

REMINISCENCES OF

THE HONORABLE GLENN MENCER

FORMER JUDGE OF THE

COMMONWEALTH COURT OF PENNSYLVANIA

July 8, 2003

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MR. SCHUCKERS: Today is July 8th, 2003, and this is Dan Schuckers, the Prothonotary of the Commonwealth Court. I am in the home of Judge Glenn Mencer, one of the original judges of the Commonwealth Court from 1970 to 1982. We are in Smethport, Pennsylvania, and the Court tomorrow will be having a special session in Smethport of six or eight cases to be argued before a panel of the judges of the Commonwealth Court.

I'd like to take this opportunity to thank Judge Mencer for inviting us into his home, and to discuss with him his background and some of the background of the Commonwealth Court and his memories of the Commonwealth Court.

First, Judge, you had a distinguished career before you came onto the Commonwealth Court. You had been district attorney here in McKean County and also a Judge here for how many years?

JUDGE MENCER: Almost six-and-a-half years.

MR. SCHUCKERS: When did you first hear about the creation of the Commonwealth Court?

JUDGE MENCER: I think I read something about it in the newspapers during the winter of '70, but I didn't really pay much attention to it. I was on the

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common pleas court here, and it didn't seem to concern me too much. But then I got a phone call from the Governor's office on a Saturday, and if my memory's right, it was the 19th of March, 1970. I haven't checked a calendar. I have not gotten Alzheimer's yet but I have what they call half heimer's, so I'm not sure of the accuracy of some things as far as dates. But my family was all gone; Hannah was working at that time, and the kids were off somewhere, and I was alone at the house.

And the fellow said the Governor was calling, and I thought that it was a friend playing a practical joke and I almost hung up. But I thought I would see what it was all about, and shortly thereafter the Governor came on the line and he asked me how the

weather was up here, and he was very congenial and pleasant, and he informed me of the nature of his call, which was whether I would consider taking the seat on the Commonwealth Court. I said I know they are forming this Court but I don't know much about it, and so I asked him a few questions.

I didn't know what I should inquire about the Court, and the first question I don't know why I asked him, I am almost ashamed: What does the job pay? I don't know why I asked that. I guess I was mercenary.

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But as I remember, he said it would pay I believe he said \$35,000. Then I already knew what the next question was, I asked him would you have to move to Harrisburg? Well, he said he didn't know. He said that was a good possibility, there was a movement afoot in Pennsylvania to have the new appellate court headquartered there, and he wasn't sure how to give me that answer.

Then we talked briefly about the Court; I asked him about the jurisdiction, who was going to be on it, and he told me some of the people who were going to

be on it. I later found out what had happened was, that they all had the general agreement on Judge Bowman; he had some work in this area in the Dauphin County Court, and both parties felt that he was the proper man to head up this new court. Then it was agreed among the political powers that Mayor Lawrence, I think he was the mayor in Pittsburgh then, he was at least a political leader there, and he was to get the appointment for one. And then I think the mayor of Philadelphia --

MR. SCHUCKERS: Was it Mayor Green?

JUDGE MENCER: No.

MR. SCHUCKERS: Mayor Tate?

JUDGE MENCER: No. It was Dilworth. He was to get an appointment. And then the American

AFL/CIO had quite a lot of influence with the Democratic party, they were going to appoint their man. The Governor had also promised one seat to Roy Wilkinson because he admired Roy a great deal. And then Bill Meehan of Philadelphia, he was to get an appointment. And the Governor thought that the Court would get off to

a better start if they had a representative either from the northeast or the northwest. Then I found out that several people had been offered this job but none of them accepted, they had turned it down, and he was running up against a deadline because the Court was originally to be started January 1, 1970, and here it was March 19 and the Legislature was going home and recess, and if they didn't get these appointments made the next week, they were going to lose the opportunity until fall.

So how my name came up, I don't know.

But I had been active in the Young Republicans, and among the people active then was a fellow named Bill Sennett, who was then Attorney General for the Governor, and I always accused him of mentioning my name as a possibility, and Bill was always ashamed to admit he had anything to do with that appointment; he always denied the fact that he did. But nevertheless, somebody must have thought a judge up in northwestern Pennsylvania

maybe would take it.

Anyway, after I found out who was on the

Court, I said to him this is something I want to think about a little bit, how much time do I have? He said, well, I can give you until tomorrow afternoon. He said I am really under the gun for time and I want to send these names as a group to the Senate Monday morning to see if they can be confirmed. He said if you can't do this or won't do it, I have to try to find somebody else later on Sunday. So I talked to my family about it, and nobody seemed to object, except my mother. She thought I had a perfectly good job where I was and I should stay put. But Hannah, my wife, and my father and my children all thought that it would be all right.

I think that the thing that swung it for me, that I felt if someone up in this neck of the woods got a chance to be in a state position and turned it down for any reason, that it would be very difficult the next time somebody from this area wanted to be considered. The other thing is, I would always wonder what would have happened in my life if I had not taken the job but turned it down instead. So I called him Sunday afternoon and told him I would take it.

Monday, I believe it was the 21st of

March, he sent the names over to the Senate and they

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were confirmed that day, and that was done. I was on the Court. However, the next day was Tuesday, I got a call from Bill Sennett, and he said when the Governor campaigned for office, he had promised the Legislature and the Pennsylvania Bar Association that he would not submit a name for the Appellate Court position unless he first had the candidate go before a committee of the Pennsylvania Bar Association for appraisal. He said, I know this is a foolish request because you have already been confirmed by the Senate and the position is yours. But he said the Governor feels if you want to meet with the bar committee, that he would feel a little more able to say that he tried to comply with the agreement and he wouldn't be quite as much embarrassed. So I said sure.

So I drove down to Hershey on Friday, Friday after the Monday I was appointed, and met with the committee of the Bar Association down there, and they were kind of embarrassed and I was kind of embarrassed because everybody knew that what had happened had happened, and no matter what they thought

about me or I thought about them, it wouldn't change a thing. And we had a very nice meeting, and I assured them I would try to do a good job, and they just politely listened, and I came back home, and we had gotten the Governor off the hook a little bit.

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MR. SCHUCKERS: Just to backtrack a little bit, I think you mentioned former Mayor Lawrence from Pittsburgh. I think it was probably Mayor Barr at that time.

JUDGE MENCER: Maybe it was.

MR. SCHUCKERS: My understanding was that Governor Shafer and the Republicans for this new seven-member Court had the ability to appoint four and the Democrats had the ability to appoint three. Is that your understanding?

JUDGE MENCER: Yes. But both sides agreed on Judge Bowman, so that meant by agreeing on him, there were six positions left and they divided it so the Republicans got three and the Democrats got three. But then Bowman being a Republican, that created

the 4/3 that had originally been agreed upon.

Just one thing more about that comment.

Judge Harry Kramer had been a Judge of the Orphan's Court of Allegheny County in Pittsburgh, and the party had talked him into relinquishing that job and running for mayor, and he would have been a great mayor because he loved the city. But he ran and I believe lost to Pete Flaherty. So he was off the bench and out of the circle, so when it came time to exercise the appointment of Pittsburgh, they felt obligated and they wanted to

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give him the position in this Court. And Lou Manderino was the Dean of Duquesne Law School, and of course Alex Barbieri was Meehan's appointment, and Roy Wilkinson was pretty much the Governor's appointment, and I was kind of a bottom-of-the-barrel appointment. But they had this time problem.

But Crumlish, the story on Crumlish was, his father was a very good friend -- I thought it was Dilworth, but it might have been somebody else. The fellow who was very prominent in the Democratic party wanted to do something for Jim's father, and he felt

this was the last chance he had to do it, so he had appointed Jim to this Court, to sort of do what he wanted to do and fill out that personal wish of doing something for the Crumlishes.

MR. SCHUCKERS: I think I am right in saying, didn't Judge Crumlish, or Jim Crumlish at the time, run for District Attorney, and wasn't he beaten by Arlin Specter, and that would have been the late 1960's?

JUDGE MENCER: Yes, he had. So that's how the Court got started. We had our first meeting on April 1st, 1970, and we didn't know each other, most of us didn't, and we met in Harrisburg, and we just sort of kind of got acquainted. Then it was agreed that due to the organization of work, that it was sort of a

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committee as a whole, there was only seven of us, so we would each take an assignment to do something and report back every Monday of what we had been able to do, and we did that.

One of the things I remember, I believe the Legislature had appropriated \$800,000 to organize

this Court. Jim Bowman, who was rather thrifty, he did certain things that helped. First of all, we had prison-made furniture. Our desks, everything, were things that prisoners in institutions had made. They wanted to put in an air conditioning system, and this was going to cost 3- or \$400,000, and he thought that was outrageous. As a result, we ended up with individual air conditioners in the windows for each office. Instead of having a system for the whole floor, we had an air conditioning unit for each office. As a result of that kind of thinking, we were able to return more than half of the appropriation to the Legislature. I believe it was in excess of \$400,000. So that gives you some kind of idea of what kind of thinking motivated Judge Bowman.

MR. SCHUCKERS: As I recall, you were housed in the sixth floor of the South Office Building.

JUDGE MENCER: Yes.

MR. SCHUCKERS: What did that look like

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when you first walked in there?

JUDGE MENCER: Some offices were in

there, but they had to remove some of the things to prepare for us, and it was pretty barren. It was almost starting from scratch.

That leads me to another thing. When the Commonwealth Court Act was passed, I believe that the Legislature thought they wanted to have some control over it, so they stated in the Act that we couldn't spend any money or make any decisions unless the Supreme Court of Pennsylvania had authorized them. One of the first things that President Judge Bowman wanted, he wanted a Prothonotary, he wanted somebody to help him organize the Court. We decided that we would fill that position, and of course the question came up with how much we would pay that person, and it was agreed to pay him \$30,000. We submitted a request to the Supreme Court to approve of that position being filled and that's how he would be paid, but we never got much of an answer, we always got put off.

That went on and on I would say for three months with nothing happening, and Jim was tired of making all the details, working it out himself. It got so bad that every one of the original members of the

Court was assigned some Justice of the Supreme Court to

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go and talk to them about this problem. I know I got to go see Justice Roberts because he was up in Erie and I was the closest one to him. Finally the answer came back that the Supreme Court would not approve this position being filled at a salary of more than was being paid to the Superior Court Prothonotary. That seemed fairly reasonable, but then of course the next logical question was asked: How much does the Superior Court Prothonotary receive? And we were amazed at the answer. The response was: We do not know.

This was a situation where the Supreme Court was telling us we couldn't pay more than the Superior Court but they didn't know how much the Superior Court paid. That made Jim a little upset, and he had a lot of friends in the Legislature, because he had been there, and Harry Kramer had a lot of friends in the Legislature, and between the two of them they went to the Legislature and got them to amend the Act so we could have our own budget or our own control over finances, our own decisions in Court just like the other

two courts in Pennsylvania had.

We were not going to be a stepchild and we could function as a court just like they did. But that was interesting when we found out we could only pay what the Superior Court did but they didn't know what

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the Superior Court paid.

MR. SCHUCKERS: Did that process go on for months until that was finally resolved?

JUDGE MENCER: I think it was finally resolved in about September. It was at the end of the summer I think.

MR. SCHUCKERS: The reason I asked that, because I had heard in the meantime Judge Bowman was trying to attract candidates for the position of Prothonotary, but one of the things that held things up was no one knew how much it paid.

JUDGE MENCER: That's right, nobody could find out.

You asked me of my recollections on the establishment of the Court. I think it was a necessary

improvement. The Court took jurisdiction away from the Superior Court and initially from the Supreme Court and helped their work loads, and I think it served a real function. And as proven over the years, I think it is a very valuable Court and tool in the administration of justice in the state. So I always felt it was a good move.

I have talked and touched on the confirmation process, in my case anyway.

MR. SCHUCKERS: I think you were one of

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the few people who was confirmed and then went through the process. I never heard of that before.

JUDGE MENCER: I know. I am afraid my life has been full of unusual firsts.

MR. SCHUCKERS: Did you know Governor Shafer before you were appointed?

JUDGE MENCER: No, I did not. I did have one connection, which is somewhat remote. I never met Governor Shafer and I don't think he ever met me. However, he was a classmate, I believe, at Allegheny College with my brother-in-law, and I think my

brother-in-law and the Governor were good friends. I do not believe that my brother-in-law spoke to Governor Shafer on my behalf. He may have once in a past conversation referred to the fact he had a brother-in-law who was a judge. As I say, I think Bill Sennett is the fellow that laid the groundwork, not my brother-in-law. My brother-in-law, who was Robert Sherman of Meadville, Pennsylvania, was a friend of Governor Shafer, but I didn't know him and he didn't know me.

MR. SCHUCKERS: Just for the record, Bill Sennett was the Attorney General under the Shafer administration; he was from Erie. I have talked to people in State Government who knew him and they said he

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was an outstanding Attorney General.

JUDGE MENCER: I liked Bill very much from the days of the Young Republicans; I was very fond of him, but he would never admit he had anything to do with this. I don't know if I could prove otherwise. So that's the story of how I got on the Court.

Of course, I agree with the leadership of both parties. Jim Bowman was really the logical person for the job of being the first President Judge of the Court; he had the administrative duties and the skills; he loved the law; his forte was procedure.

He always started off in the early days of court by asking lawyers, What gives you jurisdiction to be in this Court? Even when the lawyers were not challenging that themselves, he always challenged them. Of course, that led to one of the great sayings of all time. We had an argument one day when a lawyer was not doing very well in getting results from the bench, so finally the lawyer kind of threw up his hands in disgust and said, well, that is all I got to say; he said, I just want this Court to do what is right and fair and just by me; that is all I ask for my client. Judge Bowman said, We are not interested in what is fair and just, we are only interested in what is law. That became such a well-known saying, that his sister-in-law

crocheted a plaque for him and hung this on the wall of his office. I often thought of that: We are not

concerned about what is fair and just but only what is the law.

MR. SCHUCKERS: You mentioned President Judge Bowman being such a stickler on procedure. As I recall, he was also a stickler on jurisdiction. My favorite story in that respect is the time he asked an attorney how he got there. By that Judge Bowman meant what jurisdictional vehicle allowed him to come here, and the attorney said something to the effect he came up the Turnpike. It isn't exactly what Judge Bowman was looking for. But he was very much a stickler for jurisdiction and procedure.

JUDGE MENCER: He was also a stickler for the Court having priority over everything else in your life. I recall when my oldest daughter was to graduate from high school, I went in to ask about two weeks beforehand whether I could be excused from Court for a period of about an hour and a half, two hours. In those days the air flight from Harrisburg to Bradford and back to Harrisburg was pretty dependable. She was graduating on a Monday night, and my thinking was that I could attend Court on Monday and then I could catch the plane

and get into Bradford in time to go to graduation

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exercises, and then I could take the plane back in the morning and I could get to the courthouse in Harrisburg at about 11:00. I thought it was an en banc court of seven, and that wouldn't cause much damage.

Well, he didn't think much of my request, but he finally said, well, if you really think it is important and you have to do it, yeah, go ahead and do it. Then about two years later Judge Rogers who had come on the Court, his daughter was graduating from college, and he asked Judge Bowman if he could have off to go to graduation, and Bowman told him no, he couldn't go. Rogers always hated himself because he acquiesced in Bowman's decision and he didn't go and he missed the college graduation of his daughter. In later years he said if he ever had that decision again, he would never make the same decision, and he felt very bad about it.

Jim Bowman, who didn't marry until I believe he was 51, family was not the same as it was for the rest of us. The Court really came first. I think it was Brandeis who tells the story that one of his

clerks asked if he could have time off to get married, and Brandeis said, well, if you think you really have to. He reluctantly gave him time from the job to get married. That fits in with Jim's philosophy of the Court. I thought he had a brilliant mind, and he was a

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very fair person, and it was a pleasure to serve.

MR. SCHUCKERS: As I recall, Judge, administratively he pretty much ran the Court, but every judge had duty week once every six weeks and had to go to Harrisburg for duty-week assignments.

JUDGE MENCER: Yes. You asked about interesting cases during my tenure. I think one of the times I was about as proud of the Court and was about as happy as I could be is when we had the constitutionality question concerning the first state income tax in Pennsylvania and it was challenged under the grounds of uniformity. We heard argument, specially expedited argument, on Monday, May 17th, 1971, and that was in Harrisburg.

Then afterwards we had a preliminary

conference, and the case was assigned to Judge Wilkinson to write, and the rest of us went home to our respective bailiwicks. That was May 17th. On May 20th, three days later, we filed four opinions, I believe, from various parts of the state, flew them down by airplane -- plane service was excellent in those days. Judge Wilkinson wrote the majority for the Court. It was a 5/2 decision. President Judge Bowman dissented, I dissented, and Judge Kramer wrote a concurring and dissenting opinion but basically it was a concurring

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opinion, and the case went up to the Supreme Court.

It is one of the interesting cases of our Court, in 444 Pennsylvania 38, the Supreme Court reversed, and they said the dissenting judges were correct in the matter, and they threw out that act. Then the Legislature had to pass another act that would meet the objectives of the first act. But we did all that in three days, we gave it some serious thought, we wrote four opinions, we consulted among ourselves, we shipped these opinions all over the state, and to me that's kind of amazing we were able to do that important

work in such a short amount of time.

MR. SCHUCKERS: As I recall, the issue there was the progressive state income tax which was passed by the Legislature at the behest of the Shapp administration in 1971, and when that was struck down, a flat tax was passed a few months later I believe.

JUDGE MENCER: Yes, it was challenged on the grounds that it was in violation of the uniformity provisions, Section 1, Article 7 of the Pennsylvania Constitution. It was a very interesting decision.

Anyway, I was very proud.

As I get older and I am that much further from the work of the Commonwealth Court, my memory isn't very good anymore. A couple of the early cases that I

thought were important that I do remember, there was a case in Volume I, page 552. It really wasn't a case, it was a matter that came before President Judge Bowman involving a preliminary injunction. He held in that opinion, Barnes and Tucker vs. Commonwealth, Volume I of the Commonwealth Court Reports, page 552, he held that a

preliminary injunction may be granted even though irreparable harm is nonexistent when calamitous results will flow with danger to the public and necessary under modern conceptions of the need for environmental protection. I believe that was almost a new thought.

Then he followed up with a case that had been argued in Federal Court, and he followed it up in an opinion in Volume IX of the Commonwealth Court Reports, page 1, in which he held that the people who owned the property at the time were not liable under the facts. The Commonwealth, it involved a mine --

MR. SCHUCKERS: That was in the Johnstown area, as I recall.

JUDGE MENCER: Yes, it had flooded with water, and there had been some pumping by the Commonwealth, and yet they wanted the property owner, which was then by that time Barnes and Tucker, to be responsible for it, and he held that under the peculiar facts of this case, that Barnes and Tucker were not

responsible, and he found in their favor. But it is a very well-written case and a very interesting case.

One of the cases that I always thought was kind of important was another case found in Volume I of the Commonwealth Court Reports, page 378. It was the Redevelopment Authority, City of Erie vs. Owners. In this case it was a fellow named Achilles Black. He had a candy store in Erie. The decision in that case held that bad faith is shown by attempting to acquire land by condemnation, to give preferential treatment to a specific landowner, and it constitutes an unconstitutional taking of private property for a private use and will be struck down by the courts as abuse of power. This is an opinion I wrote. I think it's an interesting one. The Redevelopment Authority in the City of Erie wanted to condemn a blighted area, and the thought was they were going to build a hotel there where they condemned the land. Then after they had condemned it, they kind of forced on the developers a new developing plan where they would not get all the land and build a hotel but only part of it. They would have to build a smaller hotel, rest rooms, and this land would then be turned over to another property owner in the City of Erie who had a candy store there, Black's

Candy Store. The question was if you took land by

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condemnation from a property owner, whether you could turn it over to another property owner for a private use, and we established the principle that condemnation is proper but it's an abuse of power when you do this for use of another property owner.

MR. SCHUCKERS: It has to be for public good, in other words.

JUDGE MENCER: Yes.

MR. SCHUCKERS: Did you enjoy those type of cases, eminent domain or zoning cases?

JUDGE MENCER: Yes, I liked the eminent domain cases more than I did the zoning cases, because I didn't feel I had much experience about it. For awhile I felt that people like Judge Rogers, and Judge Craig when he came on the Court, other people were much more familiar with zoning than I was. But occasionally as time went on, I found myself dissenting from some things which they wrote, which made me think I was learning something about zoning. But I think the eminent domain and condemnation were even better.

Then I wrote an opinion called Payne vs. Kassab, Volume XI of the Commonwealth Court Reports, page 14, that held Article I, Section 27 of the Constitution is self-executing, but the Court must balance conflicting environmental and social concerns.

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There was a highway widening they were going to do in the city, and I think it was Wilkes-Barre but it might have been Hazleton. It was going to involve taking a portion of a public park, and there was some challenge and question to that, and we said this is a situation where there must be a balancing of interest in conflicting environmental concerns with social concerns.

MR. SCHUCKERS: As I recall, Kassab at that time in the Shapp administration was the Secretary of Transportation.

JUDGE MENCER: I believe he was.

MR. SCHUCKERS: So Payne, I assume, was one of the private individuals being affected by this action.

JUDGE MENCER: Right. Then another case

that I wrote -- I guess I remember my own cases better than I do other people's. I wrote a controversial opinion that was confirmed by the Supreme Court, so I don't know if that did it or not, but it helped that it was confirmed. But it is found in Volume VII, page 453 of the Commonwealth Court Reports. It is called Williston Township vs. Chesterdale Farms. This is a case that came out of Chester County, and Judge Rogers coming from Chester County disqualified himself, did not sit on the case, so the vote was three to affirm and

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three to reverse. Myself, Judge Crumlish, Judge Kramer affirmed; from Judge Wilkinson, Judge Bowman and Judge Blatt, there was a dissent. And it was affirmed by our Court because of the dividing decision, and then later it was affirmed by the Supreme Court. But it held that a zoning ordinance which does not totally exclude all apartments is nevertheless invalid if it permits only high-cost apartments by applying restrictions, making construction of any but highest cost apartments unreasonable. You can build apartments, they didn't exclude them entirely, but they put restrictions on

there that would prevent apartments being built except of the high-cost category. It wasn't apartments that everybody in the township had the benefit to utilize; it could only be utilized by the affluent people. So you could tell by the vote, three to three, it was a rather controversial case. But those are cases that I remember or had something to do with.

MR. SCHUCKERS: I think that case would have been typical of cases in the early 1970's, mid 1970's, in which the question came up as to whether a municipality was doing its fair share in terms of allowing various groups to have a place to live within a community. The big case in that area I think was the Surrick case, about 1970, '71, from the Pennsylvania

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Supreme Court.

JUDGE MENCER: I believe so.

MR. SCHUCKERS: Do you remember dealing with administrative agency appeals? Had you had any experience with administrative agencies in private practice?

JUDGE MENCER: I just remember being assigned worker's compensation cases, unemployment compensation cases. We had a system that Judge Bowman assigned -- that was another interesting point. On the Supreme Court of the United States, we did not know this and we did not follow the rule, on the Supreme Court of the United States, there was an issue of votes, and the Judge with the most seniority or votes with the majority gets to assign the opinion to whomever he wants, whereas in our Court we did not become aware of that rule for a number of years.

We had a rule that the President Judge, which was Judge Bowman, would assign the case whether or not he was voting with the majority or with the minority. But he was head of the Court so he got to assign it. That was kind of interesting that we didn't find that out for a number of years. So he assigned all the cases after we had voted. I suppose that is why none of us went onto the Supreme Court of the United

States, we didn't know the rules. However, it was interesting that Judge Barbieri and Judge Manderino did

go onto the Supreme Court, and I went on to the Federal Court, and Judge Wilkinson went onto the Supreme Court. There were three that went to the Supreme Court, and I went to Federal Court, so there was reputation for advancement, and it was very good.

MR. SCHUCKERS: What do you remember about the expansion in 1977 from seven to nine judges?

JUDGE MENCER: Not too much about it. But I want to say it was supposedly to alleviate the workload, but I think part of it was wanting to keep up with the Superior Court. They had expanded their court. I know, for instance, when we started out, we each had one law clerk, then that became two, and then eventually one day somebody found out that the Superior Court had three, so we went to three. There was a little more rivalry between the Superior Court and our Court, and we were the new court on the block, and yet we wanted parity with the people that had been operating ahead of us. I think there was some impact on the copying of what we did with the Superior Court. So I don't know. That may have been part of the reason.

MR. SCHUCKERS: The Superior Court

expanded, so the Commonwealth Court expanded?

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JUDGE MENCER: Yes.

MR. SCHUCKERS: You as one of the original judges of the Court had to run for retention at some point. Was that about 1973 or '75, in that period?

JUDGE MENCER: Yes. I got a four-year appointment. That was another thing I consulted with the Governor about, how long would I be on the Court if I took the appointment. The term was that Bowman and Crumlish were to receive an eight-year term; and Kramer and Wilkinson, I believe, had six-year terms; and Manderino and I had four-year terms, and Barbieri had a two-year term. That was one of the things that went into my consideration to run for the Court.

MR. SCHUCKERS: Did you do anything special for retention? Did you go around the state and campaign?

JUDGE MENCER: The retention was an interesting thought. Some judges felt that they would like to see our Court excluded from the usual election process and we should qualify for retention, and the

only way they could bring this about was to make this a separate rule for the original judges of the Court.

Judge Kramer particularly was interested in this concept, and he really forced the matter through the Legislature. He demanded to be heard by the Democratic

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Caucus, they wouldn't see him, and so he went in, rushed into the Speaker's office, and the Speaker apparently had a phone in the Caucus room, and he got on the phone and tried to stay there until they heard him, which they finally did, and he managed to get the Legislature to approve this.

Some judges on the Superior Court, I believe Judge Jacobs was one, were very upset because they didn't feel there was any basis for our Court to have the benefit of retention. So they tried to get people to bring a lawsuit, and they even talked to some of the people who were about to graduate from Dickinson, but they never quite succeeded. Then MacPhail and Craig came on the Court, and they thought they would do the same thing the rest of us did, and this time it was

challenged, they went up to the Supreme Court, and the Supreme Court ruled they could not properly do that. The implication was that they would have made the same ruling in the suit that had been brought as to the original members, but since it had not been brought and the original members were continuing to operate, they apparently left it alone. That was kind of a quirk in the law that came about because it wasn't challenged, but I don't think that it was legally correct that we would qualify for retention. But I did stand for

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retention, Judge Kramer stood for retention.

MR. SCHUCKERS: Did you do any campaigning?

JUDGE MENCER: No, I didn't. I just felt there was such an advantage of being able to run for retention, that the odds were in favor of you being successful, so I didn't see any need at all. I was just lucky that happened and I got the benefit of it. Judge Kramer was able to convince the Legislature to go that route, and Judge Jacobs wasn't able to convince anybody to challenge the law until after I was in.

MR. SCHUCKERS: So Judge MacPhail and Judge Craig were then appointed in 1977, and they were appointed and confirmed but then later had to face a partisan election, as I understand, whereas the original seven never had to face a partisan election.

JUDGE MENCER: That's correct.

MR. SCHUCKERS: The next question I have for you, Judge, do you have any reflections on the passing of Judge Bowman and the ascendancy of Judge Crumlish to be the President Judge?

JUDGE MENCER: The first one I have is Judge Bowman died too early. He was, I believe, 61 and he prematurely died, and he was doing such wonderful work, and he would have guided the Court for many years.

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I will have to say honestly, even though this may come to the attention of some of Judge Crumlish's family, there was some feeling on the Court that we should do something besides follow seniority, because Judge Crumlish was next in line, and there was a little bit of friction that existed, and it was discussed and talked

about, and it was agreed that seniority should prevail.

So he became the President Judge on that basis. But there was some feeling at the time, which may not have been justified, that Judge Crumlish might try to run the Court from either Philadelphia or Florida or someplace else, and that this demanded constant attention, somebody in the Court should be in Harrisburg every day.

But I will say that I think Judge Crumlish's becoming President Judge was a wonderful thing for the Court in this regard: He had concern for the members on the Court as to their family needs and their personal needs, and he was always concerned about whether they were sick or well, and if their family was sick, he wanted them to give that attention. He arranged for us to have improved quarters, in terms of furniture and space. He did a lot of things that benefited the Court that maybe somebody else wouldn't have done. So I think he provided good leadership for

the Court, and I think it was a very worthwhile thing that he did become President Judge.

The one thing I always thought was interesting, one of the big issues in the early days was parking spaces for the judges. The Legislature had parking all arranged and tied up; however, they admitted that Commonwealth Court should be entitled to some spaces. But we had a committee, in which I was a member, that met four or five times with a committee from the Legislature, both Houses, about parking. And although they readily conceded at the outset that we needed and were going to have to have parking, they didn't want to have any of their members who would be affected to have to give up parking. So this became quite a battle as to where and how many spaces and so forth.

But it was finally resolved, as things are, but I believe we got ten spaces in the beginning: One for each judge, one for the Prothonotary, one for the filing office. There was just a minimal number of spaces, but they were very close to our building. They were watched over very carefully, particularly in the case of Judge Kramer. The rest of us, if we weren't going to be in town, we'd let our staff know, that some

member of the staff or somebody that wanted to were

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allowed to park in our space, we wouldn't care. But one day Judge Kramer came to town unexpectedly, and his space was occupied by a car that he was not familiar with, and he reportedly came up on the floor and was pretty chagrined about it and insisted that the car be removed, and his prerogative was fulfilled and carried out, and so that was quite a traumatic incident.

Generally, parking, although it was important, was almost more important than your title or your pay.

MR. SCHUCKERS: I think you once said the most important thing in Harrisburg was not your title or your salary or how close you are to the Governor but how close you were to your parking space.

JUDGE MENCER: Yes, that's right.

Another thing I always felt in the early days was really good, we had annual Court picnics.

MR. SCHUCKERS: We still do that.

JUDGE MENCER: We also had what they call clerk parties, which were about every two months, and some clerk would host it at his residence, but most of

the judges did not attend but I always felt it was important that I did. But those were nice parties and we got to share times with the clerks.

The other thing I remember that was kind of unusual was the Three Mile Island incident. That, of

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course, was an event that just about emptied Harrisburg. It made it into as close a ghost city as I had ever seen. I believe it happened on a Friday and we were to sit in Philadelphia on a Monday, and I stopped in Harrisburg to pick up some papers on the way to Philadelphia, and it was a kind of an eerie, weird thing. You would occasionally see a person on the street, but maybe you could drive from one end of Harrisburg to the other and see as many as five or six people. And the whole town was just as if it was -- well, it was unoccupied. Nobody was in town. Everybody grabbed their children, a few clothes, a little money, and they went to relatives or someplace. Everybody was uncertain what was going to be the effect of that, and it was a while before people settled down and realized

life would go on. But that was a really weird situation. You'd drive on the street, you wouldn't see cars, you wouldn't see people, nothing. I frankly was glad when I got onto the Turnpike and got beyond east of Three Mile Island itself. I could see the stacks when I went by, but I was kind of glad when I got past it because I didn't know what it entailed, too. But it was really kind of an interesting part of my experiences.

MR. SCHUCKERS: That would have been March of 1979, just as the Thornburgh administration was

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getting off the ground.

Three years later you were appointed to the Federal bench.

JUDGE MENCER: Yes, in 1982. Of course, I wrote a memo to all my colleagues, saying that I was doing a very foolish thing, but I didn't think it was too terrible because I didn't think anything would become of it, and I didn't think anything would become of it. But the interesting thing was, although the two United States Senators from Pennsylvania made a recommendation to the President for the Court, but he

usually adhered to their thoughts -- Senator Heinz from Pittsburgh and Senator Specter, they both recommended somebody else for the Court, they didn't recommend me.

Then from the White House, President Reagan was there at the time, they overruled that, and they had earlier said they were not going to be bound by the Senators' wishes in terms of circuit appointments, they could make their own circuit appointments, but they were going to listen to the Senators in terms of district appointments. I think the thing was, they recommended a Democrat, and Reagan had campaigned and run on the fact that he was going to appoint Republicans, more conservative members of the bench. And I would assume, I don't know, but I would surmise, I

imagine he said to himself and others: Isn't there someone in Pennsylvania who is Republican? Why do I have to make the first appointment in Pennsylvania to a Democratic party when I campaigned I was going to do just the opposite thing? And of course I was on the merit selection committee of choices, but I was not on

the final recommendations for the Senators. Anyway, that is what benefited my appointment. I think it is hard for anybody to believe, I hardly believe it myself, but I obtained that position without asking a single person to speak in my behalf or without raising a single dollar for anybody's benefit. I mean I am up here with the trees and hunting and fishing and not very many voters, and I have no power base and I don't even have money, and I did not even ask my Congressman or my Senators or anybody for this position. But I just let it happen and thought it would not happen, but by gosh it did, and I'm very fortunate that a series of events turned around.

MR. SCHUCKERS: So you returned to being a trial judge which you had started out as.

JUDGE MENCER: Yes, because that's what the Federal Court was, a trial judge in there. It was kind of hard at first to get used to. As a matter of fact, I went in to see my longtime friend and colleague,

Barron McCune, he had offices next to me, and I said, Barron, I think I've made a bad mistake, I've gotten

this job and I don't know what I'm doing or what I'm supposed to do and I think I've bitten off more than I can chew. He said, Glenn, you are going to be all right. He said, let me tell you something. He said, it takes two things to be a Federal Judge. You have got to be smart enough to look up a little law once in a while and you have got to be dumb enough to think it is a good job. And I couldn't fulfill either one of those things some days, but he was right that I got better at it as I went on. I don't know if the Third Circuit ever agreed to that, but I felt more competent in the decision making as I went along, I will say that.

MR. SCHUCKERS: Judge Mencer, thank you very much.

JUDGE MENCER: You were asking for my thoughts about these things. I'm just sorry I don't remember more details. It is a matter of we were talking about some things that happened back in 1970, 33 years ago, and my memory I suppose has failed a little bit in the meantime, and I don't feel as confident about dates and names as I once did. But I do remember it was a great experience and I worked with a great group of

people, and I have always felt that they all died

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prematurely.

MR. SCHUCKERS: Judge Mencer, thank you very much for talking with me. You were an outstanding Judge at the Commonwealth Court.