the time?

JUDGE CRAIG: Yes, I did, because I had reason to expect it because it was tradition of giving at least first preference on the basis of seniority. There were some reverberations, a contest, with respect to my selection, but it was really no more than that, and I had the benefit of that tradition.

MR. SCHUCKERS: As I recall, you were

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unanimously chosen as the President Judge by the other judges of the Commonwealth Court.

JUDGE CRAIG: Yes.

MR. SCHUCKERS: Do you have any reflections on being President Judge? Did you find it rewarding, did you find it frustrating?

JUDGE CRAIG: I have found it easier than my previous positions because it was one agency head position that I worked my way up, you might say

from the bottom, from being a new guy. That was a contrast from my experience in the City of Pittsburgh administration where I came in as City Solicitor, at the top of the Department, and then came in as Director of Public Safety, at the top of that Department.

MR. SCHUCKERS: Was the resistance when you became City Solicitor or Director of Public Safety because you were coming in from the outside?

JUDGE CRAIG: I was afraid there would be. I recognized that I had a burden to face in both those situations because if I slipped up or fell short, then the people working under me could justifiably say or suspect, "After all, what's he know? He hasn't worked his way up into that." But to my knowledge, that didn't happen.

In the case of the City Law Department, again, it was an area in which I had some competence, you might say. Also in the case of

the Director of Public Safety I had, in a sense, the cushion that although I came in theoretically as the boss of all Public Safety operations, I was the chairman of the board, so to speak, with respect to the police superintendent as the company president, he was the immediate administrator. Although during the riots I'd walk the streets with him and was very much physical, there was a tradition on police matters that the Director of Public Safety was the representative of the department that most commonly dealt with the news media and issued news reports and so forth.

MR. SCHUCKERS: When you were elected President Judge of the Commonwealth Court, you already had been on the Court for 13 years and you knew everybody and you worked your way up to that position.

JUDGE CRAIG: That's why in a sense it was a much easier transition than my two previous executive positions.

MR. SCHUCKERS: As I recall, you had an administrative assistant. Mike Cohen I think was

your administrative assistant during those years,
wasn't he?

JUDGE CRAIG: Yes. We will be seeing
Mike soon.

MR. SCHUCKERS: Did you find any
particular aspect of it frustrating in terms of
being President Judge?

JUDGE CRAIG: No, I didn't. I had
some administrative problems that had to be dealt
with: A senior judge who shall remain nameless but
felt he could perform a lot of his duties from
outside the state. I simply had to put my foot down
on that. That was rare and almost but not exactly
humorous, but certainly a rare kind of problem,
because working with our senior judges was also a
pleasure.

MR. SCHUCKERS: As I recall, they
were and are an excellent resource for the Court
because of their experience.

JUDGE CRAIG: Yes. It is a great

tradition.

MR. SCHUCKERS: I might be wrong on this, but I think we began to get senior judges about 1985 or '86, I believe. I think Judge Kalish from Philadelphia was one of the first senior judges

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that we got. At the present time we have five senior judges on the Court.

JUDGE CRAIG: In fact, when I reached the age of what I call the age of presumed senility, age 70, I was reaching it in '95, I did step down from the active position a couple of months early so that my successor could start right in the beginning of the court term.

MR. SCHUCKERS: In September?

JUDGE CRAIG: Yes. Of course since then I many times reflected on, "Gee, should I have tried to stay on as a senior judge?" Because I enjoyed the subject matter so much, I enjoyed the collegiality of the Court, and there is a lot to be

said both ways.

MR. SCHUCKERS: Judge, do you have any reflection on working with the Legislature or the Supreme Court or the Superior Court in your term as President Judge?

JUDGE CRAIG: Well, as I say, at one era the Supreme Court had a -- I don't know if you would call it a tradition, but was in the position of not working closely with the Legislature on budgets. But after that era, I worked very closely with the Supreme Court in participating in the

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budget presentation of the whole judicial branch to the Legislature and to the Legislature's budget committee.

I had a very fine public administrator, Aldo Colautti, who had been executive secretary to Mayor Barr during Mayor Barr's administration. He went on from there to become an official of the Ford Foundation and made his mark there. I don't know which came first,

his time with the Ford Foundation and he also served as Secretary of Public Welfare of Pennsylvania. Aldo has long been a good friend of mine and still is. He was just a good example to me of the idea of working on issues of merit with other agencies in State Government.

MR. SCHUCKERS: He was very helpful with budgetary matters, as I recall.

JUDGE CRAIG: Yes, he's a budget genius. In fact, in recent years he has served as budget consultant to the Pennsylvania Supreme Court and has just done a terrific job with that. He's now doing that not full time but as a part-time consultant with the Supreme Court, and he was my mentor in the common sense of doing that and doing it on the merits. I'm not saying there is anything wrong with political contact and political persuasion within the budget committees of the

Senate and House, because, after all, that's the way it is supposed to work. But he taught me that merit

and straightforwardness and detail and thoroughness is what counts in that kind of a budget relationship with the Legislature.

Very little contact with the Superior Court, because, as I note, our jurisdictions are mutually exclusive, so I just can't recall any operational joint contacts with the Superior Court that I remember.

Now, their personnel. God bless the habit in Pennsylvania, at least probably other states too, of having judicial conferences where all the judges, trial judges and appellate judges, get together to have meaningful discussion sessions and also group social times.

MR. SCHUCKERS: My experience in terms of any sort of relationship with the Superior Court is that if there is a conflict as to where a case should be jurisdictionally, it is usually resolved at the staff level, with discussions back and forth. Then if it is really troublesome, the President Judge might get into it and there might be discussion between the President Judges.

JUDGE CRAIG: I don't recall any.

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There may have been some, but I don't personally recall any jurisdictional question that became that meaningful to raise that bar in my time.

MR. SCHUCKERS: One of the things I wanted to mention to you and ask you about is the period of time you were on the Commonwealth Court and particularly in the period when you were President Judge, what technological changes did you see?

JUDGE CRAIG: There were a lot there. I think it was a very exciting time, because coming on the Court in the late '70's, the computer was just emerging into our use and vision, so that my experience on the Court saw that development in government as it was going on in business, and it started with the typewriter. In school I had always taken college preparatory courses, and my mother and my parents, who were wise, new Americans -- my

father came over from Ireland -- always said I was going to college and take college preparatory courses, but they always said, too, "David, you ought to take typing." That was very practical, but the other courses crowded it out, and I finally taught myself to touch-type on the porch of our house one summer. So I came to the Commonwealth

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Court at least able to touch-type. Of course I had great secretaries.

MR. SCHUCKERS: Of course, 30 years ago when the secretaries of the Commonwealth Court had to type a page, it was on the old-style typewriter, and if they made a mistake, they had to start the page all over again. Even if the mistake was on the last line, they had to start the whole thing over again.

JUDGE CRAIG: Exactly, because you can't file opinions with crossovers. That was very important.

My secretary, Peggy Harwood, later became the number two technical person after I left the Court. I had hired her from the Insurance Department of the State, and when she came in, she was very influential in bringing in the mag card writer. I don't remember the materials of that. It was a keyboard printer system using the magnetic cards as recording media and therefore began to introduce electronic flexibility to putting the printed word on paper. I think she was very influential in that.

As to these matters, I have been reminded by both of my two terrific secretaries, Peggy Harwood and Vicki Krawjewski.

Next came the IBM display writer that had the first screen that went with the keyboard. Then we introduced network systems where we had a server to serve the whole Court, into which the individual computers in the offices linked up. I'd have to go back to our technicians, like Peggy Harwood and others, to

know to what extent originally we had a network covering the entire Commonwealth Court system. I know that we soon did, because long before I was familiar with or at least long before I used the Internet and e-mail on the Internet, we did have internal e-mail within the whole Pennsylvania Court system, and that was great. We didn't call it e-mail then. We called it computer mail or something. It was great for conferring among members of the Court, but also as President Judge of the Court I could send internal electronic mail to the other courts.

My secretaries reminded me that in introducing servers and networking, UNIX was the original operating system, and then SAMNA was it.

Then again, I remember this term -- and it was very important to the collegiality and the Commonwealth Court's very important aspect which I would underscore -- "Every judge voting on every case."

One thing in this article I emphasize, and that's the docket track, which was a computer system

for court-wide communication on cases. Of course, we adopted fax machines, in my recollection, in Judge Crumlish's time.

MR. SCHUCKERS: In the late 1980's.

JUDGE CRAIG: Yes. In the 1980's?

MR. SCHUCKERS: Yes, late 1980's fax machines came in.

JUDGE CRAIG: Did it come in during Judge Crumlish's term?

MR. SCHUCKERS: It would have been from the mid 1980's to late 1980's, Judge Crumlish being there from 1980 to 1990.

JUDGE CRAIG: That's right. Wait a minute. His administration?

MR. SCHUCKERS: From 1980 to 1990.

JUDGE CRAIG: But he was President Judge before me.

MR. SCHUCKERS: Yes.

JUDGE CRAIG: You're right. I'm getting my terms of Judge and President Judge mixed up. Before my time as President Judge fax machines came in.

MR. SCHUCKERS: As you know, it's

been a great revolution in the whole technological area, and it's certainly had an impact upon the

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legal community, and particularly the Commonwealth Court.

JUDGE CRAIG: Amen.

MR. SCHUCKERS: Judge, since you retired from the Court in 1994, what have you been doing?

JUDGE CRAIG: I had a number of very interesting jobs. I was counsel for the Allegheny County Home Rule Charter Commission. In that period, at the end of the last half of the 1990's, there was quite a wave of home rule charters coming into cities, and I was counsel for Allegheny County's Home Rule Charter. I was an elected member of the City of Pittsburgh's Home Rule Charter Commission.

I guess immediately after leaving the Court, Lawyer's Co-op Publishing Company let me be

coauthor of their two volumes of their big encyclopedia, A Summary of Pennsylvania Jurisprudence, the two volumes on local and municipal law. I did that writing work.

I also was counsel to a Pennsylvania legislative reapportionment.

MR. SCHUCKERS: This would have been in 2001 as a result of the 2000 census.

JUDGE CRAIG: Yes, which was

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fascinating. I don't think there is anything more challenging than to deal with the legal aspects of legislative reapportionment, because that is such an important mechanism to maintain the most effectively, most truly representative government. Of course, political competitors will do what they can to get an advantage out of it.

MR. SCHUCKERS: Did you find that was one area, in dealing with reapportionment and taking those census figures, that has been really influenced by computerization, that they now have

the ability to move things around, because now they can look at districts and know exactly what is happening and what the voting patterns are, that sort of thing?

JUDGE CRAIG: Yes. It also means since that technology is available to everybody, including persons who might challenge reapportionment matters in the courts and so forth, that although it sometimes facilitates attempts at favoritism, it also provides the antidote and a mechanism, a tool, to ensure a genuine, representative outcome.

MR. SCHUCKERS: As you know, one of the cases that the United States Supreme Court has taken and

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will be argued sometime this fall involves Pennsylvania's reapportionment, congressional reapportionment. I think you had worked on legislative reapportionment. But it involves congressional reapportionment, and the issue was even though there was

zero deviation in the population in Pennsylvania's 19 congressional districts, there was a question about the political input in that reapportionment and whether that had violated the Supreme Court decisions from the 1980's. It is a very, very important decision, although it is amazing how they can now get it down to zero deviation in the districts.

JUDGE CRAIG: That makes it interesting.

MR. SCHUCKERS: I think you also had done some work in construction arbitration. Had you enjoyed that?

JUDGE CRAIG: Yes.

MR. SCHUCKERS: The reason I ask that, when you were on the Court before you became President Judge, I remember you had a fascinating case, a nonjury trial that went on for three or four weeks, involving the Department of Environmental Resources and a swimming pool over in Lebanon or Berks County and some gunite, as I remember. One of

my recollections is of you in your office looking up all the properties of gunite. It was a fascinating case and it went on for three or four weeks.

JUDGE CRAIG: In fact, I was involved in construction arbitration before I came on the Court. At some point the American Arbitration Association tapped me as a so-called national neutral. I think I was tapped on that shortly before I came on the Court, so that after I retired from the Court in late '94, I immediately returned to that work as a national neutral of the American Arbitration Association. I enjoyed that very much.

In recent years that work has fallen off, and I'm not quite sure why. I am told for some reason the construction arbitration being done by the American Arbitration Association has fallen off. I don't know, but I continue to be very interested in keeping my hand in that. Then, of course, when you are known as a "retired judge," and I haven't returned to any law firm or anything, you have a lot of opportunity to do pro bono work, and that's

great. I, for example, have gotten into 501-C-3 tax exemption work for nonprofit corporations, including one formed by my own church congregation to help senior citizens. So that change of pace is nice.

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Also, because of my long experience as a planning commissioner and a planning litigator and a judge in planning matters, I had maybe two or three or four cases in which I had been put on the witness stand as an expert witness in zoning cases. It is one of those rare instances where expert testimony on what are essentially legal propositions is admissible.

MR. SCHUCKERS: Have you enjoyed the cross-examination?

JUDGE CRAIG: Yes. Of course, in that area it has to be a pretty high level of cross-examination. Nobody needs to go after me on my you might say sexual habits or entertainment habits or what have you.

MR. SCHUCKERS: One thing you might want to mention is that you enjoyed the construction arbitration. As I recall, you had a background as an undergraduate in the engineering area or in the sciences. Was some of your background in that area as an undergraduate?

JUDGE CRAIG: Yes. In college I had a major in engineering.

MR. SCHUCKERS: Was that the University of Pittsburgh?

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JUDGE CRAIG: Yes.

MR. SCHUCKERS: You went to law school also at the University of Pittsburgh.

JUDGE CRAIG: Yes. I felt the engineering was a good balance for the strong dose of other subjects in college life, like language and so forth.

MR. SCHUCKERS: Judge, looking back on the 17 years you were with the Commonwealth

Court, are there any particular attributes that the Commonwealth Court has and maintained over the years that you would find particularly valuable if you were to advise somebody on another court on how they should proceed with matters, personnel matters, and how you would deal with various matters of judicial administration?

JUDGE CRAIG: The Commonwealth Court has been a pioneer in one area. Of course, in terms of quality, I never heard of a court that has such a tradition of collegiality on the court, and also a tradition of being a hot court. Of course, we define a hot court as one where every judge reads the briefs in advance of argument. But the Commonwealth Court is not only a hot court in that respect, but is a hot court in that every

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commissioned judge participates in every case. We still have seven-judge courts en banc, right?

MR. SCHUCKERS: Yes.

JUDGE CRAIG: With nine judges.

MR. SCHUCKERS: Right. And then we have the three-judge panels.

JUDGE CRAIG: Even when you are not on the panel or on the Court en banc, you still have a vote in terms of an objection or an approval. Our internal operating procedure is -- and I don't know of this of anywhere else in the country, and I have taught intermediate appellate judges in summer sessions in New York from all over the country and I have never come across this -- every judge, every commissioned judge other than a senior judge, votes on every case whether he or she is sitting on the case. If not in the case, a commissioned judge can object or not object, and if the objections would mean that the case would not have a true majority support of the Court, it's not filed.

This is what I call in my chronicle the "Full Court Press." It is just so important. I think that, frankly, in this history of the Commonwealth Court, the most beneficial thing for lawyers and judges elsewhere, and all other jurisdictions and all other

courts in Pennsylvania, too, is not only to appreciate the collegiality and the Commonwealth Court tradition which is enforced by the internal operating procedures -- and the Commonwealth Court was the first appellate court in the Commonwealth of Pennsylvania to have internal operating procedures and they were later adopted by the Superior Court -- I just think that that full Court vote is so important and would recommend the study of our internal operating procedures 252 through 256.

MR. SCHUCKERS: It is invaluable not only for judicial administration but just to explain to the practicing bar how cases proceed through the Court and how the Court is going to treat various matters when various motions are filed, or when the case has been argued, how it is going to proceed through the Court.

JUDGE CRAIG: And it protects the Court at any attempt at fancy dancing by counsel, because on a court where individual decisions, even

majority decisions, don't necessarily represent the viewpoint of the whole court, counsel is always going to be looking for a court en banc or a panel having a different potential majority. But on the Commonwealth Court, there is no use trying that

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because it won't work.

Also, when a judge has to vote or object or not object on every case, it keeps his or her education of the Court's subject matter as broad as possible and equally broad throughout the Court. I think that is so important, and frankly the greatest benefit of your history, that "Full Court Press," as I call it.

MR. SCHUCKERS: I always thought that one of the unique aspects of the Commonwealth Court is its jurisdiction.

You mentioned your background in public law in the 1950's and 1960's and even going into the 1970's. I don't know of any other court in the country

that is dedicated to governmental law or public law to the extent the Commonwealth Court is in its appellate jurisdiction but also the fascinating original jurisdiction cases we get.

JUDGE CRAIG: Yes. It should be a model. I think it hasn't turned out to be a model to other states, although I haven't surveyed all 50 states to find what is comparable. But I would think it would involve, in view of my continuous contact with Commonwealth Court personnel, if the replications of Commonwealth Court have grown up to

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other states, we would have heard about it.

MR. SCHUCKERS: It hasn't occurred. There's about 12 or 13 states which have two intermediate appellate courts, and but for Pennsylvania, almost all the other ones break down into civil and criminal.

JUDGE CRAIG: Exactly. I think Pennsylvania's division of labor works very well,

although it certainly has given our Superior Court a very heavy burden. I know in teaching appellate judges in the summer courses in New York, I met some intermediate appellate judges from all over the country, and there is no question although our Commonwealth Court has a very high number of opinions per judge per year, the Pennsylvania Superior Court has an even higher number. At my last count the Pennsylvania Superior Court was averaging over 225 opinions per year per judge, and I think it is probably higher now, because I think the Commonwealth Court's opinions probably --

MR. SCHUCKERS: I think we average 130, 140 at the present time, with the senior judges averaging probably around 90 cases per year.

JUDGE CRAIG: The National Judicial Administration that I worked for in summer sessions

in New York, which was a great experience because I was seeing intermediate appellate court from all

over the country, there is no question our Superior Court had the most opinions per judge of all.

MR. SCHUCKERS: Thank you very much.

I would like to point three things out.

Judge Craig has very graciously sent me an eight-page memo dealing with the history of the Commonwealth Court, which also will be included and attached to his reminiscences, and also two publications which will be attached to the reminiscences. One he wrote in 1994-95 for the Widener Journal of Public Law, and it's an article about the Commonwealth Court, about 50 pages. It is called "The Court for Appeals of Trials and Public Issues: The First 25 years of Pennsylvania's Commonwealth Court". Also, there is an article written in the same year, 1995, in the Duquesne Law Review, dealing with appellate court judges in Pennsylvania, 1969 to '94, and that also will be sent over to the Historical and Museum Commission.

Thank you very much for your time. We are so fortunate to have you. We are an unusual court dedicated to public law, and we are so fortunate to have somebody with your background in public law to be a

member of our Court. We really appreciate you taking

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the time this afternoon and letting us know your
reminiscences, and we will send them over to the
Historical and Museum Commission. Thank you very much.

JUDGE CRAIG: I really missed it
after I hit the age of presumed senility.