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Commonwealth Court of Pennsylvania  
Reminiscences of The Honorable James R. Kelley

December 14, 2011  
Harrisburg, Pennsylvania

1 MR. SCHUCKERS: Today is December 14, 2011. This  
2 is Dan Schuckers, former Prothonotary of the Commonwealth  
3 Court. We're on the third floor of the Pennsylvania Judicial  
4 Center interviewing Senior Judge James Kelley, who, at the  
5 end of this month, will be leaving the Commonwealth Court  
6 after 21 and a half years with the Commonwealth Court.

7 Judge Kelley, it is my pleasure to interview you.  
8 I just want to know a little bit about your personal  
9 background, where you were born, and your educational  
10 background, family background, if you can fill us in on that.

11 JUDGE KELLEY: Wonderful, Dan. And thank you for  
12 the opportunity to share with you my thoughts and background.

13 I, first of all, want to commend you for your long  
14 contribution to the Court. I think that that cannot go  
15 unnoticed by anybody, currently or in the future.

16 MR. SCHUCKERS: Thank you.

17 JUDGE KELLEY: Basically I was born in Greensburg,  
18 Pennsylvania, Westmoreland County. I was the ninth child of  
19 my parents, the baby. And I was I wouldn't say disciplined  
20 by my mother and father, but they probably had a lesser  
21 responsibility -- no, just a lesser action, full  
22 responsibility. But my siblings did a good job, I believe,  
23 and kept me in line and order and respect for you might say  
24 seniority, as I didn't get seconds at the table until  
25 everyone else had their seconds.

1           So I came into typical boyhood and playing. My  
2 father at the time was in the coal business. He was a coal  
3 operator and had a mine, a couple of mines, coal mines.

4           And I started off my formal education in the  
5 Catholic parochial school system. And I guess they kept  
6 working on me, thinking they needed more work, so my  
7 education became Catholic all the way through.

8           But I spent the first years in Greensburg until I  
9 guess I was about ten -- I was born in 1931. And my father  
10 was elected to Congress in 1940 and that allowed me to get  
11 wonderful double exposure to things. I usually -- except the  
12 fact I had been raised and reared in a small town,  
13 Greensburg, which probably at that time had about sixteen,  
14 seventeen thousand people. And all of a sudden, I moved to  
15 Washington for my 7th and 8th grades. Because it was during  
16 World War II -- and my five brothers were in the service, for  
17 the second World War. So then there were my three sisters  
18 and me. So my mother and father -- Congress was full-time at  
19 the time -- so we ended up being -- you might say temporarily  
20 residing in Washington.

21           So at that point on, I ended up finishing up down  
22 there. I became a paper boy, had a paper route down there.  
23 By the way, back in Greensburg, I had had a paper route prior  
24 to the move. So I worked in the drugstore down in Washington  
25 and mixed sodas and sold all sorts of gizmos.

1           Later I had an opportunity to become a page boy.  
2 That required my getting up about 4:00 in the morning on my  
3 own and taking the streetcar down to the Capitol. We had a  
4 Capitol page school at the time inside the Capitol. You'd do  
5 that for a couple hours, and then you would go up and get  
6 ready for the session of Congress. You'd have to pick up a  
7 whole bunch of books under every seat and get it ready,  
8 yesterday's journal. Then you're available for assignments  
9 that do anything from pushing Congressmen in wheelchairs to  
10 doing errands and going and picking up packages and  
11 delivering them to and from offices and even going to some  
12 governmental offices.

13           MR. SCHUCKERS: Were you about 14 or 15 at the  
14 time?

15           JUDGE KELLEY: Yes. And actually I did something  
16 that was pretty unusual, I guess. I made a decision which  
17 was unilateral. I was finding out that I was getting up and  
18 I was not getting enough rest and everything else. And my  
19 school grades reflected it, so I just absolutely quit going  
20 to school. I didn't tell my mother and father about it. But  
21 he found out about it, and he became a little angry. But I  
22 said, look, you know, this is a great experience. So I lost  
23 a year of school and then started over. And then I ended up  
24 finishing; I went to -- finished up my high school at  
25 Georgetown Prep in Washington as a day student.

1           MR. SCHUCKERS: And your father was still in  
2 Congress at the time?

3           JUDGE KELLEY: My father was still in Congress.  
4 And then I end up -- after I did all the things, I tried my  
5 hand at jobs and things. But then I thought something  
6 magnetic took me back home, so I went back to St. Vincent  
7 College in Latrobe, which is about ten miles east of  
8 Greensburg. And I did my college there.

9           Somehow I just gravitated, I think, to the law.  
10 There was no particular law background. My uncle had been a  
11 President Judge in Westmoreland County. And I just -- I  
12 guess somehow, like from the liberal curriculum, the liberal  
13 arts curriculum at St. Vincent's and they teach you to think  
14 and challenge, as they did in my high school years. And so  
15 when you start being a thinker and challenging things that  
16 are said in your own mind, if not openly, then you almost  
17 naturally gravitate to those unanswered questions that govern  
18 in the law about well, who said you can't do this and who  
19 said you can't do that, why do we do this and not do that.

20           So with that background, I went to law school. And  
21 I had two brothers that came out of the second World War, and  
22 the family, again, still being a lot in Washington, they went  
23 to Catholic U Law School on the G.I. Bill. So I went down to  
24 Washington. And I had an opportunity; I matriculated at the  
25 same school.

1           But this time, the best thing ever happened to me.  
2 I always liked to be a social person. I didn't wrap myself  
3 up in academics, and I never have. And I'm glad that I  
4 haven't. I only concerned myself about how things and  
5 actions affect people. The best thing that ever happened was  
6 when my brothers went -- Catholic U is a little law school,  
7 by the way. It was old; not as old as the old, old ones at  
8 Harvard and Virginia. But Catholic U I believe began the law  
9 school sometime around 1890. It was situate on the main  
10 campus at the time, when my brothers went.

11           When I went, what happened is they had an old law  
12 school called the Columbus School of Law that the Knights of  
13 Columbus used to run. And Catholic University acquired that.  
14 And they were down 18th at that time, right below  
15 Massachusetts Avenue, between Massachusetts Avenue and F  
16 Street I think it was.

17           And that's where I matriculated. And there were 20  
18 in my freshmen class, and that was the greatest thing in the  
19 world for me because we had a new dean. They put together --  
20 they had some of the old faculty together, and they had some  
21 new faculty. But for me, it wasn't a question of, you know,  
22 was I going to be called upon; the question was for which  
23 case I was going to be called upon. Therefore, I had to be  
24 prepared for every case in the assignments because you didn't  
25 know which case you were going to get.

1           Also at that time, during that period of time, I  
2 got married, which also helped a lot with the discipline  
3 aspects of academic pursuit.

4           At this time, I was doing a lot of part-time work  
5 because I had an opportunity because of my father's access to  
6 the Congress. I was able then to also get a more responsible  
7 employment position and with hours by which I could work my  
8 schedule in both morning and evening classes. So I did that,  
9 and I finally completed the law school.

10           And with marriage, we had our abode, our marital  
11 abode in Virginia right across the river. My wife was  
12 working. And all of a sudden, you know, things change. And  
13 Washington had a unique situation; you could take the bar  
14 exam if you were going to complete your academic pursuits for  
15 the LLB in 60 days. So a lot of us took the bar. And I was  
16 successful, luckily, but I don't think I had necessarily any  
17 successful talents. Then we had a child.

18           I undertook at that particular time, because I had  
19 already made preparations back home in Pennsylvania, in  
20 Greensburg, Westmoreland County, to register with my  
21 preceptor. In those days, you had a preceptor/clerkship type  
22 of thing for -- even prior to registration for your bar -- I  
23 mean for your going to law school; you had to register in  
24 those days.

25           MR. SCHUCKERS: So you had three years of law

1 school, and then you had to go through a preceptorship. Is  
2 that correct?

3 JUDGE KELLEY: That was it. In my case, my law  
4 school took a little more than three because of two things:  
5 One, I was working, and so I had to shuffle that; plus the  
6 fact at that point I also had a severe, a serious operation.  
7 I had a kidney removal during law school, so the combination  
8 took me more than three years. I think it was about four.

9 MR. SCHUCKERS: So then you were able to take the  
10 bar examination, and then you had a preceptorship in  
11 Greensburg. Is that correct?

12 JUDGE KELLEY: That's correct. What happened -- in  
13 Pennsylvania, it was a total of a six-month program. And you  
14 could only use six -- out of the six months, you could only  
15 use three months prior to your graduation from law school  
16 while you're studying for the bar and taking the bar.

17 So really in your law school, you could only -- in  
18 the clerkship program, preceptor clerkship program, you could  
19 only utilize basically one month a year between your course  
20 -- your academic years in law school. And then you -- if I  
21 recall aptly, it was -- I believe you could only do three  
22 months after you took the bar, complete the bar. I can't  
23 remember exactly; it's been so long. I was able to serve as  
24 a preceptor right at the very end of that program.

25 MR. SCHUCKERS: I think that program ended about



1 1969 or '70, as I recall.

2 JUDGE KELLEY: Somewhere around that there. But it  
3 was a great, great thing because it just taught you the  
4 whereabouts, where to go to the courthouse and what to do and  
5 familiarize yourself with the office process, meeting and  
6 dealing with clients, office procedures.

7 MR. SCHUCKERS: Law school tended to be very  
8 theoretical and not that practical. So when you combine the  
9 law school with the preceptorship, the preceptorship would  
10 give you the practical aspect of law.

11 JUDGE KELLEY: Practical, as far as the operations  
12 go as a practitioner. I don't necessarily agree that -- the  
13 case method, which I think we're getting away from in law  
14 school -- and there's a lot of writing going on about that  
15 right now. I think that the case method is absolutely  
16 essential to the legal mind and how it operates and functions  
17 in a logical, coherent process. Then I guess I came back.  
18 In fact, I started practicing back here in 1960 I believe it  
19 was.

20 MR. SCHUCKERS: In Greensburg?

21 JUDGE KELLEY: '59 or '60.

22 MR. SCHUCKERS: In Greensburg?

23 JUDGE KELLEY: In Greensburg. But at the same  
24 time, I did practice with a friend of my mine in Washington  
25 for a while. So I was functioning down in Washington and

1 also back home. And by then, we had another child, and I  
2 thought, you know, this is not pragmatically the best thing  
3 in the world for family life or anything like that. So I was  
4 a single practitioner, but I was associated with a couple  
5 fellows, sharing office space and things like that.

6 MR. SCHUCKERS: Did you have a general practice, or  
7 were you able to specialize in anything?

8 JUDGE KELLEY: Very much general practice,  
9 hopefully always trying to get a good, healthy civil  
10 liability case if I could, tort case. I had a few of those,  
11 one of which was one of the first successful cancer cases  
12 that I had. And it gave me a perspective about life itself;  
13 natural, conserved positions of people who just didn't know  
14 and were apprehensive about saying that they didn't know --  
15 or they weren't apprehensive about saying they didn't know;  
16 they were apprehensive about saying it could be or yes, it  
17 was a causal connection.

18 I went everywhere. I went to the National Medical  
19 Library in Washington. I went and I did all the readings to  
20 find out what the hell was going on because no one knew what  
21 causes cancer. Now, in this case, we went to federal court,  
22 and we got a verdict. And I was very happy because we were  
23 able to at least go to a jury. Because I had one doctor from  
24 Chicago; I had found this fellow that had written about this.  
25 And basically the case was an industrial situation actually

1 where a worker was cutting chromium pipes with a torch to  
2 dismantle the system. And somebody had kept the damn valves  
3 closed, and so when it broke through towards him, he got this  
4 big blast of ammonia gas. And God was with me; you know, how  
5 am I going to prove that he didn't have something  
6 preexisting? I went around, and I found out that the fellow  
7 had a TB x-ray test taken about less than a year before the  
8 accident.

9 MR. SCHUCKERS: And that revealed?

10 JUDGE KELLEY: The purity of his system.

11 MR. SCHUCKERS: Were you mainly on the plaintiff's  
12 side when you were practicing in Greensburg?

13 JUDGE KELLEY: Yes. I did a little bit of defense  
14 side as well, in conjunction with other attorneys. You know,  
15 I loved that part of it. I think I could still, if I got  
16 involved in anything else but trial work, in preparation for  
17 trial work.

18 One case I remember a fellow got me in where a car  
19 supposedly ran into a kid sled riding. I traced his car; I  
20 traced the tires back. And I found out the tires were bald.  
21 And, of course, we were able to settle the case.

22 But, you know, those are the kind of things that  
23 threw you a little bit and you start thinking very pragmatic  
24 about things.

25 MR. SCHUCKERS: I take it you really enjoyed trial

1 practice.

2 JUDGE KELLEY: I did. I did. And I did some  
3 criminal defense too. And one of the reasons I think I did  
4 it is because I've always looked at it as trial is very much  
5 like you're a movie director and you have a story to tell a  
6 jury through the witnesses and evidence that you introduce.  
7 And if you're not distractive, you know, don't try to be a  
8 showboat, don't try to be anything, just try to relate to  
9 these jurors as well as you can.

10 MR. SCHUCKERS: So you really enjoyed being in  
11 front of a jury?

12 JUDGE KELLEY: Oh, very much. That, I think, was  
13 the most gratifying. Unfortunately you can't get to enough  
14 juries because people settle. But to prepare a case takes a  
15 great deal of time to do it correctly.

16 MR. SCHUCKERS: A great deal of organizational  
17 skills.

18 JUDGE KELLEY: Oh, absolutely.

19 MR. SCHUCKERS: Now, when did you dip your toe into  
20 the political waters in Greensburg?

21 JUDGE KELLEY: Well, I guess because of my father  
22 being in Congress, I was exposed to that element. I was  
23 exposed to things that had been going on. Because of my work  
24 up there, I'd be often asked to be a participant in something  
25 as a worker, so I remember George Leader coming down and

1 things of that nature.

2 But I guess it goes back to 19 -- I guess 1952 when  
3 I was in college at St. Vincent's. I graduated in '54, so it  
4 was '52. You had mentioned earlier, prior to this, Steve  
5 Reed, the former mayor of Harrisburg. Well, in 1952, I was a  
6 participant, along with Steve Reed later and many, many other  
7 people, for a number of years. One of the former members of  
8 this Court, Genevieve Blatt, who was a trailblazer in public  
9 service, she had been elected as the first woman elected  
10 statewide in Pennsylvania as Secretary of Internal Affairs  
11 under the former constitution.

12 But Genevieve Blatt was a spinster. And she took  
13 it upon herself with some friends and she organized what is  
14 called the ICG, Intercollegial Conference on Government. And  
15 so on a cycle of every four years, people -- every college  
16 and university in Pennsylvania chose to participate. Most of  
17 them did. And there were usually people who inclined  
18 themselves to be politically interested, and many became  
19 political activists later.

20 The cycle would be from a state legislator to the  
21 state constitutional convention, the national nominating  
22 convention. And I forget what the fourth was, but it was a  
23 national conference. But 1952, because it was a presidential  
24 year -- and this ICG would meet every year in Harrisburg; but  
25 prior to that by zones and regions, they would also have a

1 meeting usually on a weekend at some regional college,  
2 academic facility.

3           And I remember very vividly that the regional  
4 facility for Southwestern Pennsylvania at that time was at  
5 Duquesne University. And I, along with other people,  
6 participated. And the element became one of a nominating  
7 convention.

8           So after our various subcommittee meetings and  
9 things of that nature, the General Assembly there for that  
10 regional meeting, they opened it up for nominations for  
11 president. And there's a great lull of silence. So I put my  
12 hand up, and I nominated Harry Truman. And I talked about  
13 all the things that Harry Truman had done, you know,  
14 responsible, and everything else he had done, affected the  
15 world, the peace, and everything.

16           MR. SCHUCKERS: Of course, he was the sitting  
17 president at that time.

18           JUDGE KELLEY: He was the sitting president. And  
19 the question was -- you know, but he wasn't very particularly  
20 popular. They asked for seconds. Nobody put their hand up.  
21 So I put my hand up, and I seconded the speech that I had  
22 given. And guess what? Harry Truman got nominated at that  
23 regional meeting.

24           MR. SCHUCKERS: And that was your first exposure?

25           JUDGE KELLEY: It was the first exposure in the

1 sense of dealing with other people in an open assembly. And  
2 it was very good for me because it taught me, you know -- you  
3 know, I know you're not supposed to second your own speech.  
4 But my idea was hey, I'm sorry, but here I am, no one else is  
5 doing it. And I spoke again about Harry Truman, and he  
6 prevailed.

7           So it taught me a good lesson that without breaking  
8 any rules, believe in what you're doing and say what you  
9 believe. So his having prevailed there I guess gave me  
10 enough stimulus of my own. Then after that, I became active  
11 in every campaign.

12           So even when Jack Kennedy ran, I -- even in  
13 reflections back, I don't believe I ever spent more time and  
14 energy in any campaign, including my own, as I did for Jack  
15 Kennedy in 1960. I was of that age where Jack Kennedy just  
16 offered such a positive approach and confidence in governing  
17 and going forward. And I don't regret one bit having done  
18 that.

19           MR. SCHUCKERS: You found him to be a real  
20 inspiration?

21           JUDGE KELLEY: Very much so. And when you read  
22 about other people of that same age -- and there were many,  
23 many people. I wasn't alone by a long shot. There was  
24 probably a majority of people my age at that stage. And so  
25 he won. And then every since, I have been consistently

1 active. Back home at the municipal level, I always  
2 participated in all of these elections. I became a committee  
3 person, and I also got active in the state committee  
4 indirectly because I worked with people who were elected to  
5 state committee. And I'd come down to the state committee  
6 and substitute for somebody at the state committee. So I  
7 expanded my contacts and things of that nature.

8 I was on the board of adjustments in Greensburg  
9 dealing with the zoning matters, and that was probably 8 to  
10 10 years. You know, it's a job, but you do your duty to take  
11 care of things. And then I became -- I was dissatisfied with  
12 the status quo; my county was Democrat for years. I ran and  
13 challenged the organization in the primary. And I prevailed  
14 and got elected.

15 MR. SCHUCKERS: Was this for county commissioner?

16 JUDGE KELLEY: County commissioner.

17 MR. SCHUCKERS: What year would that have been?  
18 1970?

19 JUDGE KELLEY: Forty-some years ago. I don't know.  
20 I don't remember the years.

21 MR. SCHUCKERS: Okay.

22 JUDGE KELLEY: Maybe I don't want to; I don't know.  
23 But I was in my 30s, and I'm 80 now. So that had to be well  
24 over 40-some years ago. And so then through that we got  
25 active people to go to the constitutional convention, and we



1 got people involved in that.

2 MR. SCHUCKERS: And that would have been in 1967 --  
3 '68.

4 JUDGE KELLEY: Yes. And so in that regard, one of  
5 the people we sent from Westmoreland County was one of the  
6 members of this original Court, Lou Manderino. Lou had been  
7 teaching like you. He had been teaching at --

8 MR. SCHUCKERS: Duquesne Law School.

9 JUDGE KELLEY: Yes, he was. And unbeknownst to  
10 many people, Lou Manderino also was a councilman in the city  
11 of Monessen.

12 MR. SCHUCKERS: Monessen, yes. He's from Monessen.

13 JUDGE KELLEY: Which gave him a great background.  
14 I had known Lou for a long time. He had been at St. Vincent  
15 when I was there. His brother Jimmy and I were classmates,  
16 and Lou was a couple years ahead of us. So over the course  
17 of time, in fact, I was able to play a role in Lou's getting  
18 on this Court initially. Because of my activities of knowing  
19 people from my contacts in Washington and activities here at  
20 state level, I was able to participate in that successfully  
21 to get Lou on the Court. Even with me, I didn't appreciate  
22 the uniqueness of the establishment of this Court.

23 As a practitioner, I, in those days, didn't know  
24 that there were so many activities in the general practice.  
25 You didn't have the code, municipal codes, and you didn't

1 have many things. Most things are contract or divorce and  
2 some little, simple thing.

3 And this Court, then as you become more aware of  
4 this Court, you realize -- I believe it's almost God-blessed  
5 initiative through our Bar Association that took the lead for  
6 this Court. I'm not a great believer the Bar Association  
7 always has the ultimate result that we desire, but in this  
8 case, it set Pennsylvania uniquely for having an intermediate  
9 appellate court that deals basically with government, the  
10 functions and operations of government itself. It's so  
11 unique, and I think it's a sleeper. I don't think many  
12 people are aware of it, even lawyers. Judges a lot of times  
13 don't get near it unless they're assigned to those things in  
14 the various courts.

15 MR. SCHUCKERS: As I recall, Judge, you ran for the  
16 Senate then at some point, for the state Senate at some  
17 point.

18 JUDGE KELLEY: I did.

19 MR. SCHUCKERS: And served in the Senate for 12 or  
20 14 years --

21 JUDGE KELLEY: Fourteen and a half.

22 MR. SCHUCKERS: Fourteen and a half years. While  
23 you were in the Senate -- you mentioned the Commonwealth  
24 Court being a sleeper -- did you follow events of the  
25 Commonwealth Court while you were in the Senate?

1 JUDGE KELLEY: Yes, I did. One of the reasons  
2 because of Lou Manderino. I was county commissioner, and Lou  
3 -- I went down to look at the facilities that he had in his  
4 home base. And I thought, my God, that's lovely, ought to  
5 pay more attention to this Court and spend -- and the county  
6 had to pay for the home chambers.

7 So, in that sense, we were -- and I came to the  
8 Senate, and I became much more sensitive to the Court and  
9 aware of it. When I served -- I served in innumerable  
10 committees and joint committees in the Senate that you -- you  
11 all of a sudden become aware of the jurisdiction and the  
12 functions and, I guess, the reality of a court that  
13 concentrates in this field.

14 Chief Justice Flaherty often said that and said  
15 about how much he had appreciated the fact that our Court's  
16 jurisdiction was such a relieving burden about the appellate  
17 court switching back and forth that by concentrating on it,  
18 we become -- we're the high experts compared to others. We  
19 even concentrated ourselves on certain kinds of government  
20 matters.

21 MR. SCHUCKERS: But looking back on your 14 and a  
22 half years in the Senate, do you regret not being with the  
23 Senate anymore? Did you enjoy your time there?

24 JUDGE KELLEY: Every position -- no place's  
25 position is ever perfect. There are gratifications in all of

1 them. And that's what's nice and great about life, because  
2 there's great collegiality there. There was then. I don't  
3 know now, though.

4 As I said, there are a lot of things you miss about  
5 where you were, where you served. And you meet wonderful  
6 personalities and the subject matter. There's great  
7 collegiality in the Senate. And there's equal frustrations  
8 everywhere. So you have to learn and evaluate and appreciate  
9 those characteristics, positive and negative.

10 But there is no doubt that there I learned that  
11 it's unfortunate, because as much as we're in session all the  
12 time, all year around in the General Assembly, there's great  
13 room for efficiencies to take place. There are not enough  
14 consummate reviews by the people in the General Assembly.

15 And even up to today, reading the opinions of this  
16 Court, or in any court basically over which they can  
17 legislatively correct matters, how many times we will set  
18 forth in our opinions here about, you know, well, this is the  
19 way it is, but it appears to be unequitable or inequitable or  
20 indefensible but it's up to the General Assembly because it's  
21 what they've said.

22 Well, we ought to have somebody over there reading  
23 these things so that -- because the result -- to resolve the  
24 conflict is not political; it's just good common sense. And  
25 they could be correcting legislation that way. Didn't do it

1 then and didn't do it because sometimes, again, it's not  
2 really full-time enough. And so what we all do -- I did it;  
3 I was there. You try to practice law. You do it because you  
4 try to raise a family, you wanted and needed more security  
5 financially.

6 MR. SCHUCKERS: Looking back over your 14 and a  
7 half years with the Senate, do you look back at the governors  
8 during that time, Governor Shapp and Thornburgh and Casey,  
9 and then you look back at the some of the leaders who were  
10 there in the House and the Senate -- of course in the Senate,  
11 you'd be working with various Senators -- do you have any  
12 reflections on those Governors or those people who were in  
13 the General Assembly with you?

14 JUDGE KELLEY: Yes. You know, I think there are  
15 people in both parties who are too complacent and they're  
16 more concerned about sustaining themselves here in the  
17 majority or not caring to move out of the minority because  
18 they have leadership positions. And they have a control,  
19 some power there. And they get fixed in accepting someone  
20 else who's in power. What I mean is that there are people  
21 who get sometimes to the point of the most resourced power  
22 who really don't use it all, and so if they don't use it all,  
23 others --

24 MR. SCHUCKERS: Somebody else will.

25 JUDGE KELLEY: And they do. So it becomes a

1 self-protective kind of a matter that as long as you're not  
2 using all your power, I'll support you to be up there and you  
3 just behave yourself. They don't articulate it that way, but  
4 if you observe it long enough, that's what happens. But I'm  
5 not so sure that it doesn't happen within almost every  
6 institution of public service. Corporations sometimes get  
7 this way too, but they have to show a profit line.

8 MR. SCHUCKERS: One of the things I think occurred  
9 beginning probably in the 1960s and has occurred for several  
10 decades was the expansion of the legislative bureaucracy.  
11 The number of assistants, aides over in the Legislature  
12 wasn't great in the '60s, but by the '80s, it had really  
13 expanded.

14 JUDGE KELLEY: Very, very much so. And we have  
15 justification, I have to say. I mean, you know, they provide  
16 across the board a certain amount of money for you to have a  
17 home office and the Senate. And you can divide it up if you  
18 want to have one, two, three, or four offices, of course,  
19 under the extent of your geographical district, your  
20 secretarial staff and equipment and materials. But it is not  
21 put to efficient use. And one of the reasons for that is  
22 because each Representative/Senator is elected and so you  
23 can't tell them how to run their office. So to be fair, you  
24 allocate that same amount of resources for everybody. But  
25 they use it most of the time as a bureaucracy, and it sort of

1 supplements a political base. And that's a misfortune. But  
2 it's just a natural inclination. You try to do everything.

3 Now, if you start using your resources to get  
4 in-depth on a given issue, whether or not too many in-depth  
5 issues -- take what's currently up here now. About every  
6 20 years; privatization of the LCB. Well, when that came up  
7 for privatization -- I'm a Democrat -- Democrats vehemently  
8 opposed my position because they defend the system.

9 Well, my point was that, first of all, the system  
10 offered nothing. When I first came to the Senate, you walked  
11 in the state store; there was a counter. You couldn't get  
12 behind the counter. There was no display of anything. They  
13 had it all on shelves, but the shelves weren't exposed  
14 openly. You had to know exactly what you wanted, and they  
15 couldn't help you.

16 MR. SCHUCKERS: It's one of those issues which  
17 recurs, like you say, every 20 years. I can remember in the  
18 Thornburgh administration in the late '70s, early '80s and  
19 also in the Ridge administration about 15 years later and now  
20 with the Corbett administration.

21 JUDGE KELLEY: Well, during the Thornburgh years, I  
22 debated the union labor people because my premise was, hey,  
23 the state has no business being able to sell the product; the  
24 more serious one, we control by licensure, pharmaceuticals.  
25 I said, you know, what happens is -- this is the key theory.

1 What happens -- they would say to me, are you still for the  
2 privatization? I say, of course, but I'll tell you, it's  
3 never going to pass now. They made it customer-friendly.  
4 You can walk all around. And people have been trained to  
5 teach you and learn. They have a selection. Hey, you can't  
6 compete. You can't compete with us now.

7 MR. SCHUCKERS: It's one of those issues which cuts  
8 across all sorts of political lines and regional lines.

9 JUDGE KELLEY: Sure.

10 MR. SCHUCKERS: And maybe the Corbett  
11 administration will succeed on that. I think your prediction  
12 is they're not going to succeed on it because there are too  
13 many people who like the system the way it is.

14 JUDGE KELLEY: It's customer-friendly. First of  
15 all, the stores are, you know, well-illuminated and  
16 maintained. I mean, all you have to do -- you start -- you  
17 go to another state where they have the private system and  
18 they don't have the selection that we have and it's all  
19 confined. In other words, again, it's the private sector.

20 But this way, it's very uniform because we have  
21 people all trained a certain way; not always perfect, of  
22 course. But I think that we've made it, as I said,  
23 customer-friendly. And they can help you; they teach you  
24 about wines. And if you go in and you ask about wines and  
25 ask about anything else, they'll give you a damn good



1 explanation. You know, I'm just saying whenever it's  
2 customer-friendly, you're not going to build up a momentum of  
3 people on the theory of privatization.

4 MR. SCHUCKERS: I assume that didn't make you very  
5 popular in your caucus.

6 JUDGE KELLEY: Oh, I was very unpopular in the  
7 caucus, but popularity was never my standard; as far as you  
8 believe in something, it's your belief. You know, I'm a  
9 Catholic. I believe in that. If you're not a Catholic, it  
10 doesn't bother me at all. As long as you feel strong in your  
11 faith -- I hope you do -- that's fine with me. I can live  
12 with anybody, love everybody.

13 But the main thing here is that those issues and  
14 when you've been in the different things, county commissioner  
15 -- you could be an executive trying to administer situations,  
16 which I was able to do almost exclusively as a commissioner.  
17 I was allowed. No one else wanted that type of thing, but I  
18 loved it. Then you go in the Senate, legislative. Then you  
19 come over in the Court, judicial. I think it gives you a  
20 comfort factor. I don't know that it makes me any more  
21 qualified to sit.

22 I think my experience subconsciously in those  
23 municipal functions helped me keep a feel for how I think  
24 things are working. I think that service on the board of  
25 adjustment -- I can't help but think about, in my mind, when

1 I was making rulings in the board of adjustment for  
2 applications and things, that what was my standard? You  
3 know, my standard was, you know, I was a pretty practical  
4 kind of a person in those standards. Because I'm thinking  
5 there, you know, I'm dealing -- the city didn't get zoning  
6 until 1954.

7           Then you think about when you're sitting up here in  
8 the court, and you say to yourself the same thing is true.  
9 You know, it's one thing to try to have a zoning commission  
10 or a planning commission and zoning board and all those  
11 matters who are fresh near development areas that have no  
12 constraints really initially.

13           But if there's an old community, it's hard to get  
14 such fixed lot sizes, setbacks and all this, that there has  
15 to be a sensitivity to those you're making judgments on.

16           MR. SCHUCKERS: Have you developed over the years a  
17 philosophy concerning how much power should be in local  
18 government and how much power should be in state government  
19 and how much power should be in federal government? I take  
20 it from what you're saying that you really do think that  
21 government operates best when it's operating locally.

22           JUDGE KELLEY: No question about it in my mind. No  
23 question about it. One of the reasons is the old adage: You  
24 can run, but you can't hide. I dealt with some of those  
25 controversial issues as county commissioner when I stood for

1 and did things that if I had been listening to the so-called  
2 mob of people, I would have never done it, believe me. But,  
3 again, you do it because you believe in it.

4 For example, the establishment of community  
5 colleges. You stand out there and you go to the meetings.  
6 You take the shells, and you take the shots. And you stand  
7 up and say what you believe. Now it all turns out that they  
8 had -- I had many, many people who were openly opposed to  
9 that, who were political activists, who subsequently came up  
10 to me and said, "Jimmy, you were right." But that was after  
11 it was proven to be a very successful institution of  
12 learning.

13 MR. SCHUCKERS: As I remember, the community  
14 college movement came about, I think, in the Scranton  
15 administration; it was carried on in the Shafer  
16 administration in the mid to late '60s. And I believe you  
17 were a county commissioner then and active in local  
18 government.

19 JUDGE KELLEY: Well, I was county commissioner when  
20 that came out.

21 MR. SCHUCKERS: So you were very supportive of the  
22 idea of the community colleges?

23 JUDGE KELLEY: I was. You know, I absolutely was.  
24 And -- well, they just celebrated last year the 40th  
25 anniversary, so that would have been 40 years.

1 MR. SCHUCKERS: Bringing things up to date, as I  
2 recall, Judge Crumlish and Judge Barry reached the retirement  
3 age of 70 in 1990 and you were appointed -- along with Robert  
4 Byer, you were appointed by Governor Casey. Can you give us  
5 a little background how that came about?

6 JUDGE KELLEY: Well, other than the fact -- really  
7 I can only tell you how my name initially came out; I suppose  
8 I must have initiated my own interest in it. There were two  
9 places for us. One was the Bar Association where we had to  
10 answer a questionnaire, and then you go to a meeting. The  
11 committee, they interview you and ask you questions. And the  
12 other was the Governor had his own committee.

13 So in the case of those nominations, I must have  
14 successfully passed both of those. And the Governor  
15 appointed me. I didn't even know Rob Byer at the point until  
16 he was nominated with me. And then we had hearings for our  
17 confirmation in the Senate, and both of us were confirmed. I  
18 think it was around May or June of 1990. And the election  
19 was to be in the following year. There would be two seats up  
20 for election.

21 MR. SCHUCKERS: In 1991.

22 JUDGE KELLEY: In 1991. There was primary  
23 competition on the Democratic side. We had at least three  
24 candidates, one of whom was Shelly Friedman, who ultimately  
25 got elected, as did I, in 1991, November.

1           Rob Byer had a running mate. I can't even tell you  
2 who it was, but it was somebody from Harrisburg here. I  
3 can't remember his name, but Rob did not prevail in the  
4 election. Judge Friedman and I were elected at that time.

5           MR. SCHUCKERS: I remember going out to your  
6 ceremony when you were sworn in at Greensburg. Quite a crowd  
7 there.

8           JUDGE KELLEY: Yes. Well, we mentioned also the  
9 Senate -- our President Judge was in the same process for  
10 confirmation. Quite a few people had been nominated and did  
11 the Senate process at the same time, and then they had to  
12 stand for election.

13          MR. SCHUCKERS: As I recall, one of the speakers  
14 there was Leonard Staisey.

15          JUDGE KELLEY: Leonard, yes.

16          MR. SCHUCKERS: A former Senator.

17          JUDGE KELLEY: Former Senator. He's legally blind.  
18 Former Senator. And then he was a judge at that point.

19          MR. SCHUCKERS: Very articulate.

20          JUDGE KELLEY: Very much so. I was always an  
21 admirer of him. He ran in the -- Lieutenant Governor with  
22 Shapp.

23          MR. SCHUCKERS: In 1966.

24          JUDGE KELLEY: The years I'm not sure.

25          MR. SCHUCKERS: Because in 1970, Milton Shapp ran

1 with Ernie Kline, as I recall. And Ernie Kline became  
2 Lieutenant Governor in 1971. Then you were on the Court as a  
3 commissioned judge for ten years.

4 JUDGE KELLEY: That's correct.

5 MR. SCHUCKERS: And then turning 70, you became a  
6 senior judge and have been a senior judge the last 9 or  
7 10 years. If you look back upon it, are there any cases that  
8 jump out at you as really being very interesting cases, any  
9 area of the law that you really enjoyed?

10 JUDGE KELLEY: Well, there are. They're not  
11 necessarily the result which I thought was best. One of the  
12 things -- you mentioned about Judge Doyle. You know, when we  
13 did the Police and Fire Arbitration cases, I said, well, the  
14 standard of review should be different if it's interest or  
15 grievance. I said there should be no difference for a  
16 grievance; for interest, yes.

17 Well, you know, I tried to persuade them. So it  
18 goes through that your standard is the same, you know, for  
19 grievance or interest, Police and Fire Arbitration. And I  
20 still to this day cannot comprehend why. It went up to the  
21 Supreme Court. The Supreme Court said sure.

22 So to this day I think what -- what's wrong? Why  
23 wasn't that so obvious? Why is that not so obvious? Because  
24 to me, in my mind, there is no justification to say the  
25 grievance procedure should be any different than any other.

1 You know, a grievance is a grievance.

2 MR. SCHUCKERS: So grievance arbitration versus  
3 interest arbitration.

4 JUDGE KELLEY: Yeah, Police and Fire.

5 MR. SCHUCKERS: Police and Fire.

6 JUDGE KELLEY: You know, they're saying no, Police  
7 and Fire, the standards are the same for interest or --

8 MR. SCHUCKERS: And I think the Commonwealth Court  
9 and the Supreme Court really wrestled with that issue over  
10 the last 20 or 30 years.

11 JUDGE KELLEY: Well, I think what is happening is  
12 that they recognize it, they know that this is crazy, because  
13 it's confused the whole idea of grievance arbitration.  
14 Because there's just no justification in my mind. Now, you  
15 say, well, that's one of the things with which I've lived,  
16 and I live with it every day. And that standard maybe  
17 someday will change; maybe not. It's not life and death;  
18 it's not, you know, anything of that nature.

19 I think one of the most interesting things that's  
20 being argued today court en banc, which I had during a duty  
21 week which I put over because the issue is so fundamental,  
22 it's a question that arose last year, a group of people here  
23 in the Commonwealth who were beneficiaries under the Tobacco  
24 Settlement. And all of a sudden they're changing the  
25 settlement without amending the Tobacco Settlement Act.

1 MR. SCHUCKERS: Were they disbursing funds and  
2 didn't have the authority to do it?

3 JUDGE KELLEY: Well, what they're doing -- it takes  
4 full-time General Assembly, people wanting to do the job  
5 correctly. But the General Assembly wanted to do things  
6 quickly and easily. So there's a budget every year. So what  
7 do they do now? They make a fiscal code and underneath the  
8 fiscal code, in preparation for each budget -- it's been  
9 going on now for a number of years, like maybe ten years or  
10 so. And this transfers the money from a fund in the -- a  
11 certain fund by a certain reference to the statute of the  
12 Tobacco Settlement. And it's done innumerable times. So  
13 what they do is they can make themselves have a guarantee of  
14 this money for the fiscal year through the Tobacco Settlement  
15 Fund. So over here it doesn't get disbursed and treated  
16 subsequently to this amendment to the fiscal code. And it's  
17 a requirement in the Tobacco Settlement case.

18 You sit back and say, how did that happen? This is  
19 a case being argued today. I don't know what's going to be  
20 the outcome. I gave the plaintiff a chance to file amended  
21 petitions.

22 MR. SCHUCKERS: This is going to be argued en banc?

23 JUDGE KELLEY: Yes.

24 MR. SCHUCKERS: And you, as a commissioned judge --  
25 as a senior judge, won't be able to vote on it.



1 JUDGE KELLEY: Well, I won't be around even for  
2 that. You know, I won't be able to see it resolved.

3 But these things -- these are the frustrations. My  
4 frustrations will stand out much more than anything positive  
5 because really the positive things is what we should be doing  
6 and how we should be doing it. But the difficulty is that  
7 you get these other things that come along -- I didn't give a  
8 lot of reflection to your question on things. But I would  
9 say that this particular issue and this particular case just  
10 is indefensible. It's already happened.

11 MR. SCHUCKERS: You served under various President  
12 Judges; if I recall, Judge Craig and then Judge Colins, Judge  
13 Doyle, Judge Colins again, and now under Judge Leadbetter.

14 JUDGE KELLEY: Yes. And all fine, all different  
15 personalities, as they in their personalities relate with  
16 other judges and staff as well. As you know firsthand  
17 yourself, even preceding that list, that litany includes, of  
18 course, Judge Crumlish and Judge Bowman.

19 MR. SCHUCKERS: And you would have known Judge  
20 Bowman and Judge Crumlish?

21 JUDGE KELLEY: I did. Bowman I got to know because  
22 I was in the Senate at the time. I said to you earlier  
23 almost God's wisdom or gift about the Constitutional  
24 Convention in '68 which gave us a unique court. No other  
25 jurisdiction has this. And then to have Bowman with his

1 background of -- with the docket, the Commonwealth docket in  
2 Dauphin County. With that experience, well, he just got the  
3 Court off on the right feet. Just terrific. And the people.

4 Dan, I see our time is up. My staff has something  
5 else scheduled for me.

6 MR. SCHUCKERS: Thank you. I enjoyed it.

7 (Whereupon, the interview concluded.)

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