

YOUNGSTOWN STATE UNIVERSITY

ORAL HISTORY PROGRAM

Judges

Personal Experience

O.H. 1443

CLYDE OSBORNE

Interviewed

by

Michael Graham

on

December 9, 1991

CLYDE W. OSBORNE

Clyde Wayne Osborne of Youngstown, Ohio was born on April 21, 1917 to Mark A. Osborne, and Loretta McEvey Osborne. He grew up in Youngstown, Ohio, and graduated from South High School in 1934. Judge Osborne attended the Miami University at Oxford, Ohio, from 1936-1938, and returned to Youngstown in 1938. He attended Youngstown College Law School from 1938 until he was drafted into the Army, in 1941. Judge Osborne remained in the Army until he was discharged in 1945.

While in the Army, Judge Osborne married the former Jean Lewis. The couple had two children, Linda Fosnaught, and Lorene Osborne. Judge Osborne returned to Youngstown College, and received his Juris Doctor degree in 1949. He was a private attorney until 1957, when he was appointed as an assistant Prosecuting Attorney to Thomas A. Beil. Judge Osborne served on the bench until 1981, when he retired at the age of sixty-four.

Judge Osborne is a member of Boardman United Methodist Church, a life member of Delta Tau Delta fraternity, and the American Legion Post 15. He remains active in the area, and enjoys traveling to see his family.

G: This is an interview with Clyde W. Osborne for the Youngstown State University Oral History Program, on Judges, by Michael Graham, on December 9, 1991, at Youngstown State University Media Center, at 1:00 p.m.

Let's begin with something that is not too strenuous. Why do you not tell me a little about your childhood.

O: Oh, I would call it a very pleasant, normal childhood. I was born in Youngstown. I lived on East Dewey Avenue until I was about twelve. Then, my father, who was in the automobile business, moved us all to Fort Wayne, Indiana, where we stayed a year or so. Then we came back to Youngstown. I went to South High School. I graduated in 1934. I did very little for the next two years, except working at a gas station for my father. I went to Miami University at Oxford in the fall of 1936. I left at the end of my sophomore year, 1938. I came to Youngstown College, then, and started law school.

My childhood, I do not know where to start with that. I had a very pleasant family life, as I recall it. Both my parents were living until not too far back. I have two brothers, Mark Jr. and W. Glenn, both still living. We have a close relationship, uneventful, actually. Any specific questions?

G: Where did you live in Indiana?

O: Fort Wayne.

G: What did you say your father did?

O: He was in the automobile business. He sold Dodge cars. I suppose you are probably too young to remember W.O. Strausbaugh in Youngstown. He had the Dodge franchise here. Before that, it was a man named Van Baalen. This was when I was just a little boy. My dad was a bookkeeper for them. Then, Mr. Van Baalen died, and a man named W. O. Strausbaugh, from Toledo, Ohio was sent in here by the Dodge factory, then known as Dodge Brothers, to pick up the Dodge franchise. My dad stayed on with him. Eventually, he became sales manager. Then, he had a chance to have the Dodge Brothers' franchise in Fort Wayne, and he took it. He went out there, spent a year or so, and then sent for us. We went there, my mother and the three of us. We stayed there about a year, went to school there, then came back here. I was in the seventh grade when I came back here. I went to Princeton Junior High, then on to South High, and so forth.

G: Where did you live at on the Southside?

O: I was born on West Dewey Avenue. I lived on East Dewey Avenue, 21 East Dewey, in fact, until I was about twelve. Then, we went to Fort Wayne from there. Then, when we moved back, we lived on West Evergreen Avenue, 112, for a couple of years while my dad had a house built, out at the corner of Rush Boulevard and Hollywood Avenue. We

moved out there, and there I lived until I went in the Army.

G: Tell me a little of what the neighborhood looked like.

O: Dewey Avenue?

G: Yes.

O: Alright. There was a SOHIO, I think Standard Oil, then, on the corner of Market and Dewey. Kingdom Hall now has a parking lot on that property. Across the street from that, on the southeast corner of Dewey and Market, was a triplex apartment building, a frame building. Next to that were residences. It was a very pleasant neighborhood in those days. It still is. As a matter of fact, I drive through it frequently. We had a long line of sycamore trees that went all the way down to the bridge, which crosses a ravine. We used to call it Dewey Woods, where the Y & S railroad tracks ran. The Kingdom Hall was built after we left there. That was a vacant lot, behind the SOHIO station. It was Standard Oil then, but that does not make any difference. It was a gas station. That was vacant clear down to approximately across the street from where we lived on East Dewey. We were the third house, counting the apartment, on East Dewey, on the south side of the street. The property across from us was vacant until they built Kingdom Hall. In those days, we played in that big open field, behind the gas station. It was a very nice neighborhood. The homes were all relatively new in those days. I was born in 1917, and we moved down there, I am told, shortly after that. So we are talking 1918, 1919, 1920, or 1924. I think it was in 1928 or 1929 [when] we moved to Fort Wayne.

G: Let's talk about high school. You went to South High?

O: Right.

G: Were you involved in any activities or any sports?

O: I went out for football all three years that I was there. I went so far as getting a suit my senior year. In those days, of course, the squads were relatively small. I got kicked off the squad after about two days. My lack of talent was obvious in those days. Strangely enough, I stayed in school after I graduated. I stayed and took some mathematics, which I had not had because I thought I had better get ready to go to college, if I wanted to. Like a lot of kids, I did not think college was worth anything then.

G: You said you joined the Army. You joined it when?

O: Well, I was drafted.

G: You were drafted?

O: Selective Service. Yes. I was. Let's see. I think everybody had to register in December of 1940, maybe, or 1939, somewhere along in there. We were each assigned a number. Mine was relatively low. I was then a student in Youngstown College Law School, and it was getting to the point where I probably was going to be drafted in the Spring of 1941. So, I got a student deferment. Of course, there was no war on then. It was a civilian obligation in those days. I got a deferment until the end of the Spring quarter, June, it ended. And, then I went down and volunteered, as a matter of fact, and they told me not to volunteer, because my number was so low. Keeping in mind, now, this was not heroic because it was only for twelve months, and the war had not started. We were supposed to serve one year, that was all. There was nothing patriotic about it, it was just that I would get the thing out of the way. So, I volunteered, but they told me that I was going to come up pretty soon anyway, so to just forget about it, and stay where I was, which I did. I was drafted on August 5, 1941.

G: What did you do?

O: I went into basic training at Fort Bragg, North Carolina in the Field Artillery as a battery clerk. I was in a specialist training regiment. I stayed there at the end of the training cycle. I made private first class, then corporal. As a matter of fact, I was a corporal on Pearl Harbor Day. They had me stay on as an instructor in the field, training battery clerks in military correspondence, file typing, that sort of thing, as well as base subjects such as rifle marksmanship, close order drill, and physical training. I stayed there until 1943, when I was transferred to a new infantry replacement center at Camp Robinson, Arkansas as a Sergeant Major for a training battalion. So, I stayed there then. I was transferred, of course, to the infantry, because it was an infantry training center. I stayed there as a Sergeant Major, which was the grade of staff sergeant, until I went into Officer's Candidate School in 1944. I graduated in December 1944 as a second lieutenant, which was right about the time of the Belgian Bulge. It is a strange thing. I have always felt, not guilty, exactly, but that I should have done more than I did, because I never saw any combat service. But, I did volunteer to go to Officer's School in the infantry, which is a pretty tough combat situation when you go. It was a strange thing.

They were graduating from the infantry school, in those days, about one hundred to one hundred and fifty second lieutenants a day. It was a seventeen-week course, very rough, physical, of course, and mental, too. The classes immediately preceding ours were going straight to ports of embarkation. They were being shipped immediately over to France because they had a very difficult situation going at that time. Our forces had penetrated deeply, but the Germans had counterattacked. They surrounded our units there. So they were filling them. They were sending replacements. Our class graduated intact. Nobody was sent overseas from our class. Well then, coincidentally, so far as I was concerned, at least, they sent me back to the same place where I had been sergeant major. [They sent me back to] Camp Robinson, Arkansas.

When I reported in, I told the personnel sergeant major that I had been there before, the 127th Battalion. He said, "Well, we have not got any officers vacancies in the

127th, how about the 126th?" I said, "Sure." So, they sent me back to a battalion next to the one I had been in before, in the same regiment. So, I knew practically everybody, and it was not very long until they made me assistant regimental adjutant, because I had been a sergeant major, which is sort of a chief clerk job. I stayed there until August of 1945, when I got my overseas orders. I was sent to Camp Roberts, California, for overseas assignment. Another officer from Toledo and I arrived in Camp Roberts at the same time. [We] stayed one night, and they put us on orders the next day, for Fort Ord, which was the port of embarkation. We were told, "You have got twelve days to get there." Fort Ord was only 100 miles from Camp Roberts, or so. We were asked, "Do you guys want a delay?" We said, "Sure." So we came back home. He went to Toledo, I came to Youngstown. We stayed here about ten days or so, and then we went back.

Well, in the interim, the war had ended, the fighting war. The shooting war ended in August of 1945. We still had not had the treaty signing yet, but the war was over. Well, I had been in the Army forty-eight months, four years, and my wife and I had a baby. So, I had forty-nine points, one per month, plus one per child. That was the dividing line. If you had forty-nine points, you did not go overseas. That is a rather undistinguished military career.

G: I do not know about that. Okay, you said you went to school from 1939 to 1941 at Youngstown.

O: 1938 in the Fall I enrolled in Youngstown Law School, and in 1941 I went in the service. When I came back--I worked at the Vindicator at that time. When I came back, I did not go back to law school, I think, until October, 1946. I got out of the Army on Christmas Day, 1945, actually. My papers, I think, were dated that day. I had been home since about the 15th or 16th of December. Then, I did not go to school, until the Fall quarter. I just worked. I made a home for my wife and daughter. Then, I came back up here in October of 1946, and finished in 1949.

G: What did you do at the Vindicator?

O: I started out as a copy boy, and ended up as a police reporter. When I came back from the service, I was a police reporter. They felt they had to give me more money than a copy boy made, so they paid me thirty-five dollars a week. That is what I made with a wife and daughter.

G: Gee.

O: That was above the minimum, incidentally.

G: What was the minimum?

O: I do not know, I think it was thirty dollars. We were represented then, we belonged to the

newspaper guild, and that was our negotiated contract. That was not too bad, really, in those days. You could survive. Of course, you could not eat on it now.

G: Two questions. First of all, when you got back into college, it was the Fall quarter of 1946?

O: [It was the] Fall quarter of 1946, I think. I may be wrong. It was somewhere around there, yes.

G: Apparently, earlier you had decided to become a lawyer?

O: Yes.

G: What made you?

O: Well, I think because my uncle, for whom I was named, was a lawyer. I suppose I was attracted to it for that reason, primarily. I had no other great driving urge to become an attorney. I liked it, once I started.

G: When did you graduate?

O: 1949, I finished. They were graduating one class a year. I suppose they do not now, but they did then. So, I had actually finished at the end of the Fall quarter in 1948, and I had taken the bar exam. I had passed the bar by the time I graduated, which you could do then.

G: Tell me about the law school.

O: Okay. When I came up here, there was not anything but Jones Hall. All our classes were in Jones Hall. The Law Library was way up on the top floor in the attic. It was hotter than the devil up there in the summertime. Judge George Gessner was the dean when I started. Of course, he was an old friend of my uncle's and so on, which did not do me any good, incidentally, but he was. Judge Erskine Maiden taught Common Law Pleading. Judge Gessner taught Criminal Law, among other things. Let me see, I am not sure of my faculty. When I started, I know Gessner was dean. I know Maiden was there. I think Henry Church, an attorney, was there. There was an attorney named Ross Diser, who later was a referee in bankruptcy. He taught debtor's estates, and things like that. Most of the faculty were practicing attorneys. They all were, I think, as a matter of fact. They were part-time. Then, when I came back, Gessner had died, I think, or, died shortly after I came back. Ray Falls, an attorney, was dean. Westenfield was the other man's name. He came a little bit later. When I came back from the service, Paul Stevens was a practicing lawyer, and still was teaching. John Newman, Board of Trustees, he was up here a long time, and was teaching here. Henry Church was here, Old Judge Jenkins, that

is, David, was here. Ross Diser was here. That is about all I can remember of the faculty. I am sorry. Everybody who ever went here [remembers] Knowles Wyatt.

G: That is who I wanted to get to.

O: Oh, yes. Everybody remembers Knowles Wyatt.

G: Everybody remembers Knowles Wyatt, everybody I have spoken to. This guy is just fascinating.

O: He was fascinating.

G: Tell me about him.

O: Well, Knowles was a soft-hearted guy, actually, who was very fierce. I can remember. Have you interviewed Judge Jenkins? Elwyn?

G: No, I have not.

O: He is ill. I do not know whether he would be up to it or not. But, he and I, and a number of local lawyers were in school together. I can remember sitting next to Elwyn Jenkins in a Conflict of Laws class that Knowles Wyatt had, and Wyatt would go right down the row. Jenkins, hand on the arm of the chair, was soaked with nervous sweat. You knew when he was going to call on you. If you were late, you did not get in. That was number one. If you screwed up, you went out in the hall. You were out. If you tried to lie to him, you were out. I mean out! He would say, "Get out! Osborne, get out!" or, "Jenkins, get out!" Whoever it was. If you tried to bluff him--if you were supposed to read a case and brief it, of course, for homework, if you tried to bluff him, he would find out. He would ask you a question, which you did not know the answer to, because you had not read it. He would give you the devil about that. Oh, man. He would say, "The trouble with you is you can't read!" He would say things like that. He would say, "Go back and read that again." Things of that kind, very brutal, but he was a nice guy. He really was.

I was working at the Vindicator at the time, I was a police reporter by this time. Many times, due to my assignment, I was called out like at one o'clock in the morning, for a fire or a murder or a traffic accident, or something like that. Sometimes, I did not have my homework. So, when I did not have his, and I wanted to go to school, I went to him, and I said, "Look, Mr. Wyatt, I just want you to know before we go in, that I have not read this assignment." I said, "So, I just want you to know that, I do not want to go in there and have you throw me out." He replied, "Well, go on in there and sit down, and just keep your mouth shut." He was that kind of a guy. I always liked him. He had a law firm of Wilson and Wyatt. Jack Harris was with him. Jack is now retired. He went here to law school, too. Most everybody did. Judge Nathaniel Jones went here, Judge Forrest

Cavalier, our whole bench. Elwyn Jenkins, Judge Charlie Bannon, Don Hanni, Judge Leskoviansky, Sidney Rigelaupf. At one time, everybody was from Youngstown College, except for the probate judge, I think, as I remember. So, everybody knew each other. It was kind of nice.

G: You just graduated from college. Where did you go from there?

O: Well, I stayed. Oh, I had forgotten. I had forgotten my political career. In 1947, Charles Henderson was elected Mayor. He asked Dean Falls, Ray Falls, who was the dean of law school, to recommend some law students to him to be his--what was then called, his secretary. It later became known as his executive assistant. I was one of them. So, he appointed me, Chuck Henderson did, as his secretary. So, that is how I got into politics. [In] 1948, January 1st, I was sworn in. I passed the bar during his administration. I told him when I took the job, that I wanted to take the bar in 1949, and I wanted to go to a refresher course, because it had been since 1948. So, he gave me permission to do that. He gave me a leave without pay. Of course. I had the G.I. bill. The G.I. bill gave me a little subsistence. So, he gave me leave, I took the bar exam, I passed it, and stayed on with him until April of 1950, as his secretary. Then, I went into practice with my uncle. I practiced law for six years, and then went into the county prosecutor's office in 1957. That started my political career. I always seemed to be at the right place at the right time, you know. I do not give myself a great deal of credit for that. I just happened to be there.

G: How much were you making?

O: At the Vindicator?

G: No. You already told me about that. That was \$35 a week.

O: Well, I made a little more than that when I left. I had gotten some raises.

G: Okay. Your first political job.

O: I made pretty good money in that job. Yes. Let's see, I think I made around \$200 or \$250 a month, or something like that. In those days, it was pretty good money.

G: What were your duties as the assistant prosecutor?

O: Well, to assist the county prosecutor. To assist him in trial work, or whatever he needed, by way of an assistant. I was primarily a trial assistant. I did a lot of trial work for him. I never was a research lawyer or a civil practice lawyer. The prosecuting attorney, as you may know, is actually legal counsel for all county officials and township officials. So, he has a lot of civil work to do. He has opinions to write and so forth. He usually has one or

two lawyers assigned to that, which I never liked very well. I guess I liked to work where it is at, as they say now. I always enjoyed that. I enjoyed the courtroom, very much.

[In] 1957 I went in with Tom Beil. I was appointed to assist him in January 1957. Tom was forced to resign, actually, in 1963. He had a series of strokes. He was only thirty-eight years old. It became impossible for him to continue, physically impossible. In those days, the common pleas judges appointed the successor. So, they appointed me. That was in 1963, in January. Of course, I had to run that year. Let's see, is that right? What year was Kennedy assassinated? 1963?

G: 1963.

O: If it was 1963, then I was appointed by the judges in January of 1963. I am pretty sure. Tom had been re-elected in 1960. He had served two years, then they put me on. He served in 1961 and 1962. He had to retire in December of 1962. It does not really matter. It was either 1963 or 1964. I had to run in 1964 for the job. I was elected in 1964.

G: Was it a four-year term?

O: Yes. I served three of that. Then, Judge Maiden died, and Governor Rhodes appointed me to fill his vacancy in September, 1967. That is how I got on the common pleas bench. Then, I had to run. I had to run in the next general election, which was in 1968. I was appointed in 1967, September. Under the law at that time, you had to run for the unexpired term of the predecessor in the next general election, which was 1968. So, I ran in that election. I was opposed by a friend of mine, a lawyer who really did not wage much of a campaign. I was elected in 1972 to a six year term. In 1978, I was opposed again, by Judge Kolmacic, from Campbell. My term started in 1979, in January and, I served two and a half years of that, and then retired.

G: Now, in the elections, did you have to wage a real tough campaign?

O: I had a real rough campaign in 1964 for prosecutor. A real rough campaign.

G: Tell me about that first.

O: Well, Judge Harold Rickert who was, incidentally, a Youngstown College graduate, was Domestic Relations judge. He had a son, Harold. [Harold] graduated from Western Reserve Law School. [He was a] very bright young man. He was a county judge in Austintown. He decided to run against me. That was tough, boy. He really waged a tough campaign.

G: Did you win?

- O: Yes. I won for prosecutor. And, as I said, I served three years of the four-year term, when Judge Maiden died. That was a hard campaign, that was real rough.
- G: Now, did you announce whether you were Democrat or Republican, or can you do that?
- O: You do not have to. You can file as an Independent. I am not familiar with the election laws anymore, but it used to be that you had to get a great number of signatures on your petition to run as an Independent. So, most judges in the primary run as a partisan. In the general election, they run non-partisan. It is a non-partisan judicial ballot. Of course, it is kind of a silly thing, because everybody knows what you are, if they want to check the primary. What I did, I ran in the Republican primary, and in the general election, as a non-partisan.
- G: Why do you not give me a little bit about your daily duties when you got to the common pleas?
- O: Well, to tell you, for a long time, I did not know what to do with myself, because I did not realize how much pressure there was in the prosecutor's office, until I sat in the judges chambers for a couple days, and [I] did not do anything. I could not figure out what was wrong. There was plenty to do. You have got a case list. There were four trial judges then, Judge Rigelhaupf, Judge Jenkins, Judge Cavalier, and me. That is right, four. The docket was divided, more or less, arbitrarily. The court year was divided into terms, the January term, May term, and September term. Each, four months. We rotated the equity docket, which is a non-jury docket: mortgage foreclosures, injunctions, temporary restraining orders; things of that nature, which do not require a jury trial. We rotated that. We rotated the criminal docket once every year. During that term, the judge assigned to that would handle all the criminal cases, everything. That is, everything of court jurisdiction, unless it was something that another judge had beforehand. Then, it would go back to the judge who had it. Matters involving sentencing, motions, which had been handled by the original trial judge would go back to him for handling. The other docket was the civil docket. That took care of automobile accidents, all kinds of damage claims, damages for breach of contract; just about anything you can think of. The common pleas court is the court of general jurisdiction. There is virtually no limit on the jurisdiction of the common pleas court, including the death penalty. [There is] no limit on the amount of money a jury can award.
- G: Did you have a particular preference for what you liked?
- O: Criminal law.
- G: Did you enjoy criminal law?
- O: Yes. I enjoyed it. As I said, I was police reporter for the Vindicator, I got used to being

on the scene of crimes, not while they were in progress, of course, but afterward, riding in the ambulance, from time to time, riding in police cars--the things that police reporters did and still do. I kind of liked it. I knew everybody at the police department. I had handled some criminal work in private practice. I had tried a number of criminal cases. [I handled] one murder case, as a matter of fact, one capital murder case. So, I had had some courtroom experience. It made it a lot easier for me as a trial judge--the fact that I had had this experience. Because you know what is right and what is wrong, as far as the rules go, and as far as those things are concerned. Civil law was hard for me, because I had never really practiced Business Law, Contract Law, things of that kind. Of course, Tort law is automobile accidents, things like that. That is not a very difficult thing. It does not require a lot of legal research, usually, except for questions of damages, or questions whether an insurance policy covers it, or something of that kind. Normally, it is just who was negligent, who was hurt, if anybody, and how much. That is usually what it came to. But, I liked the criminal law. Yes. As a matter of fact, when I was prosecutor, I pretty much handled the grand jury by myself. I used to like that. It was a pleasure for me to go in there and present cases.

G: From criminal law, did you ever have to give anybody the death penalty?

O: No. I asked for it as prosecutor, several times. No, the jury never gave it, while I was there, and I never had occasion to. I never had a death case in my court.

G: How did you handle that? That has got to be a lot of pressure on you.

O: You just have to do it. You do what you have to do, as they say. Yes, of course, you separate a family, you send a son to the penitentiary, you send somebody to the penitentiary for killing somebody else's son, or somebody else's daughter, with a firearm or an automobile, or whatever. Yes, it is hard, of course. And, it is very hard, sometimes, to send the kid to the penitentiary. The ones I used to hate to send were young kids, young guys. Some crimes, of course, were not probationary, and still are not. So, you had to send them away, whether you liked to or not. Of course, under a certain age, under thirty, I think they went to the reformatory, as I remember, which, I suppose, was just as bad as the penitentiary. As a matter of fact, I have had guys ask me to send them to the penitentiary instead of the reformatory--people who had been there before. They could not go back to the reformatory, but they asked, anyhow.

G: Give me a typical day.

O: A typical day, okay. I used to get downtown around 8:30 or so, go over to my chambers, meet my bailiff, sit down and go over the schedule for the day. By this time, of course, the lawyers who were there for the nine o'clock cases are there. I always tried to, before we went right into a trial, I always tried to have a little conference with the attorneys to see just what was going on. They would tell me. I did not tell them. It was their case,

not mine. Then, if it was a jury trial, we would summon the jury, put them in the courtroom, go through what we call voir dire examination, seat the jury, and proceed. From then on, I would sit on the bench, and sort of act as a referee, sustaining or overruling objections, and that sort of thing. Then, charge the jury--not usually in one day. A jury trial usually lasts several days. I do not know how they do it in some states. Incidentally, I read about these cases going on for six months, and so forth. I do not know what they do that takes that long. The longest case I ever had was ten days long. That was a civil case. Most criminal trials last three or four days, from beginning to end. Although, there have been criminal cases--I think Don Hanni had a murder case that went for something like ten weeks. It was that Masters Case, in Boardman. I think that went on and on. Don is a good criminal lawyer, by the way. [He is] a very good lawyer, not just a criminal lawyer. He tries a nice case. But that was it.

It was just handling the ordinary routine. Some days, you did not have trials, of course. You had pre-trial conferences, or you ruled on motions which had been filed. You had hearings on motions, or you ruled on some [cases] that you had already heard. There is a great back-log of things that build up on you. You have to stay with it all the time. I did not always do that, but I do not think any severe injustice resulted on anybody, from what I did not do. The supreme court, by the way, instituted what they call rules of superintendence. About halfway through my term, maybe a little bit more than that, Chief Justice C. William (Bill) O'Neil was chief justice when we started. It was a good thing. It was a good rule, because it makes each judge responsible for his cases.

When I started, cases were more or less arbitrarily assigned. If you were on equity for a particular term, you got the equity cases. If a lawyer felt that judge A was on the side of labor, or conversely, on the side of management, he would find out what term that judge had equity, and he would file his law suit, so it would go before him. I do not think it worked out that way, but that was the general idea. Then, the rules of superintendence came in, and from then on, the cases were assigned by lot. Each case, when it is filed takes a number. The clerk of courts, physically, has a book of tickets. On the back of each, is the judge, and the courtroom. The front of it is the number. They changed the numbering system. Before, it used to be just a number. Now, the criminal cases are CR, for the prefix of the year, and then, the number of the case and the time it's filed. Civil cases are CV, and so forth. So, now you know what it is, by looking at the case number. You know if it is a civil case or a criminal case. Now, when a lawyer files a case, the clerk takes a stamp, puts it on that pad, takes off the top card. Those cards are shuffled, by the way, before they are bound, and that judge gets the case. Now, of course, that is not set in concrete, because, obviously--I have a brother, W. Glenn, a lawyer. Obviously, if my brother came up in my court, I could not handle it. Ethically, somebody else had to take it.

Another rule we had was the open court rule, to expedite the docket. It used to be that if I was trying a case, in my courtroom, and another case was assigned to my court for that day, it could not be tried. It would just be put off. We used to work it out. I do not mean it was that way. But, rules provided, that if courtroom numbers are one, two, three, and four, the trial judges--now they have got Mike Gerchak, that will be five. If

courtroom number one is busy, and a case is assigned to him and set for trial that day, courtroom number two will take it, by rule, if he is available. If he is not, then courtroom number three will take it. In other words, if you are in here from Cleveland, and you have got a case, as a lawyer, it is going to be tried by somebody that day, if the rules are followed. It is good. It was a good thing.

Sometimes, it was a bad thing because people get caught up in the numbers. "I have four hundred of these cases pending, and three hundred of those, and I have got to get rid of this, and I have got to get rid of that." You had to report every month to the supreme court. If you had all your cases up to date, you got an award, a certificate; that kind of thing. So sometimes, it got to be kind of a hassle. It was a good thing, overall. As a matter of fact, I think the changes that took place during my time, for example, the Mapp Case, which is the rule against unlawful searches and seizures, was decided by the United States Supreme Court. The Miranda Case, which required the warning of the defendant of his rights, was decided during my time down there. I think they were good. It made the police department work a little harder. It required a little more care in arrests, interrogations, and so forth.

G: What exactly was the Mapp Case?

O: The Mapp Case was out of Cleveland, Ohio. Prior to the Mapp case, we had, in Ohio, a doctrine, which was loosely called the Silver Platter Doctrine. Say you are a police officer, not a very good one. You go in a house for some reason. You do not have a search warrant, or you do have a search warrant, but it is for something other than what you find. You proceed to search the entire house, and you pick up things, which are not included in the search warrant, or you have no search warrant at all. You make a search which is not proper. This is probably a good example. Suppose the FBI is trying a case, and the Youngstown police get a lot of evidence which they did not have a warrant for. They could give it to the FBI, and the FBI could use it. By the same token, if the Austintown Police Department got a lot of illegal evidence, the State could use it in the prosecution. That is what was called the Silver Platter. It was not tarnished, it came to you free of any error. Now, under Mapp, if the search was not conducted with reasonable fairness and in reasonable conformity with the warrant, the evidence cannot be used. Now, we thought at the time, as prosecutors and as police officers, that was horrible. We thought that it was really going to hurt us, but it did not. It meant that police officers got more careful, and they would make their warrants more carefully. The judges would be more careful in issuing a warrant, and so forth. And, it worked out fine. So did Miranda.

G: Did you ever throw a case out where you knew the guy was guilty?

O: No. I have thrown it out--not thrown a case out. I have found them not guilty for serious crimes, without a jury.

G: If the evidence was tainted?

O: Oh, I see what you mean. If the evidence were tainted. Oh, yes. I have sustained motions to suppress the evidence.

G: Even if it was obvious that the guy was guilty?

O: Well, it necessarily was not obvious. I mean, it was evidence that they had, that they picked up, say, cocaine, or something, that they had gone in and taken without any kind of cause whatsoever. If you could find some way to keep it in, you would. I think most judges would. Sometimes, you just cannot. You just have to let it go.

Another rule is a trial within a specified time, after an arrest. That is the one that's bad. Now, I had one thrown out on me, that I made a mistake on. The mistake I made was not getting it on the record. A lawyer came in and asked for a continuance. It was a lawyer I knew and respected. The prosecuting attorney was there, and he had reason for a continuance of this case, and we granted it. But, I did not sign a journal entry. The court reporter was not there. It was one of these things. Well, time ran, and here comes the lawyer back, and moves to dismiss because lack of a speedy trial. He won, which established the rule to my satisfaction that you had to sign a judgment entry on everything you do. So I did, from then on.

G: Did it bother you?

O: Heck yes. It bothered the heck out of me. It bothered me mostly, because the lawyer had done it, and everybody knew the lawyer had come in and asked for time, and then, the same lawyer used this favor we did him, against us. Well, you cannot help it. He is a very good lawyer, by the way, but I have always remembered that about him.

G: Who were your bailiffs?

O: My first bailiff was a fellow named Bill Young, who was Judge Maiden's bailiff. He stayed on with me until he retired when he was eighty years old. Let me go back. When I was a practicing lawyer, first starting, Mahoning County was in pretty bad shape. General Motors had not started yet. [The] Korean War had not ended yet, it was still on. Things were bad here. There were too many lawyers for the economic situation. As a matter of fact, a survey was done by a committee of the Bar Association. We had the worst per capita income of any Bar Association in Ohio, as I recall it. We had too many lawyers. So, there was a move a foot, by the Bar Association, to ask the common pleas judges to appoint young lawyers as their bailiffs. Judge Ford did that. Judge Ford appointed Bill Houser, who is now a common pleas judge, as his bailiff. Bill was just out of law school and had just passed the bar. He served as his bailiff until he came to work in the prosecuting attorneys office with me, not under me, but with me. He then appointed--Judge Ford did--I am not sure whether Harry Sevasten, who later was a mayor, of the city--was appointed by him as his bailiff. And, Art Close, an attorney, was appointed. Young retired when I was a judge, I recalled that.

Of course, lawyers then, by this time, were doing pretty well. They were not looking around for what would be a minor job. But I conceived the idea of having a law student. So, I was just thinking about this when one of the court reporters called me and told me that Gary Van Broklin was in law school in Akron. Well, Gary's father and I went to Youngstown College together. We were not classmates, but we were in the same classes. We were very good friends. We worked in the prosecuting attorney's office together. I did not even have to interview Gary. I just called him up and said, "If you want this job, it is open." He came down, and was my bailiff.

He did a good job while he was finishing law school. Then, he started to practice law, and left, and I hired R. Scott "Scotty" Krichbaum, who is now Judge Krichbaum. He was then starting at Akron. As a matter of fact, Jim Philamena, and I talked him into going to law school. He was a student up here. Jim Philamena, then an assistant prosecuting attorney, taught him. He was one of Jim's students. Jim came to me and said, "If you are looking for a bailiff, I have got a young man in my class that would do a good job for you." So, Scotty came down, and we interviewed him. I gave him the job. I talked him into it. He was thinking of staying in business with his father-in-law. It turned out that this was a good thing, because what he had in mind did not materialize anyhow. He did a real good job for me for the four years that he was there. Then, I hired Danny Gilboy, a city detective, who went to Akron Law School. He was the last bailiff I had.

G: What is a bailiff's duty?

O: Pretty much a secretary. Now, judges have secretaries. We did not have them when I was there. We should have. The bailiff would keep the docket. He would go and get the files for you, and go and get your books, if you wanted a law book out of the library, and maintain order. He took care of the jury. If the jury was sequestered, he made sure they were secure, and saw to their comfort and their needs. He just was sort of a general chief clerk. He was helpful. He was helpful because these kids were law students, and they helped me. They knew what I was talking about when I would say, "I need something on Eminent Domain," or something like this. They knew what I meant. It was helpful to me and them because they got to know all the lawyers in Mahoning County. They saw the courtroom in action and saw good lawyers try cases. I think that was really helpful.

G: Did you ever give anybody a sentence, which because of their attitude, either they got a worse sentence, or a better sentence--because of the way they walked into the courtroom, and the way they addressed you. Granted, they committed the crime and they were found guilty, did you ever sentence them because of the way they were acting in the courtroom and the way they affected you?

O: Not consciously. I suppose it is possible. Yes, you get some people who are terribly defiant and cocky, and have no sign of remorse, or anything like that. Yes. I suppose it

is possible. I do not recall any specific case of that. I had a guy curse me out on the bench one time, but he was a mental case. I just sent him to Lima State, where I was sending him anyhow. That is why he was mad at me. He knew that. No, I do not recall any. As a matter of fact, I found a guy not guilty that I had prosecuted several times, for indecent exposure. He was sort of a sex pervert. Later, he was charged with rape, and they waived the jury, and I found him not guilty, even though I knew his background. I told him, I said, "You know me, and I know you," because I had sent him to the penitentiary for running around naked down in Mill Creek Park, scaring girls. But I did not think he was guilty of rape. I found him not guilty.

G: Have criminals gotten worse?

O: Well, I am ten years out, you know.

G: In your time, did you see a progression?

O: No, because this gang stuff had not started. As a matter of fact, I think the black people--and they were right--were all upset at the time, because the drug enforcement pretty much laid them low. I had the first wave of drug arrests in my court, the first big ones--heroin, then. I think they were all black, maybe with one exception. I am not sure of that, of course. I sent this one guy, I really laid it on him, not because he was black, but because he was selling heroin. As a matter of fact, I felt terribly sorry for some of these guys. I had a thirty-eight year old man--he is dead now--in my chambers, tell me that he had been on dope for years. He worked, if I am not mistaken, at Commercial, or maybe, G.F. His wife worked. They lived on his wife's pay. He spent his whole pay on heroin. He told me that he needed a transfusion, and the only vein they could find was in his armpit, to put a needle in. His veins had all collapsed. I really felt sorry for him. I said he died. He died about three or four years after he got out of the penitentiary. Now, of course, it has moved into everybody. Out in Boardman, now, they've had two drug arrests in the last couple weeks.

G: Have the crimes gotten worse?

O: No, I do not think so. In the prosecutor's office, we tried first degree murder cases, we tried rapes, we had violence. We did not have gangs. We did not have shootouts on the street. I do not recall ever--well, maybe one individual shootout we had between two guys who were mad at each other--but no drive-by's or anything like that, that I remember, ever hearing about them, even. Yes, I think in that sense, the attitude toward firearms has changed. But I have seen them, you would get a punch in the nose, or some guy would ask you outside. Now, you are lucky if he does not kill you with a gun of some kind, usually an assault weapon. I do not know, that is terrible. But, as far as individual crimes, no, I do not think they are any worse. We had serial killers then. This fellow, Speck, who just died, was one in Chicago. We did not have anything that I

remember, like this guy from Minneapolis, or Saint Paul, or whatever with cutting them up and putting them in the refrigerator.

G: Jeffrey Dahmer.

O: Yes. [We did not have] anything like that. We had murders, we had stick up men killing people, we had people killing their wives, wives killing their husbands. I do not think there is any difference in the individual. There is a lot more crime. I was just talking to the prosecutor the other day. I ran into him downtown. I was talking to him. They have many, many, many more cases than I had. Of course, this year, we have sixty homicides so far. That was unheard of.

G: Two more questions. First of all, how did you learn to be a judge? How did you know when you finally were comfortable with what you were doing?

O: Well, I think, when I tried my first case, when the objections were flying at me, when I was ruling on evidence, I felt pretty comfortable because I was sort of at home in the courtroom. I never felt completely at home with very complicated corporation matters. As a matter of fact, I had won an award when I was in corporation law when I was up here, for the best grade on the examination, which was Dean Falls' two volumes of Corpus Juris, on corporations which are inscribed. I still have them. Dean Falls told me, he said, "I hated to give this to you, but you were the best of a poor lot," which was not, obviously, a great compliment. I was never comfortable with those cases. They were always a real strain on me. But knock-down drag out fights, killings, robberies, that sort of thing, I was pretty much at home. I had been on so many of them. I guess that is when I felt comfortable. Except for these cases, nobody is comfortable. I have just heard they have twenty-two or twenty-three asbestos cases. That would floor me totally. I would not have the slightest idea of what to do with those. I said to one of the lawyers in the group, I said, "Why is that not a worker's comp case?" He said, "Because they are not suing the employer, they are suing the manufacturer." Everybody else they can find, manufacturer, wholesaler, distributor, retailer, installer; those things, they will drive you crazy. Fifteen, or sixteen parties--I am glad I do not have to try those.

G: In all your years, who are some of the most interesting people that you have run across? The ones that really stick out.

O: You mean lawyers? Knowles Wyatt, I would have to say, is one of them. As a matter of fact, Knowles offered me a job, later, not in his office, but he wanted to recommend me for a job. And, I told him no, that I was practicing. Elwyn Jenkins and I were very good friends, we were fraternity brothers, we went to school here together, we took the bar exam together, we took the refresher course together. I certainly would have to class him as one of the brightest men I have ever known in my life. I remember people for different reasons. I remember Bill Ambrose who was prosecuting attorney when I started

practicing. He was one of the guys that could cut you into little pieces with sarcasm. He was something, boy. [He was] a good trial lawyer. Judge Maiden, I remember. Because when I was in my senior year of law school, I was working for Mayor Chuck Henderson, and I needed a course in Chattel Mortgages to finish. It was not available. Judge Maiden taught it. He had me come down to his chambers at noon and he taught me Chattel Mortgages in his office during the lunch hour. I cannot forget that. Old Judge Gessner, a criminal lawyer. John Ranz, an outstanding lawyer. My uncle was a good trial lawyer. I remember him because I practiced with him. He was great in the courtroom.

I have so many memories of so many people. I am going to dodge that to this extent. In my time on the bench, I had lawyers from Cleveland, Cincinnati, other big cities, and I do not think there is any question about it, that our Bar, in Mahoning County, is as good as any. The lawyers in Mahoning County are as good as any I have ever run into on the bench from other cities much larger, on all sides of the case. William Pfau, Sr. was a good lawyer. Dave Comstock is a good lawyer. My brother is a good lawyer. He never practiced in my court, but he does a good job. [He is] an excellent lawyer. John Newman taught Insurance up here. Paul Stevens, one of the faculty up here, and a personal friend of mine, we graduated from high school together. Paul Brown, who went on to the Supreme Court of Ohio. He was Attorney General, and then went on to the supreme court. He taught up here. He was in Ray Falls' office, a private law office, and he taught various courses. If I had known you were going to ask me, I would have made a list.

G: Well, sir, thank you very much.

O: Thank you.

End of Interview