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Commonwealth Court of Pennsylvania

Reminiscences of

Stanley H. Siegel, Esquire

Tuesday, December 4, 2007, 1:00 p.m.

Irvis Office Building

Harrisburg, Pennsylvania

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1           MR. SCHUCKERS: Today is December 4th, 2007, and  
2 we're here at the Commonwealth Court with Stanley H. Siegel,  
3 who has been an outstanding practitioner in the workmen's  
4 compensation area since 19 --

5           MR. SIEGEL: '52.

6           MR. SCHUCKERS: -- 52. Stan has some wonderful  
7 reminiscences of the Commonwealth Court. I'd like to ask him  
8 just a few questions and then let him go ahead and give his  
9 reminiscences of some of the judges and of the Court over the  
10 last 37 years.

11           But first, Stan, a little bit of your background.  
12 Where are you originally from? Where did you go to school?  
13 Where did you go to law school?

14           MR. SIEGEL: Well, I was born and raised in Mifflin  
15 County and have lived there all my life except when I was in  
16 the Navy and away at law school. I went to Lewistown High

17 School. When I got out of high school in 1943, you knew you  
18 were either going to join the service or be drafted. So I  
19 got into the Navy College Training Program. They sent me to  
20 the University of Pennsylvania in Philadelphia and then  
21 transferred me to the Reserve Officers Training Corps.

22 And I was commissioned in October 1945, sent to the  
23 Bainbridge Naval Training Center and Separation Center for a  
24 year and then was ordered to inactive duty on September 1st,  
25 1946, because at that time Congress had not appropriated any

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1 money to pay reserve officers later than September 1st, 1946,  
2 so they had to let us all go.

3 And then I went to Yale Law School from 1947 to  
4 1950.

5 MR. SCHUCKERS: Did you graduate from the  
6 University of Pennsylvania?

7 MR. SIEGEL: Yes. I had to go back -- the  
8 University of Pennsylvania would give me credit for most of  
9 the courses. The Navy prescribed the courses. We were

10 permitted to take 1 or 2 electives at the time.

11 I took a couple political science courses because I  
12 was interested in the subject and found out when I got out of  
13 the Navy that I could go back to Penn, take four political  
14 science courses and freshmen English and get a Penn College  
15 degree. At that time at Penn, you had to have freshmen  
16 English to graduate from The College at the University of  
17 Pennsylvania. The Navy didn't care about English courses, so  
18 I never had freshmen English.

19 MR. SCHUCKERS: Okay. So then you went to Yale Law  
20 School?

21 MR. SIEGEL: Then I went to Yale Law School,  
22 beginning in October 1947. I graduated in May 1950, went  
23 back to Lewistown, practiced with my father.

24 I didn't take the bar exam in July of 1950. I was  
25 married the summer before I went to law school, and our first

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1 child was due about the time the bar exam was scheduled. And  
2 I was afraid that being a brand new father, if I had prepared  
3 for the bar exam and the baby came, I'd walk out and not

4 finish anyway. As it turned out, our daughter Ruth was born  
5 on the first day of the bar exam. So that was a wise  
6 decision.

7 MR. SCHUCKERS: A very wise decision.

8 MR. SIEGEL: And it didn't make any difference  
9 because I was going to be with my father doing exactly the  
10 same sort of thing for the first six to nine months whether I  
11 took the bar exam then or whether I took it in February of  
12 1951.

13 MR. SCHUCKERS: Well, what type of practice did he  
14 have, general practice?

15 MR. SIEGEL: Well, there was my father and my uncle  
16 when I came back. It was a small town general practice; lot  
17 of commercial law, wills, estates, trusts, real estate, very  
18 little criminal defense law because we weren't interested.

19 And then in the early 1950s, I started doing a  
20 little workers' compensation work. By the middle of the  
21 '50s, I came to the conclusion that even then, the practice  
22 of law was getting too complicated to know everything about  
23 everything and I was going to try to learn something a little  
24 bit more about something. I was interested in workers'  
25 compensation, and by the mid '50s, I was into it. Beginning

1 I would say roughly from 1980 to about 2000 when I really  
2 stopped going to hearings, probably 90 percent of my time was  
3 workers' compensation.

4 I did a few other things, but it was basically  
5 workers' compensation defense. In the early days, I had a  
6 couple of claimants' cases but came to the conclusion that  
7 there were possibilities of conflicts. What bothered me is  
8 you appeared before the same small group of workers'  
9 compensation, then referees, now judges, and if I am arguing  
10 for a claimant on a principle of law that I have to argue for  
11 to support the claimant's case, then two days later I've got  
12 to argue the other side to support the defendant's case, I  
13 just saw too much potential for conflict. So I stopped  
14 representing claimants.

15 MR. SCHUCKERS: So you really developed in the  
16 1950s and '60s a specialty in workers' compensation. In  
17 those days, what was the appeal process in workers'  
18 compensation?

19 MR. SIEGEL: First of all, in the early days, a big

20 workers' compensation case before 1972, when there was a  
21 drastic statutory revision -- there was no interest; there  
22 were no penalties -- would be \$2500. Now \$2500 won't pay for  
23 one medical deposition.

24       The hearing was before the Referee. The Referee  
25 was the fact-finder, but back in those days, the Board was

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1 free and loose with the facts. They changed the facts if  
2 they didn't like what the Referee found.

3       You went to the Board. If you were dissatisfied  
4 with the Board, your right of appeal was to the Court of  
5 Common Pleas in the county in which the claimant resided.

6       Very rarely in those days did we pay much attention  
7 to common pleas workers' compensation opinions because except  
8 for a few, large metropolitan counties or counties in the  
9 coal regions where there's a lot of silicosis, both hard and  
10 soft coal regions, common pleas judges got so few workers'  
11 compensation cases that they really didn't know much what it  
12 was about. So for the most part, you would ignore common

13 pleas court judges' opinions except in certain limited  
14 circumstances where you knew a judge handled a lot of the  
15 cases.

16       And I never had a case in the Superior Court  
17 because by the time we got to the point of appealing beyond  
18 the Board, the Commonwealth Court was in existence.

19       MR. SCHUCKERS: But back in the '50s and '60s, you  
20 would take an appeal from the common pleas to the Superior  
21 Court?

22       MR. SIEGEL: Superior Court and then by Allowance  
23 of Appeal to the Supreme Court. You rarely got there in a  
24 workers' compensation case.

25       MR. SCHUCKERS: The Commonwealth Court was created

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1 in 1970, and the appeal process was greatly changed.

2       MR. SIEGEL: That's when the whole appeal process  
3 was changed. You went from the Board to the Commonwealth  
4 Court and then by Allowance of Appeal to the Supreme Court.

5       Now, what a lot of people forget -- and nobody has  
6 ever done anything about it -- there is still the old

7 Occupational Disease Act of 1939 which was never repealed but  
8 hardly ever used because occupational disease was engrafted  
9 onto the Workers' Compensation Act.

10       Until 1939, there were no occupational disease  
11 benefits except for an Occupational Disease Act in 1937 which  
12 was declared unconstitutional. A new Occupational Disease  
13 Act was passed in 1939. Until then, there was no remedy for  
14 occupation disease type cases. Now, if you bring a case  
15 under the old Occupational Disease Act, which nobody does in  
16 their right mind, but if you're under that act, the appeal is  
17 from the Board to the Court of Common Pleas and I guess now  
18 to the Commonwealth Court from Common Pleas.

19       MR. SCHUCKERS: I don't think we've seen one of  
20 those cases for 10 or 15 years.

21       MR. SIEGEL: Well, claimants' attorneys just don't  
22 bring those cases because the benefits are limited to the  
23 benefit schedule in 1939. They never amended it. So if  
24 there's any way at all you can get under the Workers'  
25 Compensation Act -- and it's not hard to get under the

1 Workers' Compensation Act -- a claimant's attorney would  
2 almost be guilty of malpractice now if he brought a case  
3 under the OD Act. And you're not going to see very many of  
4 those anymore.

5 MR. SCHUCKERS: Like I said, I don't think we've  
6 seen one of those in 10 or 15 years.

7 Now, the Commonwealth Court was created in 1970  
8 with Judge Bowman as the President Judge. Did you know many  
9 of the original judges of the Commonwealth Court?

10 MR. SIEGEL: Well, of the original judges, I got to  
11 know fairly well Judge Bowman; Judge Wilkinson, who I knew  
12 long before he was a Commonwealth Court Judge because he  
13 practiced law in Bellefonte, which is in Centre County right  
14 next to our county, and we had contact back and forth. So  
15 Judge Wilkinson was the only one I really knew on a personal  
16 basis before he became a Commonwealth Court judge.

17 In the early Court, I got to know Judge Bowman. I  
18 have a story about that. I got to know Judge Kramer. I got  
19 to know Judge Rogers and Judge Craig. And through my wife, I  
20 got to know fairly well Judge Blatt.

21 And those are the ones that I probably knew the  
22 best of the early Commonwealth Court judges. I know Rogers

23 and Craig weren't the original judges, but they were very  
24 early on in the history of the Court.

25 MR. SCHUCKERS: Judge Bowman, of course, was the

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1 first President Judge of the Commonwealth Court, and he was  
2 President Judge from 1970 to 1980. Did you get to know him  
3 pretty well?

4 MR. SIEGEL: I got to know him pretty well, and  
5 there were a number of things you could say about Judge  
6 Bowman.

7 Judge Bowman, other members of the Court told me,  
8 was a rather strict taskmaster but everybody went along with  
9 Judge Bowman because he never asked anybody to do anything he  
10 wouldn't do himself. And Judge Bowman, as you know, was an  
11 imposing figure physically. He was a big man. I mean, he  
12 was just -- he was tall, about six-three or six-four.

13 MR. SCHUCKERS: Exactly.

14 MR. SIEGEL: And he must have weighed close to  
15 300 pounds at one time. He was just a big man.

16 MR. SCHUCKERS: Yes.

17 MR. SIEGEL: And I knew him casually. But there  
18 were two stories about him. He and I were both in a meeting  
19 at the Greenbrier. He was a guest, and I was talking about  
20 workers' compensation. And I'm walking down the hall one  
21 day, and Judge Bowman was coming the opposite direction. And  
22 he said hello to me, and I said hello. He says, "Mr. Siegel,  
23 come over and sit down; I want to make a deal with you."

24 Well, I didn't know what he had in mind, and of  
25 course at that time, I didn't really know him personally. So

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1 I didn't know what was going on. We sat down, and we  
2 chatted. At that time I was doing what was called the annual  
3 review of workers' compensation law at the midyear meeting of  
4 the Pennsylvania Bar Association.

5 And the deal that Judge Bowman wanted to make was  
6 that if I would agree -- he didn't mind if I criticized  
7 opinions, but that if I would agree with him that if I  
8 criticized an opinion, I would not mention the name of the  
9 author of the opinion and if I approved of the opinion, I

10 would mention the name of the author. He would commit to me  
11 that every Commonwealth Court Judge, absent illness or death  
12 in the family, would attend every one of these sessions that  
13 I gave every year. So we made a deal.

14       And I lived up to my end of the bargain. And from  
15 that time until I stopped doing the annual review, I think  
16 there was only 1 or 2 Commonwealth Court Judges who did not  
17 attend and they were physically ill the day of the  
18 presentation.

19       Now, another story about Judge Bowman -- and this  
20 is just conjecture -- one of the cases I had to argue before  
21 the Commonwealth Court, for some reason, it sort of shouldn't  
22 have been, but the Court ordered to hear it en banc. So  
23 there were seven of them sitting. It was back in the days  
24 when there was only seven, so they were all there.

25       And they come out with the argument list, and I

1 always had a practice of when I had to argue a case before an  
2 appellate court, I got down a couple hours before my

3 argument. I wanted to hear what frame of mind the judges  
4 were in and how things were going and who was going to bite  
5 whose head off.

6 My case was listed for the last one in the morning,  
7 but I got there about 10 when they started, or 9:30. And  
8 Judge Bowman announced that at 12, they were going to recess  
9 for lunch until 2. And they go on to the arguments, and I  
10 figured, well, I'm not ever going to make it in the morning  
11 and I'd have to be there in the afternoon.

12 And they got down to -- mine was the next case, and  
13 it was about 5 or 10 minutes after 12. Judge Bowman looked  
14 up -- and I'm not sure why he did it; I have my own ideas --  
15 he looked at me. And he said to the members of the Court,  
16 "We're going to hear one more case before lunch." And he  
17 heard my argument, and I went home, and I didn't have to come  
18 back in the afternoon. Now, I may be wrong, but I think  
19 Judge Bowman was doing me a favor.

20 MR. SCHUCKERS: You mentioned Judge Wilkinson; you  
21 knew him beforehand?

22 MR. SIEGEL: I knew --

23 MR. SCHUCKERS: Before the creation of the Court?

24 MR. SIEGEL: I knew Judge Wilkinson before the  
25 creation of the Court. And shortly after the Court was

1 created, I still did some other work. I represented one  
2 client, did a lot of work for them, and they were involved in  
3 an environmental problem. I forget the details of the case,  
4 but it was a type of case that if either party wanted, the  
5 Court had to have a jury trial. The parties had a right to a  
6 jury trial. It was an original jurisdiction in the  
7 Commonwealth Court. It wasn't an appeal.

8       The case was assigned to Judge Wilkinson. The DER  
9 attorney was in Harrisburg; I was in Lewistown. Judge  
10 Wilkinson's chambers were in Bellefonte. The Judge could  
11 have ordered all to show up at Bellefonte or Harrisburg or  
12 whatever, but that was not Roy Wilkinson. He called every  
13 everybody and said, "Let's do this by telephone."

14       And so we set up a telephone conference call. As  
15 we begin, Judge Wilkinson opens by saying, "Well, Stan,  
16 what's this case all about?" Well, I could almost hear the  
17 attorney for DER falling off his chair. He didn't know what  
18 he was getting into.

19 But then as the discussion progressed, it became  
20 evident that Judge Wilkinson would like us to settle the case  
21 because he frankly didn't have the foggiest notion of how he  
22 was going to impanel a jury if anybody wanted a jury trial.  
23 And from what you told me, Dan, I guess that was a legitimate  
24 concern at that time.

25 MR. SCHUCKERS: Absolutely. The first jury trial

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1 we had -- we've only had three. The first one I think Judge  
2 Mencer had in 1977 or '78. And of course here at the  
3 Commonwealth Court, being an appellate court, we're not  
4 really set up for a jury box. So we would have to --

5 MR. SIEGEL: Bring some chairs in.

6 MR. SCHUCKERS: Bring some chairs in. Or what we  
7 end up doing is going to a common pleas court and using one  
8 of their courtrooms. We've only had three jury trials in the  
9 history of the Commonwealth Court.

10 MR. SIEGEL: Well, Judge Wilkinson dodged the  
11 bullet because we did settle the case. And it made him very  
12 happy because he didn't have to figure out -- now, I don't

13 know how long it was after that until you had to have a jury  
14 trial. It must have been some period of time.

15 MR. SCHUCKERS: Right. Now, some of the other  
16 judges you knew. You mentioned Judge --

17 MR. SIEGEL: Well, Judge Kramer. I knew Judge  
18 Kramer. My favorite Judge Kramer story is -- this is about  
19 35 years ago -- when my wife would go with me to Pennsylvania  
20 Bar Association meetings.

21 We had a meeting in Pittsburgh, and there was a  
22 dinner in the Duquesne Club. And at that time, women had to  
23 go in a separate door to get in the Duquesne Club. Women  
24 weren't allowed in the main door. And so we went. My wife  
25 and Judge Kramer's wife, who got to talking to each other,

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1 were protesting the whole way, but we went.

2 And apparently Judge Kramer and his wife and my  
3 wife had met at some social function the day before. I don't  
4 remember the details. But the two women get into the special  
5 door which led you right up to the second floor where the

6 banquet room was. There was a big marble staircase that went  
7 down to the main entrance.

8 Judge Kramer's wife and my wife decided they were  
9 going to walk down that staircase because there were signs  
10 all over the place that women were not permitted to use that  
11 staircase. So the two of them marched down the staircase,  
12 and the little old man who was the doorman down at the foot  
13 of the staircase we thought was going to turn to stone. He  
14 didn't, but we thought he was, he was so shocked.

15 MR. SCHUCKERS: Right.

16 MR. SIEGEL: Now you want to move on to three more  
17 judges?

18 MR. SCHUCKERS: Sure. Go ahead.

19 MR. SIEGEL: Judge Rogers. He is sort of a special  
20 person in my book because when my youngest son graduated  
21 Temple Law School, he decided he wanted to be an appellate  
22 court clerk for a year.

23 I knew Roy Wilkinson, so I called Judge Wilkinson  
24 and asked if he had any vacancies. Well, he said, just the  
25 day before, he had hired his last clerk. But he said, "Judge

1 Rogers is looking for a clerk." He said, "I'll call him,  
2 tell him you're going to call him. You call him tomorrow."  
3 Well, we did that, and Judge Rogers invited my son in for an  
4 interview and then hired him.

5 Judge Rogers was a truly outstanding gentleman in  
6 every respect. I got to know him fairly well during the  
7 period that my son was his clerk.

8 In addition to being extremely bright and  
9 intelligent and writing excellent opinions, he instilled in  
10 all of his clerks the professionalism that young people even  
11 in that generation didn't learn in law school and didn't  
12 learn anywhere else.

13 This is a small example. His chambers were in West  
14 Chester. That's where my son lived for a year. And I think  
15 there were three clerks; I don't remember the exact number.  
16 But when they went to work during the week, they had to have  
17 a shirt and tie, and they could wear a sports jacket. If  
18 they come in nights or weekends, they could wear jeans or  
19 whatever they were comfortable in.

20 Judge Rogers at that time, when the Court travelled  
21 for oral argument, would always take two clerks with him.

22 When you travel ed with Judge Rogers, you wore nothing but a  
23 shirt, tie and a suit, because that was his way of trying to  
24 instill in everybody the niceties of practicing of law and  
25 that it wasn't just a business.

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1 My son's second suit in his life was because he  
2 went to work for Judge Rogers, and he had to have a suit  
3 because in those days, kids didn't own suits.

4 MR. SCHUCKERS: I'd just like to reaffirm something  
5 that Stan just said about Judge Rogers. I think Judge Rogers  
6 is one of the brightest people I've ever met. He would have  
7 been an outstanding judge on any court in the United States.  
8 He was just absolutely brilliant and a brilliant writer, too.

9 MR. SIEGEL: Now, there's another incident about  
10 Judge Wilkinson. Let me relate it, and you can delete it if  
11 you don't want to use it.

12 I tried to read the advance sheets. Back in those  
13 days, you didn't have the internet, thank goodness, and you  
14 read the advance sheets in West. But they were usually  
15 several weeks behind until you got the report. Unless you

16 were involved in the case or knew or had a friend who was an  
17 attorney who was involved in the case and told you about it,  
18 you didn't know about an opinion for 4 or 5 weeks after it  
19 was handed down.

20 I'd get the advance sheets and look at them. There  
21 was a case where Judge Wilkinson had written the opinion,  
22 reached the correct conclusion, but there was one paragraph  
23 which was 100 percent wrong, just the opposite of what it  
24 should have been.

25 Ordinarily I wouldn't do this with a Commonwealth

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1 Court Judge, but I knew Judge Wilkinson well enough. I  
2 called him, and I said, "Look at this." I gave him the page  
3 number.

4 MR. SCHUCKERS: And it's a case you were not  
5 involved in?

6 MR. SIEGEL: I wasn't involved in it. I wasn't  
7 involved in the case at all. And I said, "Read that, Roy.  
8 What do you think of that?" He said, "My goodness, you're

9 right. That's wrong."

10 When the case came out in the bound volume, that  
11 paragraph was changed, and it was correct when it came out in  
12 the bound volume.

13 Now if you don't want to use that --

14 MR. SCHUCKERS: We'll use it.

15 MR. SIEGEL: -- you can delete it.

16 MR. SCHUCKERS: Some of the other judges, you  
17 mentioned Ted Rogers and --

18 MR. SIEGEL: Well, Rogers -- now, Judge Craig;  
19 Judge Craig was a truly outstanding individual. I got to  
20 know Dave Craig very well because, as I mentioned earlier,  
21 the Pennsylvania Bar Association at the midyear meeting was  
22 doing the surveys of the various specialty areas of law.

23 I did workers' compensation, and Judge Craig did  
24 zoning and planning, which were his field in Pittsburgh. And  
25 because we were together on the program for a couple of

1 years, we got to know each other fairly well. And then we  
2 became much better acquainted when Judge Craig became

3 president of PBI, Pennsylvania Bar Institute, where I've been  
4 involved in since there was a PBI.

5 And we got to know each other fairly well, and he  
6 was a truly outstanding judge in every respect; thorough, a  
7 perfect gentleman.

8 At one point, I think to Judge Craig's credit, the  
9 Supreme Court came out with an opinion on how you handled  
10 subrogation rights in a workers' compensation case under  
11 Section 319 of the Workers' Compensation Act.

12 The Supreme Court frankly had it so tangled up that  
13 I'm not sure they understood what they were talking about.  
14 Judge Craig afterward, a year or two later, wrote an  
15 excellent opinion straightening the thing out. He didn't  
16 come right out and say, "I'm overruling the Supreme Court,"  
17 but that's in effect what he did. And he became the expert  
18 on subrogation.

19 Anytime the Pennsylvania Bar Institute or anybody  
20 else needed a speaker on subrogation, you asked Judge Craig  
21 because he had it all figured out and he had it figured out  
22 right.

23 MR. SCHUCKERS: And I'll elaborate on that a little  
24 bit. He gave a presentation -- I guess this is about

25 20 years ago -- over in Hershey to about 600 attorneys on

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1 subrogation, with his overhead projections, and he just did a  
2 wonderful job of explaining the differences in these cases  
3 and how subrogation under Section 319 should proceed.

4 MR. SIEGEL: And he sorted it out and did it right.

5 MR. SCHUCKERS: And he sorted it out and did an  
6 outstanding job. And I'd also add that he's also one of the  
7 people that I've met that I thought would have been an  
8 outstanding judge on any court in the country.

9 MR. SIEGEL: He could have held his own on the  
10 Supreme Court of the United States without a doubt.

11 MR. SCHUCKERS: Yes.

12 MR. SIEGEL: And he was more than being completely  
13 knowledgeable and thorough and able to intellectually sort  
14 out confusing Supreme Court opinions, he was an excellent  
15 teacher. He could lay out a complicated subject so that  
16 somebody who was really not paying attention could understand  
17 it, which was -- I think you would agree with that.

18 MR. SCHUCKERS: Oh, absolutely.

19 MR. SIEGEL: There's one other sort of  
20 humorous story -- not humorous really, with Judge Blatt. I  
21 knew who Judge Blatt was. I mean, she was -- she had a lot  
22 of public positions, and you knew the name.

23 She and my wife were in a group of attorneys and  
24 judges who took a tour to Russia and China in 1982. I wasn't  
25 along on the trip, so my wife and Judge Blatt became friends.

19

1 And there's two stories that came out of that.

2 That trip was right after some either Russian  
3 dancers or musicians who were playing or performing in the  
4 West defected and they got -- Judge Blatt's group got to  
5 Russia a day or two after the defections. So the Russians  
6 were really hyper about everything, and they attempted to  
7 take Judge Blatt's rosary from her, which created quite a  
8 commotion. They didn't succeed, but it created quite a  
9 commotion.

10 MR. SCHUCKERS: You could do a lot of things to  
11 Judge Blatt, but you could not take those rosaries. She was

12 a very, very strong Catholic.

13 MR. SIEGEL: She was very devout.

14 MR. SCHUCKERS: Very devout. And in many respects,  
15 Catholicism was so central to her life, and I can't imagine  
16 somebody trying to take her rosaries.

17 MR. SIEGEL: She and my wife became friends on this  
18 trip. The trip was about a month. And in the course of  
19 their conversations, my wife mentioned that I was interested  
20 in streetcars and trains, which is my hobby.

21 From the time they got back from that trip until  
22 Judge Blatt left Harrisburg, every time there was an article  
23 in the Patriot about railroads or redeveloping trolleys or  
24 the history of the streetcar in Hershey, I would get these  
25 envelopes from Judge Blatt addressed to me with a clipping

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1 inside and a friendly little note that she knew I was  
2 interested and she was sending this. That continued I don't  
3 remember for how many years but from the time they came back  
4 from the trip in 1982 until she left Harrisburg.

5 MR. SCHUCKERS: Any other reflections on any of the

6 other judges?

7 MR. SIEGEL: Not particularly. I think -- probably  
8 I'll get in trouble saying this, but I think the early  
9 Commonwealth Court was probably the best appellate court  
10 Pennsylvania ever had.

11 MR. SCHUCKERS: That's wonderful to hear. And they  
12 were all appointed by Governor Shafer in 1969 and '70.

13 MR. SIEGEL: Right. And then there's another  
14 comment. Every one of the original judges on the  
15 Commonwealth Court were politicians before they got on the  
16 Court because if they weren't politicians, they wouldn't have  
17 gotten appointed.

18 But with 1 or 2 exceptions, which I won't discuss,  
19 every one of the judges once they got on the Court became  
20 judges and no longer were politicians. And they didn't act  
21 like politicians, and they didn't act like some judges who  
22 consider themselves still to be politicians.

23 MR. SCHUCKERS: I'm just wondering about any  
24 changes you might have seen. In terms of number of cases  
25 we've seen in workers' compensation, it has really gone up

1 over the last 30 years.

2 MR. SIEGEL: Well, like I mentioned earlier, back  
3 in the '50s and '60s, if I read 50 to 60 appellate court  
4 opinions a year, which is 1 or 2 a week at the most, I had  
5 all the appellate law there was in workers' compensation in  
6 Pennsylvania.

7 Now, at one point when I was going full blast in  
8 workers' compensation, I think there was something like 800  
9 Commonwealth Court opinions a year, or close to that number,  
10 or cases. They may not all have been --

11 MR. SCHUCKERS: Cases. At one time, I think they  
12 were up to around seven or eight hundred cases. Now, in  
13 terms of opinions, we'd be at three to four hundred opinions  
14 per year.

15 MR. SIEGEL: In addition, there was probably half a  
16 dozen Supreme Court opinions usually. The trouble with the  
17 Supreme Court opinions is almost every time the Supreme Court  
18 gets a case, they decide it wrong. They have almost a  
19 perfect record.

20 MR. SCHUCKERS: Anything else you can think of?

21 MR. SIEGEL: Well, if you're interested in some

22 anecdotes about the early practice of workers' compensation,  
23 not necessarily before the Court, I've got a couple of  
24 stories.

25 MR. SCHUCKERS: Sure.

22

1 MR. SIEGEL: Now, I don't know, Dan; have you ever  
2 -- have I told you the story about the principle of law in  
3 workers' compensation known as the shifting cigar rule?

4 MR. SCHUCKERS: No.

5 MR. SIEGEL: Well, back in the early days, '50s,  
6 '60s principally, the workers' compensation referee who came  
7 to Lewistown was the county chairman in Blair County of the  
8 political party empowered in Harrisburg. That was the  
9 qualification to be the workers' compensation referee. That  
10 was the patronage plum. Well, the result was these fellows  
11 didn't know much of anything about it and didn't care much of  
12 anything about it.

13 And they had two reporters. At that time, the  
14 reporters were state employees. They weren't contract

15 reporters.

16       The hearings were in the second story of the old  
17 YMCA building in Lewistown. And the one referee would come  
18 down, and all the hearings were scheduled for 9:30. He'd  
19 walk in the hearing room, and there would be a bunch of  
20 attorneys and claimants and other people, witnesses. And  
21 he'd say, "Everybody who is going to testify, raise your  
22 right hand." He swore everybody in; he didn't know who he  
23 was swearing in. If a dog had walked in and raised his right  
24 paw, he would have been sworn in.

25       Then the referee would promptly go over in the

23

1 corner, sit down and fall asleep. One of the reporters was a  
2 fellow by the name of Frank Goss, who was very knowledgeable  
3 because he had reported so many workers' compensation cases.  
4 He knew what was going on.

5       Before 1972, it was quite common that a defendant  
6 client would say, "Go to a hearing; whatever the referee  
7 decides, we're going to do." There were no penalties for  
8 going to a hearing; there was no interest, no delay. So

9 there was nothing -- no risk in going to a hearing.

10 If you were going to a hearing where you knew your  
11 client was going to be -- go with whatever the referee  
12 decided, you weren't going to take an appeal, you watched  
13 Frank Goss as he was taking the testimony. And he took it in  
14 shorthand, the old-fashioned way. And he always had a cigar  
15 in his mouth, never lit, but he had a cigar in his mouth.

16 When the cigar started moving from one side of the  
17 mouth to the other, you knew that Frank had heard all he  
18 wanted to hear about that case, and you also knew that Frank  
19 was deciding the case because the referee was sound asleep  
20 over in the corner and didn't know what was going on.

21 So if you were just going to go with the referee's  
22 decision, you -- when Frank started shifting that cigar, you  
23 quit wherever you were because you knew you were going  
24 downhill from then on. And then Frank would write the  
25 decision. He had a rubber stamp with the referee's name.

1 He'd stamp it. I don't think the referee ever saw the

2 decisions. Now, that's the way it used to be back then.

3 MR. SCHUCKERS: That was back in the '50s and '60s?

4 MR. SIEGEL: '50s and '60s.

5 MR. SCHUCKERS: Yeah. I think there's been a great  
6 effort to professionalize that.

7 MR. SIEGEL: Well, now that's no longer the case.

8 The several referees we had in Lewistown were all  
9 politicians. The first real good referee we had was probably  
10 in the '70s who was appointed, and he really took his job  
11 seriously. And he was the referee, and he decided the cases.

12 It used to be when I started practicing workers'  
13 compensation law, a lot of the referees were just political  
14 appointees. Now under the latest amendments to the act,  
15 referee -- judges -- they're now judges -- have to be  
16 attorneys, although there are still some non-attorney judges  
17 because they were grandfathered in.

18 And while I theoretically feel that you should have  
19 to be an attorney to be a workers' compensation judge, some  
20 of the best judges and referees have been non-attorneys, and  
21 so it's hard to make logic out of it, make sense.

22 MR. SCHUCKERS: You mentioned the shifting cigar  
23 story. I remember Harold Fergus, who has been a member of  
24 the Workers' Compensation Appeal Board for about 25 years.

25 He used to tell the story of a workers' compensation referee

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1 out in the western part of the state who would handle, I  
2 think, cases involving lung problems and the referee would  
3 light up a cigarette and if the claimant coughed, he would  
4 get benefits and if the claimant didn't cough, he wouldn't  
5 get benefits.

6 MR. SIEGEL: Well, then another -- if you go back  
7 in the almost antiquities of workers' compensation, in  
8 occupational disease cases, under the old OD Act, you had to  
9 have a hearing because the state paid 40 percent and the  
10 state wouldn't pay nickel one unless there was a hearing.  
11 And so you had to have medical testimony.

12 And there was a doctor in the coal region who --  
13 and I've heard this story so many times, I believe it to be  
14 true; who was appointed. He was a political hack. He was  
15 appointed by the party in power. And he was pro-claimant,  
16 but he thought that he had to show his objectivity by finding  
17 a couple of people not disabled.

18           So the story is that he had ten steps up to his  
19 office and if he had ten files, he threw them down the steps  
20 and the files that landed on steps, like, maybe 3 and 5 were  
21 not disabled; everybody else was totally disabled.

22           Too many people have told me that story that --

23           MR. SCHUCKERS: Well, I think beginning  
24 particularly in the Thornburgh Administration, there was the  
25 realization of how important the job is of being a workers'

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1 compensation referee, particularly in light of the '72  
2 amendments when they became the ultimate fact-finder. And as  
3 a result, there was a real effort by all of the past  
4 administrations, including the Thornburgh Administration and  
5 on forward, to professionalize --

6           MR. SIEGEL: Well, they're now all civil service.

7           MR. SCHUCKERS: All civil service. And I hope  
8 there's no political overlay like there had been back in the  
9 '50s or '60s.

10           MR. SIEGEL: Well, the only way there can be  
11 political overlay is -- right now, as I understand it, to be

12 a workers' compensation judge, you have to take two exams:  
13 One, the civil service exam. Then if you rank high enough in  
14 that, then there's a separate exam that the Office of  
15 Adjudication now administers for prospective judges.

16 Now, when they go to fill a vacancy, the  
17 administrators still have, as I understand it, the option of  
18 picking from the top 2 or 3. And if somebody has influence,  
19 they may sneak in, but that's far less than the old way. At  
20 least everybody in the top 2 or 3 are qualified.

21 MR. SCHUCKERS: Absolutely. There have been great  
22 improvements made in that system.

23 MR. SIEGEL: And now I think -- I don't have any  
24 statistics to prove this, but I think it's true, that the  
25 average workers' compensation judge will rule on dispensing

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1 more money in the course of a year than the average common  
2 pleas judge will.

3 MR. SCHUCKERS: I think that's a distinct  
4 possibility, particularly in light of the volume that they

5 handle.

6 MR. SIEGEL: Well, the volume and the fact that you  
7 figure somebody is getting five, six hundred dollars a week  
8 compensation, multiply that by 52, and the average medical  
9 bill now, you're talking 50, 60, \$70,000 medical bills in  
10 most cases.

11 MR. SCHUCKERS: That's one of the great changes we  
12 saw, particularly beginning in the 1980s when the medical  
13 costs started to really take off as opposed to -- the wage  
14 loss has always been there, but the medical started to take  
15 off.

16 MR. SIEGEL: Well, even with the enhanced weekly  
17 benefit rate and the fact that it does go up with -- in  
18 effect, there's no cost-of-living escalator. As such, your  
19 benefit rate is fixed at the time your petition -- you're  
20 awarded benefits. But what the rate can be each year goes up  
21 because it's based upon the statewide average weekly wage,  
22 which changes every year.

23 But once you're locked into a specific benefit  
24 rate, there's no cost of living that it's going to go up  
25 automatically; that's your rate for the rest of your claim.

1 MR. SCHUCKERS: Stan, in terms of what you've seen  
2 from Commonwealth Court decisions over the past 37 years in  
3 workers' compensation, you mentioned you didn't think the  
4 Supreme Court got it right very often. Do you think the  
5 Commonwealth Court has done a good job in that area?

6 MR. SIEGEL: I think most of the time, the  
7 Commonwealth Court decides the case correctly. I've run into  
8 a lot of cases, one particular I can remember where the  
9 Commonwealth Court did the, I thought, rare thing of actually  
10 sua sponte imposing penalties on the defendant because the  
11 defendant's conduct was so abysmal that it should have  
12 happened.

13 One of the big problems where you get cases which  
14 make bad law is there are too many of our brethren, both  
15 claimants, more defendants than claimants, who will appeal a  
16 case where the facts are so terrible that it doesn't make any  
17 difference what the law is, the Court is going to find a way  
18 to sustain the award of benefits. And in so doing, they very  
19 frequently make statements, which may be a little bit of  
20 dicta, but they come back to haunt us later on.

21           And the moral of the story is if you have a loser,  
22 pay it, don't litigate it. And certainly if you lose at the  
23 judge's level, don't appeal it to the Commonwealth Court if  
24 the facts are so bad that you know one way or another, the  
25 Commonwealth Court can find a way of awarding benefits.

29

1           MR. SCHUCKERS: And given our scope of review, our  
2 limited power of review --

3           MR. SIEGEL: Well, given your limited power of  
4 review. And the Court can always fall back on the liberal  
5 construction rule. If they run out of any other way of  
6 awarding benefits in a case where they think benefits should  
7 be awarded, the liberal construction rule is a great crutch.

8           MR. SCHUCKERS: Do the think the Commonwealth Court  
9 has used that too much over the last 37 years?

10          MR. SIEGEL: No, I don't think so. I think that  
11 there are a few judges who use it too much, but a lot of  
12 times they're in the minority on the three-judge panel.

13          MR. SCHUCKERS: One thing I've seen over the last  
14 several years is the use of the waiver rule. It's absolutely

15 necessary for attorneys to preserve their arguments and their  
16 issues and their objections at the lowest level and keep  
17 preserving them all the way up.

18 MR. SIEGEL: Well, that's the case -- I forget the  
19 name of it, but sort of put an end to the taking appeal and  
20 just summary type thing where you don't say anything, you  
21 know.

22 Or another case where it used to be when you filed  
23 an answer for defendant, if there were 12 paragraphs, you  
24 went 1 to 12, denied, denied, denied, denied. Several years  
25 ago, the Court put an end to that.

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1 And a lot of the problems you have in workers'  
2 compensation come from the way more defendants' than  
3 claimants' attorneys practice. Many defendants' attorneys  
4 are reluctant to tell their client they don't have a case.  
5 They're afraid they'll lose a client, so they'll litigate.  
6 And it's a loser. And if you litigate a loser, you're going  
7 to make bad law. The best thing to do with a loser is to pay

8 it.

9           And that has a number of benefits. In the workers'  
10 compensation field, you run across the same workers'  
11 compensation judges time and time again. Now, if you have a  
12 habit of litigating everything that comes down the road,  
13 these judges get used to that. They turn off their hearing  
14 aides when they see it because they figure this guy is going  
15 to raise every issue under the sun, which makes no  
16 difference, so they don't pay attention to you.

17           If, on the other hand, you establish a reputation  
18 with judges that the only time you're there to litigate is  
19 when there's something to litigate about, they pay more  
20 attention. And that's intangible, but I keep telling defense  
21 lawyers that I think that that is a distinct advantage that  
22 you have, if you can develop a reputation of only litigating  
23 when there's something to litigate.

24           With a good claimant's counsel -- and I've done  
25 this any number of times -- you sit down and you agree on

2 case where there's more than 1 or 2 or 3 at the most issues

3 that warrant litigation. Too many defense counsel will

4 litigate all 12 issues.

5 MR. SCHUCKERS: And we see it in other areas of the

6 law just as well.

7 Well, Stan, thank you very much. I appreciate your

8 taking the time to come in and discuss your reminiscences and

9 your memories of some of the Judges of the Commonwealth Court

10 and the Court itself. I really appreciate it.

11 MR. SIEGEL: Well, it's been a pleasure.

12 MR. SCHUCKERS: Thank you. I appreciate it.

13 (Concluded at 1:44 p.m.)

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