Commonwealth Court of Pennsylvania

Reminiscences of

Stanley H. Siegel, Esquire

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

Irvis Office Building

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

MR. SIEGEL: '52.

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

But first, Stan, a little bit of your background.

Where are you originally from? Where did you go to school?

Where did you go to law school?

MR. SIEGEL: Well, I was born and raised in Mifflin County and have lived there all my life except when I was in the Navy and away at law school. I went to Lewistown High
School. When I got out of high school in 1943, you knew you were either going to join the service or be drafted. So I got into the Navy College Training Program. They sent me to the University of Pennsylvania in Philadelphia and then transferred me to the Reserve Officers Training Corps. And I was commissioned in October 1945, sent to the Bainbridge Naval Training Center and Separation Center for a year and then was ordered to inactive duty on September 1st, 1946, because at that time Congress had not appropriated any money to pay reserve officers later than September 1st, 1946, so they had to let us all go.

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

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

MR. SIEGEL: Yes. I had to go back -- the University of Pennsylvania would give me credit for most of the courses. The Navy prescribed the courses. We were
I took a couple political science courses because I was interested in the subject and found out when I got out of the Navy that I could go back to Penn, take four political science courses and freshmen English and get a Penn College degree. At that time at Penn, you had to have freshmen English. The Navy didn't care about English courses, so I never had freshmen English.

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

MR. SIEGEL: Then I went to Yale Law School, beginning in October 1947. I graduated in May 1950, went back to Lewistown, practiced with my father. I didn't take the bar exam in July of 1950. I was married the summer before I went to law school, and our first child was due about the time the bar exam was scheduled. And I was afraid that being a brand new father, if I had prepared for the bar exam and the baby came, I'd walk out and not
finish anyway. As it turned out, our daughter Ruth was born on the first day of the bar exam. So that was a wise decision.

MR. SCHUCKERS: A very wise decision.

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

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

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

And then in the early 1950s, I started doing a little workers' compensation work. By the middle of the '50s, I came to the conclusion that even then, the practice of law was getting too complicated to know everything about everything and I was going to try to learn something a little bit more about something. I was interested in workers' compensation, and by the mid '50s, I was into it. Beginning
I would say roughly from 1980 to about 2000 when I really stopped going to hearings, probably 90 percent of my time was workers' compensation. I did a few other things, but it was basically workers' compensation defense. In the early days, I had a couple of claimants' cases but came to the conclusion that there were possibilities of conflicts. What bothered me is you appeared before the same small group of workers' compensation, then referees, now judges, and if I am arguing for a claimant on a principle of law that I have to argue for to support the claimant's case, then two days later I've got to argue the other side to support the defendant's case, I just saw too much potential for conflict. So I stopped representing claimants.

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

MR. SIEGEL: First of all, in the early days, a big
workers' compensation case before 1972, when there was a

drastic statutory revision -- there was no interest; there

were no penalties -- would be $2500. Now $2500 won't pay for

one medical deposition.

The hearing was before the Referee. The Referee

was the fact-finder, but back in those days, the Board was

free and loose with the facts. They changed the facts if

they didn't like what the Referee found.

You went to the Board. If you were dissatisfied

with the Board, your right of appeal was to the Court of

Common Pleas in the county in which the claimant resided.

Very rarely in those days did we pay much attention

to common pleas workers' compensation opinions because except

for a few, large metropolitan counties or counties in the

coal regions where there's a lot of silicosis, both hard and

soft coal regions, common pleas judges got so few workers'

compensation cases that they really didn't know much what it

was about. So for the most part, you would ignore common
pleas court judges' opinions except in certain limited circumstances where you knew a judge handled a lot of the cases.

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

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

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

MR. SCHUCKERS: The Commonwealth Court was created in 1970, and the appeal process was greatly changed.

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

Now, what a lot of people forget -- and nobody has ever done anything about it -- there is still the old
Occupational Disease Act of 1939 which was never repealed but hardly ever used because occupational disease was engrafted onto the Workers' Compensation Act.

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

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

MR. SIEGEL: Well, claimants' attorneys just don't bring those cases because the benefits are limited to the benefit schedule in 1939. They never amended it. So if there's any way at all you can get under the Workers' Compensation Act -- and it's not hard to get under the
Workers' Compensation Act -- a claimant's attorney would almost be guilty of malpractice now if he brought a case under the OD Act. And you're not going to see very many of those anymore.

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

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

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

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

And those are the ones that I probably knew the best of the early Commonwealth Court judges. I know Rogers
and Craig weren't the original judges, but they were very early on in the history of the Court.

MR. SCHUCKERS: Judge Bowman, of course, was the first President Judge of the Commonwealth Court, and he was President Judge from 1970 to 1980. Did you get to know him pretty well?

MR. SIEGEL: I got to know him pretty well, and there were a number of things you could say about Judge Bowman. Judge Bowman, other members of the Court told me, was a rather strict taskmaster but everybody went along with Judge Bowman because he never asked anybody to do anything he wouldn't do himself. And Judge Bowman, as you know, was an imposing figure physically. He was a big man. I mean, he was just -- he was tall, about six-three or six-four.

MR. SCHUCKERS: Exactly.

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

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

Well, I didn't know what he had in mind, and of course at that time, I didn't really know him personally. So I didn't know what was going on. We sat down, and we chatted. At that time I was doing what was called the annual review of workers' compensation law at the midyear meeting of the Pennsylvania Bar Association.

And the deal that Judge Bowman wanted to make was that if I would agree -- he didn't mind if I criticized opinions, but that if I would agree with him that if I criticized an opinion, I would not mention the name of the author of the opinion and if I approved of the opinion, I
would mention the name of the author. He would commit to me that every Commonwealth Court Judge, absent illness or death in the family, would attend every one of these sessions that I gave every year. So we made a deal. And I lived up to my end of the bargain. And from that time until I stopped doing the annual review, I think there was only 1 or 2 Commonwealth Court Judges who did not attend and they were physically ill the day of the presentation. Now, another story about Judge Bowman -- and this is just conjecture -- one of the cases I had to argue before the Commonwealth Court, for some reason, it sort of shouldn't have been, but the Court ordered to hear it en banc. So there were seven of them sitting. It was back in the days when there was only seven, so they were all there. And they come out with the argument list, and I always had a practice of when I had to argue a case before an appellate court, I got down a couple hours before my
argument. I wanted to hear what frame of mind the judges
were in and how things were going and who was going to bite
whose head off.

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

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

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

MR. SIEGEL: I knew --

MR. SCHUCKERS: Before the creation of the Court?

MR. SIEGEL: I knew Judge Wilkinson before the
creation of the Court. And shortly after the Court was
created, I still did some other work. I represented one
client, did a lot of work for them, and they were involved in
an environmental problem. I forget the details of the case,
but it was a type of case that if either party wanted, the
Court had to have a jury trial. The parties had a right to a
jury trial. It was an original jurisdiction in the
Commonwealth Court. It wasn't an appeal.
The case was assigned to Judge Wilkinson. The DER
attorney was in Harrisburg; I was in Lewistown. Judge
Wilkinson's chambers were in Bellefonte. The Judge could
have ordered all to show up at Bellefonte or Harrisburg or
whatever, but that was not Roy Wilkinson. He called every
everybody and said, "Let's do this by telephone."
And so we set up a telephone conference call. As
we begin, Judge Wilkinson opens by saying, "Well, Stan,
what's this case all about?" Well, I could almost hear the
attorney for DER falling off his chair. He didn't know what
he was getting into.
But then as the discussion progressed, it became evident that Judge Wilkinson would like us to settle the case because he frankly didn't have the foggiest notion of how he was going to impanel a jury if anybody wanted a jury trial. And from what you told me, Dan, I guess that was a legitimate concern at that time.

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

MR. SIEGEL: Bring some chairs in.

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

MR. SIEGEL: Well, Judge Wilkinson dodged the bullet because we did settle the case. And it made him very happy because he didn't have to figure out -- now, I don't
know how long it was after that until you had to have a jury trial. It must have been some period of time.

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

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

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

And apparently Judge Kramer and his wife and my wife had met at some social function the day before. I don't remember the details. But the two women get into the special door which led you right up to the second floor where the
banquet room was. There was a big marble staircase that went
down to the main entrance.

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

MR. SCHUCKERS: Right.

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

MR. SCHUCKERS: Sure. Go ahead.

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

I knew Roy Wilkinson, so I called Judge Wilkinson
and asked if he had any vacancies. Well, he said, just the
day before, he had hired his last clerk. But he said, "Judge
Rogers is looking for a clerk." He said, "I'll call him,
tell him you're going to call him. You call him tomorrow."
Well, we did that, and Judge Rogers invited my son in for an
interview and then hired him.
Judge Rogers was a truly outstanding gentleman in
every respect. I got to know him fairly well during the
period that my son was his clerk.
In addition to being extremely bright and
intelligent and writing excellent opinions, he instilled in
all of his clerks the professionalism that young people even
in that generation didn't learn in law school and didn't
learn anywhere else.
This is a small example. His chambers were in West
Chester. That's where my son lived for a year. And I think
there were three clerks; I don't remember the exact number.
But when they went to work during the week, they had to have
a shirt and tie, and they could wear a sports jacket. If
they come in nights or weekends, they could wear jeans or
whatever they were comfortable in.
Judge Rogers at that time, when the Court travelled
for oral argument, would always take two clerks with him.
When you traveled with Judge Rogers, you wore nothing but a shirt, tie and a suit, because that was his way of trying to instill in everybody the niceties of practicing of law and that it wasn't just a business.

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

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

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

I tried to read the advance sheets. Back in those days, you didn't have the internet, thank goodness, and you read the advance sheets in West. But they were usually several weeks behind until you got the report. Unless you
were involved in the case or knew or had a friend who was an attorney who was involved in the case and told you about it, you didn't know about an opinion for 4 or 5 weeks after it was handed down. I'd get the advance sheets and look at them. There was a case where Judge Wilkinson had written the opinion, reached the correct conclusion, but there was one paragraph which was 100 percent wrong, just the opposite of what it should have been. Ordinarily I wouldn't do this with a Commonwealth Court Judge, but I knew Judge Wilkinson well enough. I called him, and I said, "Look at this." I gave him the page number. MR. SCHUCKERS: And it's a case you were not involved in? MR. SIEGEL: I wasn't involved in it. I wasn't involved in the case at all. And I said, "Read that, Roy. What do you think of that?" He said, "My goodness, you're
right. That's wrong."

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

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

MR. SCHUCKERS: We'll use it.

MR. SIEGEL: -- you can delete it.

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

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

I did workers' compensation, and Judge Craig did zoning and planning, which were his field in Pittsburgh. And because we were together on the program for a couple of years, we got to know each other fairly well. And then we became much better acquainted when Judge Craig became
president of PBI, Pennsylvania Bar Institute, where I've been involved in since there was a PBI.

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

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

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

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

MR. SCHUCKERS: And I'll elaborate on that a little bit. He gave a presentation -- I guess this is about
20 years ago -- over in Hershey to about 600 attorneys on subrogation, with his overhead projections, and he just did a wonderful job of explaining the differences in these cases and how subrogation under Section 319 should proceed.

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

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

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

MR. SCHUCKERS: Yes.

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

MR. SCHUCKERS: Oh, absolutely.
MR. SIEGEL: There's one other sort of

humorous story -- not humorous really, with Judge Blatt. I

knew who Judge Blatt was. I mean, she was -- she had a lot

of public positions, and you knew the name.

She and my wife were in a group of attorneys and

judges who took a tour to Russia and China in 1982. I wasn't

along on the trip, so my wife and Judge Blatt became friends.

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

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

MR. SCHUCKERS: You could do a lot of things to

Judge Blatt, but you could not take those rosaries. She was
a very, very strong Catholic.

MR. SIEGEL: She was very devout.

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

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

From the time they got back from that trip until Judge Blatt left Harrisburg, every time there was an article in the Patriot about railroads or redevelopment trolleys or the history of the streetcar in Hershey, I would get these envelopes from Judge Blatt addressed to me with a clipping inside and a friendly little note that she knew I was interested and she was sending this. That continued I don't remember for how many years but from the time they came back from the trip in 1982 until she left Harrisburg.

MR. SCHUCKERS: Any other reflections on any of the
other judges?

MR. SIEGEL: Not particularly. I think -- probably

I'll get in trouble saying this, but I think the early
Commonwealth Court was probably the best appellate court
Pennsylvania ever had.

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

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

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

MR. SCHUCKERS: I'm just wondering about any
changes you might have seen. In terms of number of cases
we've seen in workers' compensation, it has really gone up
over the last 30 years.

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

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

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

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

MR. SCHUCKERS: Anything else you can think of?

MR. SIEGEL: Well, if you're interested in some
anecdotes about the early practice of workers' compensation, not necessarily before the Court, I've got a couple of stories.

MR. SCHUCKERS: Sure.

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

MR. SCHUCKERS: No.

MR. SIEGEL: Well, back in the early days, '50s, '60s principally, the workers' compensation referee who came to Lewistown was the county chairman in Blair County of the political party empowered in Harrisburg. That was the qualification to be the workers' compensation referee. That was the patronage plum. Well, the result was these fellows didn't know much of anything about it and didn't care much of anything about it. And they had two reporters. At that time, the reporters were state employees. They weren't contract
reporters.
The hearings were in the second story of the old YMCA building in Lewistown. And the one referee would come down, and all the hearings were scheduled for 9:30. He'd walk in the hearing room, and there would be a bunch of attorneys and claimants and other people, witnesses. And he'd say, "Everybody who is going to testify, raise your right hand." He swore everybody in; he didn't know who he was swearing in. If a dog had walked in and raised his right paw, he would have been sworn in. Then the referee would promptly go over in the corner, sit down and fall asleep. One of the reporters was a fellow by the name of Frank Goss, who was very knowledgeable because he had reported so many workers' compensation cases. He knew what was going on. Before 1972, it was quite common that a defendant client would say, "Go to a hearing; whatever the referee decides, we're going to do." There were no penalties for going to a hearing; there was no interest, no delay. So
there was nothing -- no risk in going to a hearing.

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

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

So if you were just going to go with the referee's
decision, you -- when Frank started shifting that cigar, you
quit wherever you were because you knew you were going
downhill from then on. And then Frank would write the
decision. He had a rubber stamp with the referee's name.
decisions. Now, that's the way it used to be back then.

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

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

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

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

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

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

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

MR. SCHUCKERS: You mentioned the shifting cigar story. I remember Harold Fergus, who has been a member of the Workers' Compensation Appeal Board for about 25 years.
He used to tell the story of a workers' compensation referee out in the western part of the state who would handle, I think, cases involving lung problems and the referee would light up a cigarette and if the claimant coughed, he would get benefits and if the claimant didn't cough, he wouldn't get benefits.

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

And so you had to have medical testimony.

And there was a doctor in the coal region who -- and I've heard this story so many times, I believe it to be true; who was appointed. He was a political hack. He was appointed by the party in power. And he was pro-claimant, but he thought that he had to show his objectivity by finding a couple of people not disabled.
So the story is that he had ten steps up to his office and if he had ten files, he threw them down the steps and the files that landed on steps, like, maybe 3 and 5 were not disabled; everybody else was totally disabled.

Too many people have told me that story that --

MR. SCHUCKERS: Well, I think beginning particularly in the Thornburgh Administration, there was the realization of how important the job is of being a workers' compensation referee, particularly in light of the '72 amendments when they became the ultimate fact-finder. And as a result, there was a real effort by all of the past administrations, including the Thornburgh Administration and on forward, to professionalize --

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

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

MR. SIEGEL: Well, the only way there can be political overlay is -- right now, as I understand it, to be
a workers' compensation judge, you have to take two exams: One, the civil service exam. Then if you rank high enough in that, then there's a separate exam that the Office of Adjudication now administers for prospective judges. Now, when they go to fill a vacancy, the administrators still have, as I understand it, the option of picking from the top 2 or 3. And if somebody has influence, they may sneak in, but that's far less than the old way. At least everybody in the top 2 or 3 are qualified.

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

MR. SIEGEL: And now I think -- I don't have any statistics to prove this, but I think it's true, that the average workers' compensation judge will rule on dispensing more money in the course of a year than the average common pleas judge will.

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

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

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

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

But once you're locked into a specific benefit rate, there's no cost of living that it's going to go up automatically; that's your rate for the rest of your claim.
MR. SCHUCKERS: Stan, in terms of what you've seen from Commonwealth Court decisions over the past 37 years in workers' compensation, you mentioned you didn't think the Supreme Court got it right very often. Do you think the Commonwealth Court has done a good job in that area?

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

One of the big problems where you get cases which make bad law is there are too many of our brethren, both claimants, more defendants than claimants, who will appeal a case where the facts are so terrible that it doesn't make any difference what the law is, the Court is going to find a way to sustain the award of benefits. And in so doing, they very frequently make statements, which may be a little bit of dicta, but they come back to haunt us later on.
And the moral of the story is if you have a loser, pay it, don't litigate it. And certainly if you lose at the judge's level, don't appeal it to the Commonwealth Court if the facts are so bad that you know one way or another, the Commonwealth Court can find a way of awarding benefits.

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

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

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

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

MR. SCHUCKERS: One thing I've seen over the last several years is the use of the waiver rule. It's absolutely
necessary for attorneys to preserve their arguments and their
issues and their objections at the lowest level and keep
preserving them all the way up.

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

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

And a lot of the problems you have in workers'
compensation come from the way more defendants' than
claimants' attorneys practice. Many defendants' attorneys
are reluctant to tell their client they don't have a case.

They're afraid they'll lose a client, so they'll litigate.

And it's a loser. And if you litigate a loser, you're going
to make bad law. The best thing to do with a loser is to pay
And that has a number of benefits. In the workers' compensation field, you run across the same workers' compensation judges time and time again. Now, if you have a habit of litigating everything that comes down the road, these judges get used to that. They turn off their hearing aides when they see it because they figure this guy is going to raise every issue under the sun, which makes no difference, so they don't pay attention to you. If, on the other hand, you establish a reputation with judges that the only time you're there to litigate is when there's something to litigate about, they pay more attention. And that's intangible, but I keep telling defense lawyers that I think that that is a distinct advantage that you have, if you can develop a reputation of only litigating when there's something to litigate.

With a good claimant's counsel -- and I've done this any number of times -- you sit down and you agree on 90 percent of the case. It's a rare workers' compensation
case where there's more than 1 or 2 or 3 at the most issues that warrant litigation. Too many defense counsel will litigate all 12 issues.

MR. SCHUCKERS: And we see it in other areas of the law just as well.

Well, Stan, thank you very much. I appreciate your taking the time to come in and discuss your reminiscences and your memories of some of the Judges of the Commonwealth Court and the Court itself. I really appreciate it.

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

MR. SCHUCKERS: Thank you. I appreciate it.

(Concluded at 1:44 p.m.)