

**Indiana State Bar Association
Oral History Program**

Interview with Judge John Sharpnack

September 29, 2009

Interviewer: Andy Emerson (Indianapolis)

Emerson: This is Andy Emerson. It's September 29, 2009, and I'm in Indianapolis with John Sharpnack, Senior Judge of the Indiana Court of Appeals, concerning the Oral History Project of the Senior lawyers Section of the Indiana State Bar Association and the Indiana Historical Society.

Judge Sharpnack, you were born in Columbus, Indiana and you went to college originally at the University of Cincinnati.

Sharpnack: Correct.

Emerson: And as a matter of fact you went to law school at Cincinnati, where you were editor in chief of the law review and a member of the Order of the Coif. It was after college and before law school you were in the army.

Sharpnack: That's right.

Emerson: ROTC or—

Sharpnack: No, actually when I started college, I had joined the Air Force ROTC and they didn't do physical exams until, I think, it was like in the middle of the second year or something like that and my eye sight was such that I wasn't flight qualified and

all they were interested in right then were people who were flight qualified so I was washed out of ROTC. Then as college came to an end, I volunteered for the draft and I got drafted. The one value to ROTC was that, when I got to basic training, they asked if anybody knew how to march and I indicated I did, so I became a squad leader.

Emerson: Oh splendid. And you were a court reporter in courts martial?

Sharpnack: Yes. I ended up assigned to an ordnance battalion, Fort Lewis, Washington, and when I arrived there the captain, looked at my personnel record and I had on there “like to write” and so he asked me if I knew how to type and I said I did not. So he said alright we’ll take care of that, and he sent me off to typing school and I became the, I guess administrative clerk, something like that for battalion headquarters. One of the jobs that went with that was being a court, a special court martial reporter and what I did was, I would make notes and then I would type a summary of what occurred. The commanding officer, presiding officer, whatever you called it, would review that and okay or not okay it. It was not an actual transcript. I got to go to do maybe a half a dozen or so courts martial while I was there.

Emerson: We had actual court reporters in our court martial.

Sharpnack: Oh, a step up. I think maybe they are now but at that time I believe we didn’t.

Emerson: And then you went back to Cincinnati for a law degree.

Sharpnack: Went to law school. I never had formed the real notion of being a lawyer, although my father was a lawyer, my grandpa was a lawyer, my uncle was a lawyer, but as my time in the Army wound down I, well there was a sergeant in our unit who was involved with field operations intelligence and he thought I'd be pretty good at that for some reason. I did get interested in perhaps joining the CIA. So I filled out this huge application and I ended up getting an interview in Washington. CIA was not out in Langley then; it was downtown Washington. I remember going there to get an interview. I'd never read Le Carré novels at that point because he hadn't written them, but I felt very much like somebody special when I walked down to CIA headquarters. Well, any way, I was interviewed and I said I was interested in going to law school at that point. They said "Well, we got all the lawyers we need and if we hired you we'd teach you some language and you'd read newspapers in that language and write reports on what you read." So I dropped that and, somewhat by default, went to law school. I really never had any specific plans about that. I looked at the possibility of IU and Cincinnati. I was a resident of Cincinnati and the difference in price made it clear that Cincinnati was the place. Cincinnati at that time...

Emerson: Oh you'd be out of service?

Sharpnack: Yes, yes. I grew up in Cincinnati, and Cincinnati at that time was still a municipally owned university. It's now a state university and if you lived on the right side of the street you could go for a very low tuition, so I went to Cincinnati.

Emerson: Well you obviously were very successful in law school. The editor in chief of the Law Review.

Sharpnack: Well I'd been a pretty mediocre student though I was lucky enough to go to Walnut Hills High School which is a college preparatory public high school in Cincinnati. It still is there and it is still able to require you to take an entrance exam to see if they will let you in. They take people from all over Cincinnati and out of Cincinnati and my stepfather, in particular, wanted me to go there. I had gone to grade school, Parochial school and I think he wanted me to broaden my horizons. So anyway, I went to Walnut Hills and got a very good education there, but I didn't do all that well grade-wise. I was more, somewhat more, of a cut-up than I was a student but when I got to law school, there was something about law and studying law that really caught me and I got into it.

Emerson: Obviously, you did very well. Then you graduated from law school in 1960 and went to work for the Department of Justice.

Sharpnack: Yes. I tried to get a job there the year before as a summer intern and was not successful. They had what they called an Honor Graduate Program which was designed to try to get a broader population from across the country. They tended to get Eastern law school people in there and they wanted to broaden that. I applied actually to the Civil Rights Division. I got a call one day and they said they really didn't have any room for me there, but how would I like to do antitrust and I did largely, not because I had a great fondness for antitrust although I did

take a course in it. But I was interested, I wanted to go to Washington. I wanted to be in the Department of Justice so I ended up being a “trust buster.”

Emerson: You were in the Department of Justice for 3 years.

Sharpnack: Yes.

Emerson: Then you went back to your original hometown of Columbus.

Sharpnack: Well actually, well, in general that’s true, but I went back to Columbus in June of ‘63, the original hometown which I had never lived in. I visited there from time to time, I never lived there. Then I was, because I had been working on a case that was going to be tried in November, I was, in fact, rehired by the Department of Justice, with my home base of Columbus so I got paid any time I was outside of Columbus. I worked on the case with Bernie Hollander, who was probably the first trial lawyer I really worked with at the Department of Justice. Bernie just recently, within the last year or two I think it is, retired from the Department of Justice at the age of 92.

Emerson: Oh, good heavens.

Sharpnack: They apparently have or had during his career, no required retirement age and if you could keep doing it, you keep doing it. So Bernie, anyway Bernie Hollander was in charge of this case, it was against Westinghouse for price fixing in brazing alloys. He wanted me to work with him because I had worked with him for months on the case; so I went back to work for the Department of Justice. We ran around the country a little bit interviewing witnesses and then we were to start the

trial on Monday and Friday, while we were having lunch, we gradually figured out that they were saying on the radio that Kennedy had been shot. And so, we spent that weekend still getting ready for the trial but not knowing whether there would be a trial or not and they couldn't find the judge, Cashin was his name, they couldn't find him. Finally turned out he was up in the Catskills somewhere and the start of the trial was postponed until Tuesday. So Monday around, I suppose it would have been around noon time, we were flying up to New York, the pilot put through the radio system the description of going out to Arlington and all of that. And I saw on Sunday, I was working both Saturday and Sunday, on Sunday, we saw them bring Kennedy's body down Constitution Avenue, or Pennsylvania Avenue, excuse me, and so that was an interesting time to be there.

Emerson: Yeah.

Sharpnack: So then when that trial was over . .

Emerson: And the trial was in Washington?

Sharpnack: No, the trial was in New York, Southern District of New York and when the trial was over, I returned to Columbus and I've been there ever since.

Emerson: Yeah. Okay. Now, did you simply open up an office or did you get into partnership with other people, or get into an existing partnership or how'd you do that?

Sharpnack: Well, what I did was I went back to the family firm. I never would have dreamed of going to Columbus as an individual to practice law. I would have, the other

things I had open to me at that point, I had some conversations with firms in New York and Washington in the antitrust field. Antitrust was pretty active stuff in those days and they were always looking for lawyers that had government experience and so on. So anyway, I wouldn't have dreamed of going to Columbus, but my father practiced there and he asked me to come back there. I first declined to go back there, but it ended up that I did. And I did it partly because I wanted to, I suppose, sort of re-establish some connection to the family and also the kind of practice they had, which was trial practice, all sorts of general practice, but they did trial work and I was interested in doing that. In the antitrust field, you maybe try a case every five years or something. Actually, it turned out that I didn't try as many cases as I thought maybe I would. So anyway, I went to Columbus, went in with the firm with my father, took a pay cut going from the government to Columbus and I was an associate for about a year and then I became, I think I became a partner when Lee Hamilton left. When I got there, Lee Hamilton had just been made a partner. He'd been with the firm five or six years, I guess it was, and then he was made a partner. And then he, after I got there, well, I suppose it started before that, he had all kinds of people wanting him to run for Congress and he did run for Congress and as you know, he was elected and stayed there for 34 years.

Emerson: You reminded me. My first job out of law school, which was earlier, 1953, I started with a fairly substantial firm in South Bend and got paid \$45 a week and would you care to tell me what your income was in your first year?

Sharpnack: When I went to the firm, I think I got \$6,500 a year.

Emerson: Oh, impressive sum.

Sharpnack: Yeah, and when I went to the Department of Justice, I think I got something like \$7,200 and then there was a general raise shortly after that. When I first got the job, I was the highest paid graduate in my class.

Emerson: Ah, ha.

Sharpnack: Oh, yeah.

Emerson: One of those areas in which times have changed.

Sharpnack: Oh, my, yes.

Emerson: Well, you were in your firm in private practice for, what, 27 years?

Sharpnack: Yes, I think it's down there as Sharpnack, Bigley, David & Rumble but it was originally Sharpnack & Bigley and then it became Sharpnack, Bigley & Jurgemeier, Don Jurgemeier was in there for a time.

Emerson: Was that Don Jurgemeier?

Sharpnack: Right. As a matter of fact, he and I might have become partners the same year because they brought him in to kind of replace Lee Hamilton. Anyway, it was Sharpnack, Bigley & Jurgemeier and then Jurgemeier left.

Emerson: Yeah, he went to a bank, Irwin Union Bank, didn't he?

Sharpnack: No, he had come from the bank.

Emerson: Oh, he came from the bank.

Sharpnack: He came from the bank and then went out and practiced on his own and then Pat David, who had a legal career in the Marines, Marine Judge Advocate, had come to Columbus to practice and then he ran against Sid Showalter for judge and was elected judge. Sid was a Republican, Pat was a Democrat and virtually an unknown in the community, but a lot of lawyers weren't happy with Sid so they got David to run. He got elected because, in large part I think, that was the year that Goldwater was swamped by Johnson. And four years later, these were four-year terms, and David, who had been a pretty good judge, ran for reelection and Sid ran against him. Sid was elected because this time it was Nixon versus Humphrey.

Emerson: Uh-huh.

Sharpnack: And that convinced me, among other things, that I didn't ever want to be a political candidate for the judiciary although I think from early on I had some interest in being a judge of some sort.

Emerson: Yeah.

Sharpnack: But that little episode kind of told me, you know, you can get elected for no good reason and you can get thrown out for no good reason and in the meantime your practice kind of goes to hell.

Emerson: Tell us about some of the things you did during this period of practice.

Sharpnack: Well, it was a general practice. I got to where I worked primarily on estates and then trial work, civil litigation. My dad died in 1968 and he had been the firm's principal litigator, I guess you'd say, so Tom Bigley, Jr., my cousin, and I sort of inherited that job and we sort of kind of split up the insurance companies we represented and I would do work for some and he did work for some others. I did a lot of defense trial work. We, for a number of those years, we were, what they called solicitors for the Pennsylvania Railroad and we had almost all of Southeastern Indiana. So any railroad cases there, we would handle. Some of the insurance companies would use us in other counties. So that's kind of what I did mostly and a fair amount of trial work. Of course, most cases, then and now, do get settled but take a lot of preparation. I suppose, on average, through those years, I might have tried maybe three cases or so that amounted to any kind of a case and I tried death cases, I tried quadriplegics, paraplegics and motorcycle collisions, automobile collisions, manufactured products. I remember I had one case where a fellow had built the most expensive house in Batesville. I guess it was really something, and he wanted to build a dollhouse for his daughter, I guess it was, and this was made out of wood and it was down in the basement and he was painting things and then hanging them around to dry, pieces of wood. And he had one of these, sort of flame-throwers, blow torch kind of things that you buy in a hardware store and he managed to light this doll house material and ended up burning down his house. And so he sued everybody. And his theory against my client, which was the manufacturer of the blow torch, was that it blew flame out even when he wasn't doing anything with it, which we were fairly

convinced there was no way you could do that. And he sued the alarm company because they didn't get there in time and we ended up, actually, that case did end up settling but we messed around with it forever, took depositions and all of that.

Emerson: Uh-huh.

Sharpnack: Then I had a case that involved Cummins Engine Company and we were in, of course, Columbus, the headquarters of Cummins and as a matter of fact, Judge Richman, who was a partner of my grandfather and was elected to the Supreme Court of Indiana, Frank Richman, had actually incorporated Cummins.

Emerson: Oh, good heavens.

Sharpnack: But we didn't, at the time I got there, which is quite some years later, we didn't represent Cummins. And so I was representing David Rust who is the Rose Acre – was the Rose Acre egg man.

Emerson: Oh, yes!

Sharpnack: Second largest producer of eggs in the United States at one time.

Emerson: And a very spectacular person as I recall.

Sharpnack: Oh, God. Was he ever! I represented Dave for about 10, 12 years and didn't like a minute of it. He was a difficult person. But anyway, this Cummins Engine Company generator failed, it was our claim of course, and created a fire that burned up 500,000 chickens.

Emerson: Oh, boy.

Sharpnack: So we had a lawsuit against them. Cummins was represented by Stan Lawton and the Cummins distributor was represented by Jim Rocap and Roger Pardieck and I and Ken Layton were the group that represented Rose Acres and we made many trips to Chicago to visit with the experts up there. Took tons of depositions. We had stacks – and that case ultimately settled. That case struck me as one that had been won on depositions. Just as fast as they would change theories, which they did; we would come up with something that knocked it down. It was pretty damn clear that the engine did fail. It was a bolt and the head of the bolt which we found in the debris down there that has these striations that came across and then there was a tear. So it obviously had been stressed and over time, got to the point where it'd let go. And this was a bolt that was used to hold the connecting rod, to some degree, together. And apparently what had happened, was when it had been manufactured, a little fleck of metal or something was in under that when they put it together and it was just enough of an imbalance to let this thing blow apart. So we had all kinds of photographs. That was a very, very interesting case even though it wasn't tried. And I had a whole bunch of different kind of cases. Mostly trial work. And by the time I ended up, up here, I didn't do much – well, I still had some estates. I would at least do wills and things for people that would be estates at some point; but I didn't want more trial work. And like that, trial work was always a tension builder.

Emerson: Oh, yes.

Sharpnack: And I said to Tom Bigley when I got the job up here, I said you know, I betcha if I hadn't gotten this job, my guess is I would have been dead in five or six years.

Probably an exaggeration. But I tried several times to get appointed. First time I tried to get appointed was to the federal court and that's when Gene Brooks was appointed. And I went through the process and Jim Donadio was doing what he could to help me. And they ended up selecting 15 candidates, I guess you'd call them, to submit to then Senator Bayh, the father – although I've been told many, many times since it was Gene Brooks from day one. The rest were just window dressing. So I was in the 16th place and not in the list. This poor fellow – can't think of his name right now, but he was a good lawyer from Terre Haute, apparently – I don't know – something happened to his car and he was walking along the interstate over there and got smacked by a semi and killed. But I was still out of the running. So then I tried – I applied one time – I'm not sure exactly when that would have been and withdrew my application. And the next time I applied was in 1979, I believe it was.

Emerson: No, which court are we talking about now?

Sharpnack: Court of Appeals. Now we had the Merit selection system they have now. And that was the year that Wes Ratliff got the job. I made the final three that time and Wes got it. Then it was pretty quiet for a while and the next time – oh, I did apply for the Supreme Court in there some where because when Randy Shepard was selected, the other two people on the panel of three were a lawyer from Columbus and a Judge from Columbus, both of whom I thought – my god, if they can get on there, so the next opening, which turned out to be Brent Dickson, I applied; but I didn't even get the final three there. It took me a while to catch on to it would help to be of the same party as the Governor when you doing those. Then the

time – I see guess – who got the job. Well, I guess that was when Ratliff got the job. Yes. I was interviewed by Governor Bowen because I was in the final three and that was very nice. Much simpler than when I was interviewed by Governor Bayh with a couple of staff people there. But Governor Bowen -- I went into his office and he was sitting at his desk and he had a chair beside the desk and said “Sit down.” So I sat down there and we were both like you and I are now and we chatted. We spent a lot of time talking about the appointment of a trial judge, Dev Silva in Columbus. Dev had been selected by the party chief in the county to replace Bill Lienberger, who was just a wonderful judge, had retired and so the party chief wanted Silva, a Republican. Well, Bowen’s approach was that whoever the party chief appointed or wanted was it, if the Bar Association would accept it. Well the Bar Association didn’t accept Dev Silva, so there was a big mess. Silva finally got the job but – the Governor talked to me about that a good bit. And then he says to me, he says, “well, you’re a good young man and you’ve got a good legal career ahead of you.” I knew at that point it wasn’t going to be on the Court of Appeals. And then there wasn’t – let’s see, I applied the year that Linda Chezem, got it, still Republicans; and they didn’t put me in the final three that time and I was told by someone on the inside, so to speak, that they felt that there wasn’t a prayer, so why put me through that. So then Bayh gets elected and I figure, oh boy, now, here’s my chance. Neal had retired, so I applied and then I saw where John Baker had also applied; and boy that cooks it, because Baker had been a trial judge for a long time. But then in about two years, I think it was, they put in this Fifth District and Bill Moreau who was the Governor’s aide, had said

to me – says “You know I think this Fifth District is going through. You really should apply again.” And I took that not as any guarantee whatsoever, but I was in the running, so I did apply. And did get appointed.

Emerson: Wow.

Sharpnack: And started in 1991.

Emerson: ‘91.

Sharpnack: That’s a long ramble. I don’t remember you asked. What happened while I was ...

Emerson: This is your recording, not mine.

Sharpnack: That’s true.

Emerson: So you’ve been 16 years now on the bench?

Sharpnack: Well, actually, 17 and a quarter.

Emerson: Oh, this is 09 –

Sharpnack: See, I retired. My birthday on which I would have been 75, was to be 75, was May the 7th of 2008 and there’s mandatory retirement at 75, so I retired effective May the 3rd so that I could say I went out on my own two feet and wasn’t thrown out.

Emerson: Okay.

Sharpnack: And since that time, I've been in senior status.

Emerson: And as a senior status judge, in what way are your duties as a senior status judge differ from those as an acting judge?

Sharpnack: Well, the principal thing that I don't do as a senior judge that I did as a regular judge is vote on other judge's cases. When you're a full fledged judge, you're assigned to a panel of three judges for a period of time. You're assigned cases, each of them is assigned cases and the three of you have to decide those cases. So you spend perhaps half to 2/3 of your time voting on other judge's cases. You have to read and all this that and the other. That's something that people don't always realize how much work goes into voting on other people's cases. Whereas as a senior judge, a case is assigned to me and there's two other judges on the panel, and I'm responsible for generating the first draft. But I won't be getting cases from them. So that reduces what we do by a considerable margin; and of course, I don't have – before I had three clerks and an office administrator, so I basically had a little law office that I was running. Now, I don't have anybody like that. We do have two or three, it varies, clerks that work for all of the senior judges and they have you prepare a draft or do a memo or just maybe scratch out some notes of what I want; and then they'll draft it up and back and forth until we get it done. And of course, I don't have anything to do with the administration of the court or anything like that.

Emerson: Yeah. Do you come in every day?

Sharpnack: I come in three days a week, but might not come in for a month. I mean it just all depends on what – for example, my wife and I, we were going to go to Ireland and she fell and broke her arm, so we didn't go to Ireland; but I stayed home during that period to look after her. And let's see, when I'm running as I want to run, I work three days a week, Tuesdays, Wednesdays and Thursdays. Now, I'm limited in the sense that I can't get paid for working more than 100 days and I just now put in a claim for – I'm now today 77. So if I keep working three days a week before the year's out; I'll be retired.

Emerson: Retired and working for naught.

Sharpnack: Yeah, right. You know, if I have a case *in fieri* as they say, I would come and get that finished. I wouldn't say it's got to wait till next year. Wouldn't do that.

Emerson: Now do you still live in Columbus?

Sharpnack: I still live in Columbus.

Emerson: And drive – out of the three days a week that you work, you drive back and forth?

Sharpnack: Yes, yes. I used to do it five days a week. I get a lot of miles on a car.

Emerson: Yeah you do.

Sharpnack: It's 500 miles a week on a full week; and that I used to come up – I'd come in on a Saturday or a Sunday probably once a month on average, maybe. And I haven't – well, I guess I did come in one Saturday here. But the senior judging is somewhat more laid back – in some ways I'm doing the same thing that I did but

the really big difference is not voting on other judges cases although that could happen on occasion if for some reason somebody had to disqualify and they couldn't find anybody else. Oh, and the other thing senior judges do, is we have what's called a motions panel that deals with all the preliminary motions and consists of three judges, one of whom is a senior judge. So we rotate between us being the senior judge of the motions panel.

Emerson: How many senior judges are there now?

Sharpnack: Let's see, there's Hoffman and Garrard and Barteau and me and Sullivan and that's it – five. Robertson was a very active senior judge, but he has died. Ratcliff was an active senior judge until he became pretty sick and then of course he died.

Emerson: Oh, my. Oh, I was going to ask you. How's your wife getting along now with her ...

Sharpnack: She's doing okay. When she fell, that was in August and I had rescheduled to go in October, the 5th of October.

Emerson: Yeah.

Sharpnack: But she got to feeling she wasn't going to be quite as well as she'd like to be and we're going over there for fun. It was something we had to do, you could do it; and so we've cancelled that. We probably won't go until next May, and actually once we did that, I think she began to progress better. Because I think, among

other things, she was worrying “how I’m going to travel, am I going to be okay.”
That sort of stuff.

Emerson: You say she was born in Ireland?

Sharpnack: She was born in Dublin. Came to the United States – well, first she went to Canada. She immigrated to Canada and then she had a friend back in Ireland who she wanted to come over; and the friend said well I’ll come over, but I don’t want to go to Canada. I’ve got a sister in Cincinnati; I want to go to Cincinnati. So, lo and behold, they go to Cincinnati. The sister lived next door to a professor at the law school and he knew that the law school was looking for a secretary and they hired my wife’s friend; and then very shortly thereafter, hired my wife in the office. And she arrived on the law school scene when I was in my second year of law school. One thing led to another, and lo and behold ...

Emerson: ... you got married.

Sharpnack: We were going to get married in June of 1960, excuse me. June of 1961. I went up to Washington in June of 60 and Eisenhower was the president, had the election and – that’s right, yeah. She was ... any way, when I first went up there I was living with my uncle who had an apartment in Washington. And, as the end of 1960 was approaching, he was going to remarry himself; and so he needed the apartment to himself and his new wife so I had to move out. Well, we decided that since I had to move out and find another apartment, why don’t we get married. So the department was kind enough to lend me a couple of days of leave

and I went back to Cincinnati and we were married the day after Christmas in 1960 – December 26th.

Emerson: Wow.

Sharpnack: So next year will be our fiftieth anniversary.

Emerson: Well, that's a wonderful way to celebrate your Golden Anniversary.

Sharpnack: Well, as it turns out, we're going to be going over there. She's been back a couple of times. I was over there in 1970. That's the last time I've been to Ireland.

Emerson: 1970 – Ireland was still a pretty poor country as I recall.

Sharpnack: It was and the troubles were starting to heat up again. And, well Ireland, of course, had a great boom, the Celtic Tiger and all that. Now things aren't so hot over there. She's got four sisters there and so she keeps pretty well informed. They're going through the same thing so many places are going through. The economics are not so good right now. And as a member of EU they have to accept a lot of people, a lot of Eastern Europeans are moving in there and the Irish aren't terribly happy about that. It's sort of the Hispanic influx; only over in Ireland it's the Eastern Europeans.

Emerson: The Irish people in Ireland are now experiencing what the New Englanders did a hundred years earlier when the Irish came over.

Sharpnack: Yeah, exactly. Exactly.

Emerson: Oh, my. Well, let me see. What else can we – I've got a few notes here if I can find them about what we wanted to cover. Oh, here we are. Oh, yeah. Okay, what was the Bartholomew County Bar Association like when you first started there?

Sharpnack: Well, ...

Emerson: Was there one?

Sharpnack: Oh, yes. Absolutely. Well, I was in the Antitrust Division for three years. Actually got to try a price fixing case against Westinghouse and the first Bartholomew County Bar Association meeting I went to, the big hassle was how much they were going to charge for abstracts.

Emerson: Oh.

Sharpnack: They used to fix the price and I was thinking – what is going on here. But it was a good bunch of people. A lot more drinking in those days than there is now and poker playing. We would have a bar meeting, but it was usually a big one once a year and then maybe every other month. But they would argue about things like the – and like typical price fixers – Westinghouse, that price fixing case – the same thing – they would agree on prices and then they'd all cheat on each other. And the Bartholomew County Bar Association performed just like any bunch of price fixers.

Emerson: Yeah.

Sharpnack: Another big issue was when I first got there, you didn't work on Wednesday afternoon. You worked on Saturday morning. And I had trouble adjusting to that because it seemed to me that on Wednesdays, you just barely got rolling when that was it and on Saturday you'd rather be doing something else; and so – so eventually it was decided that we do a five day week and we wouldn't be open on Saturdays. Well, there was one lawyer in particular, Al Goltra, and he was always very concerned about what was going on in the bar, one thing and another. Well, he was concerned whether people were open on Saturday and he would get people to call to see if they could make an appointment to see you on Saturday. But it was a good bunch, pretty congenial by and large. I don't know – somewhere between 20 and 30 members. It's bigger now; I'm not sure how much bigger. As of now, for 18 years away from there, there are lawyers I don't know.

Emerson: Yeah.

Sharpnack: And, of course, still many lawyers I do know. And some have died, so forth and so on. But it was an okay group. I remember one of the things we got into was when they first allowed counties to supplement judicial salaries, the county could pay up to \$5,000 I think it was. And at this point, Sid Showalter was a judge. I think it might have been before that election – anyway, he was the judge and there were a lot of members of the bar that wanted to give the \$5,000 to Bill Lienberger who was the circuit court judge; and as I said, an excellent judge; and didn't want to give it to Sid who was not perceived to be as good a judge; and he wasn't. So we had a big battle about that. Well, Sid got the \$5,000. Of course, the whole

way of operation in those days was different. You had the free change of venue from counties in those days.

Emerson: Oh, yes. Oh, yes. All you had to do was ask.

Sharpnack: Right, and there were all kinds of connections from county to county. Every county would have a bar association meeting. Everybody would go to every county's bar party, Christmas party. A lot of camaraderie in that way and you would have the lawyers in the counties around you that you would like to have with you if you had to go somewhere. So you'd get a case. One of the first things you'd do usually is call around and say, "Are you available Harry?" and so on and so forth. And if Harry wasn't available; that might have some bearing on whether you'd go to that county or not. Same like coming down from Indianapolis. Of course, they had the donut counties and Bartholomew was a second change county. And so a lot of cases would go to Johnson county and then from Johnson they would come to Bartholomew county. So you had connections with all kinds of lawyers that has damn near disappeared. I don't mean lawyers don't know each other any more, but that active collaboration of lawyers has changed; and that was a big part of the practice back in those days.

Emerson: Weren't there a number of lawyers who virtually lived on being local counsel?

Sharpnack: Yes. Yes. That's true. That's true, but then the thing began to happen even before the venue rules were changed. Insurance companies got to the point where they didn't want to pay for local counsel. So if I had a case that went to Jennings County, I would go with it; but they wouldn't let me hire Harold McConnell or

whoever I would have ordinarily hired as local counsel. It was strictly a money proposition. I would usually try to badger and it worked successfully some times, depending on the case, to let me at least talk to the local attorney about the jury list and who the people are on the jury because that's, of course, one of the great values, of a local attorney.

Emerson: Yeah.

Sharpnack: On the other hand, local attorneys could be a problem. If you're trying a case, you usually have a kind of coherent theory of that case and each witness fits into that theory in some way or another. So if you do it, you're in control; and control was what lawyers most want out of everything else in life, is control. So if you would let your local counsel question a witness, they might do something a little different than what you wanted to and geeze –

Emerson: Did you ever see Henry Ryder performing his local counsel song to the tune of Ol' Man River?

Sharpnack: No.

Emerson: That was something that the Indianapolis Barristers Club put on years and years ago.

Sharpnack: Okay.

Emerson: And of course, Henry has an excellent voice and can sing quite well. Part of the lyrics were: “local counsel, local counsel. He don’t read statutes, he don’t read cases, he just keeps sitting, keeps on sitting around.”

Sharpnack: Well, some of them were kind of like that.

Emerson: Yeah. Oh, my. And you mentioned Pennsylvania Railroad. I was recalling that Ed Raub was – at least an ...

Sharpnack: Raub, Reis, yeah, right.

Emerson: White, Raub, Reis and Riegner, which is almost impossible to say.

Sharpnack: That’s right, yeah.

Emerson: And they eventually changed it to White and Raub.

Sharpnack: Right.

Emerson: After Jake White and Ed Raub were both dead, they changed the name.

Sharpnack: Well, there was a trend. I think maybe it’s still around to try to do the two name bit.

Emerson: Oh, yeah.

Sharpnack: And after I left there at one point, they went to Sharpnack and Bigley which is what it had been years ago. But now there’s two young men in there that are partners and their names are up there. You know, in a small town, I think there’s more of a desire – I want my name up there.

Emerson: Yeah. Is your name still on the door?

Sharpnack: Well, ...

Emerson: Is the name Sharpnack still up there?

Sharpnack: The name Sharpnack is still on the door and back at the time when I went on the bench we, or the firm, put in a query as to whether that was okay because of course the name goes back to my grandfather in 1905; and Tom Bigley who remained behind me and actually practiced while my grandfather was still there and of course, my father, as well. Of course, I practiced – the theory is that that was okay. Now I have had people ask me every once in a while – you still got an interest in the firm of ... There's no way you can have an interest – so it may create a little confusion.

Emerson: One time there was a canon of ethics about that, but I don't remember now – it was kind of confusing.

Sharpnack: As I recall, it had something to do – you could keep a name if it was somebody that somebody was still in the firm and actually practiced with or something like that – if I remember correctly.

Emerson: Oh.

Sharpnack: But, of course, Judge Sharpnack had practiced with different people over the years. He and my dad – I think my dad might have been an employee of my grandfather for a time. Then the second war came along. Frank Richman got on

the Supreme Court and then my dad got Tom Bigley, who was a lawyer at Bendix, I think, to come down. He was not eligible for the draft for one reason or another. I know when my dad came back from the war, he and the three of them formed what was called Sharpnack and Bigley and they didn't add any – well, at one time, Justice Givan worked there. I was introduced to him sometime in the 50's. I think I was in college and had come over for a visit and I got introduced to Justice Givan. And he didn't stay long. My dad said he preferred to get into criminal work, but he was down there for a little while.

Emerson: Oh, my.

Sharpnack: And then I don't think they had another partner until they brought Lee Hamilton in. And, my dad felt they had a commitment from Lee not to get into politics – but anyway...

Emerson: Oh, my.

Sharpnack: _____ and then they always kept telling me, our firm likes to stay neutral and stay out of politics. The only odd thing about that was I was the only Democrat in the firm. So I think the message was for me. You don't get into politics.

Emerson: Well, some firms stay out of politics; some firms jump in with both feet.

Sharpnack: Yeah, well they mostly have stayed out of it actually.

Emerson: Well, is there anything else you'd like to put on the record?

Sharpnack: Well, there have been some enormous changes in the time that I've been a lawyer and a judge. For example, ADR was – I think maybe we had the rules at that point. It was essentially not around, it was arbitration. But mediation and all that stuff, that's all occurred since I've been on the bench. It is somewhat foreign to me although I did take a course in mediation. That device there – the technology changes – I remember – we got a tape recorder for recording statements and things and we thought that was fantastic. We first had typewriters and then we upgraded to the Selectic Typewriter, a little ball that used to jump around.

Emerson: Oh, yes.

Sharpnack: And then we got the MagCards.

Emerson: So the secretary didn't have to type the same words 40 times.

Sharpnack: And then there for a while there was the typewriter that put oh, maybe five or six words on there and sort of trailed where you were and as long as they were on there, you could change that. And then the MagCard was IBM's first thing and I remember when we first went to the MagCard – I mean right now a MagCard seems like old Babylonia clay tablets; but at that time it was pretty high tech. Tom Bigley, Sr., insisted that we put the MagCard in the back where nobody could see it because he thought it would be not helpful for clients to realize how quickly we could generate paperwork. And, of course, somewhere after that we got to the point where we wanted people to see that we had modern equipment. But, at first it was kind of like the first machinery. This machine's going to put me out of business, so throw your wooden shoe in it. But those are big changes.

We talked about the change of venue. That changed. That was a whole way of life that went away. And, of course, women in the bar has changed considerably.

Emerson: Were there any women in your law school class?

Sharpnack: There was one for a while but not when we graduated. There was one in the class ahead of us and I think one in the class behind us; and that was kind of it. Now, Cincinnati's a fairly small law school. We had 40 in our class. I think now they're up to 100 plus. But, when I came to Columbus, well let's see – the Department of Justice – I don't believe there were any women. Pretty sure about that. Of course, that's a big place. And at least in the Antitrust Division, the only African-American was the fellow who ran the duplicating machine. No black lawyers. And I remember when they had the first Civil Rights march, not the one that's so famous, but before that, while I was still working there, they had another one. And there was a fairly Southern flavor to Washington and to a lot of the people in the Antitrust Division. Well, anyway, this march was going to come down Pennsylvania Avenue, and things were in such a state that the secretaries were told that they didn't have to come into work that day. And many of them didn't. Well, the whole business of racial discrimination has changed.

Emerson: Yeah.

Sharpnack: I went to this public college preparatory high school in Cincinnati. That was the first time I was ever in school with an African-American. Of course, it was probably because I lived in a neighborhood where there weren't any African-Americans growing up. And, I didn't realize until after I'd been out of there for a

while that African-Americans did not participate in swim class with the white students. The African-Americans swam on Fridays and then the pool was drained.

Emerson: Oh, for heaven's sake.

Sharpnack: And Cincinnati was a southern town in many ways. My wife, and we're talking '58, '59 – my wife and her friend went out to Coney Island which was the amusement park there.

Emerson: I remember that.

Sharpnack: Long gone. And, ...

Emerson: Moved to – well, King's Island – (*both talking*)

Sharpnack: Yeah, and she and Bernie and Helen, my wife, kept commenting that there were no African-Americans out there and why was that and they decided between themselves that it must be they don't like it. Well, they weren't allowed in. Helen, before she and I hooked up, had a friend Ram Desikan, he was an Indian – India Indian and dark skinned and when he would take her out to dinner, there was only one restaurant in – there may have been others, they were only aware of one restaurant – The Colony, downtown, where he could be served. I belonged to ATO fraternity in college. They're now into – see I started college in 51, so we're into the 50's. ATO itself, well I never paid that much attention to it, was for white Christian males. I think they've gotten rid of all that now. We had a fraternity house in Cincinnati, we had several southerners who went to school

there. One summer we agreed to house a little league team from somewhere in Ohio that was coming down to play baseball. Well, it turned out there were two African-American kids on that team. I was president of the fraternity when this happened. Two African-American kids on the team and we had this fellow – I won't give you his name, wouldn't know him anyway – from Tennessee and he was in an absolute froth that these African-Americans were going to be staying in the fraternity house and I had to keep them from staying in the fraternity. I said, look, we've told these folks they can come and stay here; now there's no way we're going to tell these kids they have to leave. Well, he ended up, he wouldn't stay in the fraternity house. So he moved out for the two or three nights they were there. I went to a fraternity convention in Atlanta and there was a big stew going there because a chapter in I believe it was New Hampshire, had admitted a Jewish boy and there was some talk somewhere about wanting to let African-Americans join. Well, of course, we met in Atlanta and we had all these "whites to the right" and signs and things – crazy. So those things – I mean prejudice hasn't gone away, but it's a lot different than it was in those days. That I think has been a big change. There are more African-American and Hispanic lawyers, for example.

Emerson: Yeah.

Sharpnack: And certainly more women – I think three or four years ago, it was that the class that was sworn in to the bar was more women than it was men. I don't know what impact that's had, to tell you the truth. I occasionally think I see that women think differently about some things than maybe men do, but it's pretty hard to put

your finger on if that's true. And, just day-to-day lawyering, I don't see any difference between them. So that's been a big change. It's kind of ...

Emerson: What about the decline in civility?

Sharpnack: Well, there's always a lot of talk about that. I'm not – in my own experience, I can't say that I've seen – I mean things weren't always all that civil in the old days.

Emerson: Okay.

Sharpnack: But I think the biggest problem with civility may be that, for example, in a small community, you're with each other all the time. I try a case with you today, I'm going to be with you again a week from today. In larger communities, people may never see each other again. And I think there's something more of a tendency to be uncivil in those circumstances. The other thing is, and this may be something that's increased, is I think there's been some growth – of course, I haven't been in a court room now for some time.

Emerson: Yeah.

Sharpnack: I think there is something of a growth of the idea – and I see this – I teach a lot – teach trial advocacy and teach deposition taking. I see some of this. There are people who think bulldozing and aggressive behavior is the way to represent your client.

Emerson: You mean “Winning by intimidation?”

Sharpnack: And I expect occasionally they do, but for the most part, I don't think it's very effective and if you're up against somebody who's really pretty good you're going to end up in trouble doing it. I think civility is important. And I'm not sure – because so many people say it's worse now; maybe it is worse. But as I say we had instances of incivility in the – Leon Cline was a lawyer that I tangled with very often. And, Leon – I forget who started this, but either I sent to Leon or Leon sent to me, a certified letter about something. And there had to be a signed receipt which meant you had to go down to the post office and sign the receipt to get the letter. “Okay, so here's one for you, Leon.” And I sent him one. So we did this about three or four times, and his secretary, wonderful woman, called me up and she said Leon wants to know what you like to drink. I said “What's he want to know that for?” She says “Well, he thinks it's time to declare peace and he wants to send you a bottle of what you want,” so civility won out in that case. I don't recall running into many uncivil lawyers really. Some jerks now and then, I suppose.

Emerson: Yeah. You've probably known a few that you wouldn't want to leave an important document with.

Sharpnack: Possibly, yes. I've known some awful bad lawyers unfortunately. Another thing that's changed and changed back, and I don't know where it's going now, is the business of fees. When I started out, for example, working for insurance companies there was a set fee if you were in a court room a half day, it was so many dollars; if you took a deposition it was \$70. And I actually remember a case, it was a case in Columbus where I represented the city, was insured by

General Accident; and a semi had come through and nicked a street light and knocked it all cockawise. So the city sends out two clowns to fix this. Well, they fixed it. They just didn't bother to check and see if they were coordinated.

Emerson: Oh, dear.

Sharpnack: So, you would have all green for both ways and then you'd get all red for both ways. Well, that went on for a while and then of course there was a collision and a woman was killed and so on and so forth. Well anyway, I was hired by General Accident to represent them and when it came down to billing time, they said we want hourly billing. So that introduced me to hourly and then everybody went to hourly billing; and now apparently we're kind of moving back from hourly billing to back to set fees in some instances.

Emerson: Um-hum.

Sharpnack: I don't know. And the involvement of lawyers in voir dire has changed in state courts -- of course, I think maybe, it may have always been this way in some of the federal courts, but when I started out, voir dire could last a day and certainly a morning. The lawyers got to ask questions. They went and got -- chances are it was kind of information -- sometimes it was a pretty naked effort to persuade the jury -- so that's been cut back; but what comes back to me kind of was that you didn't get a chance to sort of get a feel for the juror. I remember I tried a case in Judge Maschmeyer's court down in Clark County, I think it was. And he did the voir dire and the way he did it, he would say if anybody believes that the law isn't important raise your hand. Or just and I realized after about, oh, I suppose,

half an hour or so, I'd never heard any of these jurors open their mouth. He didn't have any sense – I think that would kind of hurt. A lot of insurance companies have moved to using – not quite in house, but captive counsel, so again that insurance defense bar out there has changed in character. There's probably more cases. Modern pleading. I started out, and you did too, to demurer and ...

Emerson: Oh, yeah.

Sharpnack: Motion to make more definite and certain and so on and so forth which could be kind of tedious. I remember a case where a judge in Hendricks County had sued a newspaper that I represented for libel. And we had trouble getting a judge -- judge's can disqualify themselves, and I finally encountered Sue Shields for the first time. She became the special judge and we were on ...

Emerson: Hamilton County, as I recall.

Sharpnack: Yeah, we were on something like the Seventh Amended Complaint.

Emerson: Oh, boy.

Sharpnack: But, to me that point was sort of bad, but the nice thing about it I think is that when you were done, hopefully without that many, you had a very precise statement of what's supposed to be wrong. Whereas, now, you can at least in theory can start out almost saying you hurt me and you owe me money. Although many pleaders don't realize how little they have to plead because I mean when you see complaints now that are pages long, so that's a change.

Emerson: The celebrated motions table.

Sharpnack: Yes.

Emerson: Walk around the table, one after another.

Sharpnack: And of course the selection of appellate judges changing, which is the reason I'm here. There's always a big battle over how to select your judges. The State Bar Association is on record wanting to have merit selection across the state which frankly I would favor. And all of this back and forth about activist judges and so on and so forth.

Emerson: Oh, wow.

Sharpnack: An activist judge is the judge who decided the case differently that you think he should.

Emerson: Okay, ...

Sharpnack: That's about right I think. And then in 1994, no 2004, when I ran for retention the last time, I produced a little flyer. I was the only Appellate Court Judge -- no Supreme Court Justice, no other Appellate Court Judge -- on the ballot. And I was kind of nervous that there's any number of people out there a little unhappy with the judiciary, I'm definitely a target. And they were just beginning to get this -- I never actually got one for wanting judges to say where they stand on abortion and that sort of thing; and I was always kind of holding my breath there. I think the problem with a lot of that stuff is just it gets to be a totally one issue decision. If

you're on this side, then you are out no matter how good you may be and no matter that you might never in 18 years get a case like that. But that's an unending fight. I think in most of the colonies, it started out appointment and then I think it was in the – as the states began to expand, the populists went to election. And I can see ...

Emerson: At the time of Andrew Jackson?

Sharpnack: Yeah, that's right. That's exactly right. Exactly right, which goes back to somewhat the old Tip O'Neill's "All politics is local" and add to that "temporal" because -- well, take when they had a Republican governor in Massachusetts, Ted Kennedy, when Kerry was running for President; they all thought it was essential that we not let the governor appoint an interim and we got it changed. And that law, the old Kennedy's probably going to die and we've got a Democrat governor and we don't want to have to wait until whatever. So that's an example of temporal politics. And same way with judicial appointments and the Republicans are in power. They object to the Democrats holding up appointments and this ... and then they get in – and they all use the same rhetoric.

Emerson: You've very much intrigued me. You've got a bottle on the shelf there that looks like water, but that skull and crossbones on it and says "Do not ingest." Is that a ...

Sharpnack: That's not people food. And probably poison. Well, that's partly a kind of snide remark about some of the warnings they have to put on things, but it's because I put fertilizer in it to feed my plants and just want to make sure nobody drinks it.

Emerson: Okay. I thought it might be an exhibit from a murder trial.

Sharpnack: No, no.

Emerson: Well, this has been most enjoyable, Judge. I have really enjoyed it and I trust that the readers will enjoy it. And my agenda will be – next week, I'll take this machine down and talk to Vi Taliaferro and after that I will deliver it over to Christy Stanley at Barnes & Thornburg, who will see to its being typed. And how long that will take, I don't know.

Sharpnack: Sure.

Emerson: She's doing as a volunteer I think. So I have no idea. And after it's done, she'll send it back to me and then I'll get it down to you. You can do as you wish with the manuscript. Add anything, delete anything. Change anything. Just say, I don't want to do any more if you wish. And then, when that's all done, get in touch with me and we'll pick it and proceed from there. And then ultimately, we'll go to the – she'll retype it of course or she'll have it retyped. And ultimately it will go to the State Historical Society who will prepare a deed and they write deeds like an ancient – scrivener.

Sharpnack: Oh, very tight.

Emerson: Well, they're concerned about copyright law among other things. Until you have signed that deed, it's yours and nobody can look at it. And then after that deed has been signed, it will be deposited in the archives of the State Historical Society for use presumably by historians – possibly the George Hoffman average lawyers.

Sharpnack: Well, you know, he does have a point, I think. I mean if you're trying to create a time capsule if you would of the practice of law, it probably would be good to talk some ...

Emerson: Yeah.

Sharpnack: Solo practitioners, ...

Emerson: I mean it's a very tough business.

Sharpnack: Oh, yes. I remember when our overhead surpassed a prior year's gross and I don't mean it happened in that short of a time frame, but over time it got ...

Emerson: Yes.

Sharpnack: It was very much this way. Some years were good; some years weren't so good. It's a difficult business and people who practice on their own I think at great disadvantage for a whole raft of reasons. One is they don't have the companionship of another lawyer to talk to about things. If they're developing bad habits, other lawyers aren't apt to tell them that.

Emerson: Yeah.

Sharpnack: And so they may tend to get worse over time. They will have trouble finding time to spend with their family or whatever. The demand, they will tend to take on more work because they need more income and the more work they take on, makes it more difficult for them to get their work done; and it just – some get into it and do well. There was a while that I very much was interested in the idea of

going out and being sort of a boutique lawyer on my own and do nothing but trial work. In other words, sort of tried to get to like the English barrister where I would – like whether you dealt with insurance companies, as you came up to trial, you would split your time between trying to work out a settlement and trying to get ready for trial. Those aren't the most compatible efforts and the British barrister, or at least my idealization of them, they fought a case and said we're going to try this case. And that's what you did. And I always found that kind of attractive.

Emerson: Keep a pocket in the back of the gown.

Sharpnack: Yes.

Emerson: So the fee could be split up and the Barrister didn't presumably have to know about it.

Sharpnack: Right, right. Some strange things about that, there aren't allowed to talk to witnesses, things like that. Well anyway here we are.

Emerson: Well thank you very much.

Sharpnack: Thank you.

Emerson: And we'll be in touch