

C. Edwin Luckey

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LUCKEY: C. Edwin Luckey

JW: James N. Westwood

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Tape 1, Side 1

1990 January 20

JW: We're on the Tualatin Valley Highway in Beaverton, Oregon, talking with Judge C. E. Luckey about his life, his legal career, and any other things he would care to discuss. Judge Luckey, could we start with some information about your forebears and your early family life?

LUCKEY: Well, my forebears were people who originally came to Oregon. There were four brothers, at least on the Luckey side, who came from Missouri across the plains and around by boats through around the Horn and so forth. The four brothers homesteaded in Maine County. My great-grandfather managed to take the rock-infested, snake-infested stretch of Butte area that later became a very valuable subdivision property. At the time he took it, however, he took it for the scenery I think, and was rather criticized by the other members of the family for his choice. Had he lived to enjoy it, he would have found that the price of one lot exceeded the entire value of his 160 acres. I found that out when I moved back to Eugene and realized through a checking of the title that the little house I bought back down there after I had been U.S. Attorney in Portland, that I was on part of my great grandfather's donation land claim and that lot commanded more than his value.

Well, there was another little interesting anecdote: When I was in law school there was a very well-known political science and constitutional law professor who was, during the summer, preparing a law review article for publication on the jury system. His writing was very poor and he wanted it typed. I was going to summer school at that time in the law school and he asked me if I would type it for him, which I agreed to do. He agreed to compensate me even.

And he came to Portland on some research and returned and he said that he didn't know whether I was interested but he had checked a little into my genealogy' - why, I don't know, maybe it was necessary that he know the genealogy of anyone that typed a paper for him, but in any event, [Dr. Barnett?] informed me that he had gotten me from the Revolutionary armies to the state of Pennsylvania and in the settlement where he had found my ancestors, all were killed by Indians, he didn't know how I had gotten here. I remember the family later did a little genealogical research and found that from that massacre in Pennsylvania the Indians had taken one nine-year-old boy back to Canada and later, some years later, not too long later, a British soldier saw the young fellow in the Indian camp and felt sorry for him and traded a keg of rum for the boy. So that's I guess how I got here.

JW: This is your ancestor, that is. [Laughs]

LUCKEY: That's right. [Laughs]

Oh, blame it all on a nine-year-old boy, a keg of rum and a British soldier. So I was born in Eugene in 1919. I'm therefore one of these S.N.O.B.s (sons of the native American born and educated in Eugene schools, graduated from the University of Oregon in 1940 - this year is the fiftieth anniversary year- and law school at the University of Oregon in 1942.

JW: Let's back up if we can for a moment and talk about your parents, how long had they lived where they did and where they do

LUCKEY: Well, my father was a bookkeeper and also educated in business college in Eugene. My mother died when I was a year old. She had come from Wisconsin. My grandparents lived in Cottage Grove on her side. My grandfather was a blacksmith and city councilman in Eugene and one day I was called by the policeman who was working on the history of the Eugene police department and he told me that there were two Luckey's at the first council meeting who were being considered for chief of police and he wanted to know if I knew anything about either of them, which I did not, of course. [Laughs] I had an uncle who was both a jeweler in Eugene and served as County Treasurer for a while. And my father also served for a number of years as chief deputy sheriff in Maine County before he worked in grocery stores and other activities later on.

JW: Did your father serve the role of both parents, then in your upbringing, or did he remarry?

LUCKEY: My father remarried when I was twenty years old. So, in the meantime, in my younger years, I lived with my grandmother and my father and took care of her while she was getting older. My grandmother was a very careful person, but in those days of course it was necessary for washing to be done on a scrub board, boiled on a basement wood stove and the house that I was born in still exists on Patterson Street. Everybody wasn't born in hospitals in those days, although there was a doctor in attendance.

JW: Do you know the address of that house on Patterson Street?

LUCKEY: Yes, 1140. And it's about a block west of Sacred Heart Hospital. It was convenient because I could walk to the campus when I was going to school and it was a nice house, half-way between town and the university and what was then a classless town. Everybody was the doctor across the street, the newspaper publisher, and the rest of us didn't have any class distinctions at all. It was a very nice community.

JW: What size town was Eugene when you were growing up?

LUCKEY: About 18,000. 15,000 to 18,000. It expanded rapidly during years World War II because of the wartime lumber industry expansion and the street cars left and buses came -came and went I might say until mass transit, federal mass transit, because people couldn't... private industry couldn't make the bus system survive there, so there would be periodic times when there were buses, periodic times when there weren't, after the street cars were abandoned.

JW: Was the lumber industry the main stay in Eugene in those days?

LUCKEY: Yes, the mainstay in Eugene. In fact, after I returned from World War II, in which I had the Cook's tour of Europe, so to speak, for a few years, I returned and was admitted to the bar previously. Actually, I took the bar examination just before entering the service and, having been admitted, I came back with eagerness, with a new wife from Paris, anxious to set up practice. There was no office space in Eugene. The lumber brokers had it all and it was a status system with them as to how much space they had and they wouldn't part with a square inch and it was impossible to even construct an office then because you had to have materials priority in order to get pipe and what have you. The relative of Windsor Calkins, a well-known Eugene lawyer whose uncle lived next door to us, was in Eugene and from Nyssa, suggested that they would have a place for me as a City Attorney of Nyssa in which they would provide me with office space, a secretary and so forth. I was about ready to quit scratching with the chickens in Western Oregon and head to Eastern Oregon and the District Attorney in Eugene, a fine gentleman named [Bill Bartle?], now deceased, who later became the district judge down there, whose father was a pioneer doctor, and also a fine old gentleman, came to my home and said that he was going to have shortly a vacancy as a Deputy District Attorney. In those days it was going to be a part time job, and whatever business I could have that wouldn't conflict I'd be entitled to do. A place to put my feet under those circumstances was desirable and I preferred to

remain in Western Oregon at that time and so therein became my initiation into public service. It was mixed with private practice, which was a very pleasant experience.

JW: What year would that have been?

LUCKEY: That was in 1946 when I returned from the service.

JW: Let's back up again. I'm intrigued by some of the clues you've been listing here, for example, your military service during the war and your bride from Paris.

LUCKEY: All right. I was going to law school of course when the draft registration commenced in 1940 and we became numbers instead of names. I was anxious to finish law school. The secretary of the draft board was a well-known gentleman, Orlando Hollis, who was also a professor of a number of courses that we had. Orlando Hollis seemed to take some special interest in tantalizing me with the time that I would be expected to provide service. I had an eleven o'clock class that he was teaching and in the last few months of my senior year, he would, as I left at noon-time to go home and get a brief lunch and return to either classes or study, he'd say, "Mr. Luckey, last evening I placed a document in the mail that may be of interest to you." Naturally, I would go a little half faster than usual to get home to see what the mailman had deposited there. And, over a few months there were three deferments there to my being called up. In the meantime, I had a letter from the navy indicating I would be eligible because of educational background, for a direct commission if I would just contact the Navy. After I took the bar examination, I thought I'd go to Portland one day from Eugene, where I knew a nice young lady and I'd have that evening and then return to contact the Navy. In those days if you got your draft notice, the Navy was not available. You had to go into the Army.

JW: This was in 1942?

LUCKEY: Yes, and so when I returned from that one night after the bar examination, the timing was perfect. Greetings! [Laughs] And so, Dean Hollis, I guess, allowed me to finish the law school, for which I was grateful, and then go immediately into the service. The Army worked out all right. It took me for the first few months after going to Shepherd Field, Texas, which is -there was a radio commentator whose name was Walter Winchell and one morning we turned on the radio and it said, [Colonel Kilner's?] concentration camp Shepherd Field, Texas." And it was a place where you could -I'm rambling, but there was a place where you could walk knee-deep with mud and mud and have the sand blowing in your eyes. It was rather a hazing operation for new recruits. We got out of bed about 4 o'clock to stand in line for some kind of breakfast for about an hour, outside. Then the calisthenics activities, it was pretty hot, as I explained the humidity and the wind. There were constant loud speaker announcements: "Ambulance to the West Drill Field. Ambulance to the South Drill Field." Some of the people were a little older -they took draftees up to their middle 1930s - and some of the older ones were not able to stand the rigor of the calisthenics that the rest of us who were younger could undertake. But I was only there ten days, fortunately, and that was my total basic training because I went over to take an examination that I was summoned to take. They wanted to have in-station weather observers trained. They had a weather observer school in Chinook but it was full and they needed more of them. I knew nothing, of course, as a newly-trained lawyer, about meteorology other than hot air and high-pressure areas but I managed to pass the examination. Some poor physics professor had been waiting for months and not passing up all the other opportunities for mechanics school or link trainer school, that sort of thing, but he didn't get selected. He was naturally quite disappointed. But two of us lawyers from Oregon, who were at that camp, went different ways doing station training as a weather observer in Stockton, California.

JW: Who was the other lawyer?

LUCKEY: Oh, a fellow named [Hamilton?]. He was later an assistant U.S. Attorney and then went finally into private practice in Klamath Falls and retired. I think the poor man is no longer with us, but we went to the place where we were assigned for in-station training and plotted maps -weather maps and what have you. Naturally I'd learned to type during my educational experience and so that gave me an avenue to get into the administrative end and out of this tedious plotting of maps.

JW: Had you had any sort of a science or physics background in college?

LUCKEY: None whatever. [Laughs] The Army, with its magnificent ability to choose and place had accomplished that and so I got into the administrative end and after some time in Stockton, California (seven months, approximately) went to Connecticut for preparation to go to England, eventually to France and Germany. But the weather service was in the Air Force, a rather nice service because they had rotating shifts and every three weeks you had an 84 hour leave period between shifts and so it was an opportunity to visit San Francisco and other places frequently.

JW: Was this the Army Air Corps that you were in?

LUCKEY: Yes, the Army Air Corps at that time, that's right. And we had a - there was a nice little regulation that applied to weather observers that prevented them from being assigned K.P. [Kitchen Police] or guard duty, things of that kind, because you might kill a pilot if he weren't alert plotting the weather maps. One time the company commander decided he'd place some of us on K.P. and the top sergeant in charge in the weather station went over and approached the major and threw one Army regulation 104-2 or whatever it was at the commander. You can't kill a pilot, you can't violate this regulation, these people don't do guard duty, their shifts won't allow it. I'm not necessarily proud of the fact that I never had to stand a day's guard duty or a day's K.P. but I had service in the Army, and eventually when I eventually in Europe became a warrant officer, I did voluntarily

accept duty of headquarters officer of the day, who slept in the headquarters for some unknown reason and that was the first night that the Germans started sending over their B-1's, which were pilotless aircrafts and they had a command station at the Wide Wing in Teddington near London. I'd been transferred out of the weather service after 37 endorsements from meeting a former professor from the University of Oregon was on the same base. Anyway, the transfer out got me to London area, in Teddington, where they had Wide Wing, so-called, which was the headquarters of Shafe, and I was then in the J.A. section, finally. That's when I was a warrant officer and doing that particular duty.

JW: J.A. is Judge Advocate?

LUCKEY: Judge Advocate, right. And when we heard these noises above and crisis around, I went over to this command post and they let me in and the generals were around the maps and so forth and they said, "One here, one here, one here ... we shot down a couple here but doesn't seem to be anybody in 'em." And so, they kept coming. But they were damaging to the civilian population of London of course and the surrounding area, and caused some casualties among them. To the military personnel, who - we were at that time out in the fields that we were in happened to be Henry VIII's pasture, next to his castle in the Teddington area and he had this very nice -it hadn't been occupied by cattle for a long time and it was a nice place, a nice field. We had tents there, large campaign-type tents and for a while there were about eight soldiers, and for a while we had slip trenches outside and you could watch those bombs at night as they went over, and they had .. they shot out a little light and then their distance was measured by their fuel. When the fuel stopped, and the light stopped, then they were going to fall and while we were very, very sorry for the English people, it was rather interesting to watch them come and have very little fear of them because unless they made a direct hit, the explosion goes out and up and we could hid our slip trenches and we'd be relatively safe. So, we watched them. But when the Germans started the B-2's, that was something else. You heard those, it was too late. They were just up and down.

JW: Did you ever see any B-2's?

LUCKEY: Couldn't. [Laughs] I've been around where they hit but I've not seen any. But I didn't have to participate in combat, never had to fire a shot in anger.

So, rather fortunately, Warrant Officer finally was a nice rating. The only one that I knew where they'd call you Mister, which was kind of nice in the military. And you could associate either with your old enlisted friends or with the generals the next night. That's right, and also you weren't supposed to be given any duty other than your specialty. Mine happened to be law.

JW: Were you actually doing legal practice-type things?

LUCKEY: Oh, I became a Martindale-Hubbell (that's a legal digest book) expert on the law of domestic relations and name changes and wills and all of that, but my main function of course was to review courts martial. And they sent me to a school at Chelton for a week, which was kind of a nice diversion, to understand the processes of review of court martial records. They sent a letter to everybody who had been to that school, they had a letter from the Commanding General of the Judge Advocate Generals to have them all review court martials and that particular command reviewed by this particular individual who had the school. There were only 12 General Court Martials in General Eisenhower's headquarters while I was there, and then the Twelfth Army Group was disbanded or merged and they sent over all the court martial records to be combined with those at Chafe. There were about 12 file cabinets full of them. And that was the difference, apparently. Maybe a difference in type of activity that they were involved in, but General Eisenhower had tremendous respect of his subordinates. It's common military activity to complain of the upper brass, but I never heard the soldiers complain about Eisenhower. In his command he delegated responsibility and would follow through, but he never had any antipathy apparently from the rank and file. To demonstrate that, in October 16, 1945, the

war had just ended in both theaters, and they had football teams for armies over there and they had some fine college players on those various teams. So, they had Frankfurt, where we were stationed, which had been a competitor with Berlin, as there is in countries, for the 1936 Olympics...

JW: But by now you were stationed in Europe.

LUCKEY: I was stationed in Frankfurt, yes. I went to Frankfurt in 1943. I went to Europe, first to Ascot in the Ninth Air Force...

JW: That was in Europe. I meant on the continent.

LUCKEY: Yes, and then, that's right, in England for fourteen months and then on over to France and then ultimately Germany. And Germany, after the war was over, in Frankfurt.

JW: I'm sorry, you were talking about the football team...

LUCKEY: Yeah, the football team was having these football teams were being engaged in an E.T.O. [European Theater of Operations] championship game at Frankfurt in this facility that had been developed in the bid for the Olympics. And it was one of these kinds of horse shoe covered stadiums with bleachers on the other side. The attendees included Eisenhower. It was October 14, not the 16th, and it happened to be Eisenhower's birthday. Patton was there with him and they were down on one side of the field for the first half and they were going to go over to the other side of the field so as to show no favoritism, although there was nobody over there, other than the team, for the second half. But as they stood up, some little P.F.C. [Private First Class] WAC [Women's Army Corps] went down and kissed Eisenhower on the cheek and he took that gracefully, and then there was a bunch of people gathered around to take pictures of Eisenhower and Patton. And Patton had a reputation for being stern and unpleasant with G.I.'s and he made a

motion with his hand, pointing his finger at some soldier in the crowd and an entire big Bronx cheer emanated from the stands because they thought he was giving the poor soldier the 104th Article of War right there! Well, Eisenhower was right next to him and took one step forward and the booing stopped. I never saw such tremendous respect for a man as that illustration. They weren't going to boo Eisenhower, when he became in view. Patton didn't deserve the boos. The next day it developed that he was only trying to tell the soldier that he had a strap over his lens and he wasn't going to get a picture.

JW: [Laughs] Well I guess that goes to show you how General Patton was generally regarded by the troops as well.

LUCKEY: Yes, well, that's right.

JW: Well, you were then transferred from England to the Continent. This must've been after the Normandy invasion. Were you shortly behind the advancing troops?

LUCKEY: No, no, no. Well, it was the - actually, the hostilities had ended in Europe before I got - no, no, that's not correct, this was September of 19, hostilities ended the following May. It was September, they made the invasion and Paris had been liberated at the 25th of August and we went over on about the 7th of September or something of that kind. They still required us to carry our carbines in Frankfurt, actually, when we got up there after the war was over, the hostilities were over for a few days in May because of snipers around. But that didn't last long. It went pretty well. Pretty calm up there after a very short time.

JW: Was there a lot of destruction evident in the general cities?

LUCKEY: Oh, yes. Yes, there was it was pulverized in Frankfurt. They saved a few buildings for use of the military and when we got there, they saved the IG Farbin Industry

headquarters, which was Pentagon junior over there. It was five stories and it was actually seven stories high and three wide instead of five all around. And it had - it was a nice facility. But they preserved that, and they preserved a few apartment buildings nearby. Everything else was demolished. Railroad station - all the windows were knocked out of the roof that they had covering it. It did look like a war had been held there, no question about that.

JW: Were the Germans receptive to the Americans, or were they quite cautious?

LUCKEY: When we first started out, there was imposed a so-called non-fraternization policy. We were not allowed to fraternize with the Germans. Although we had, eventually, shortly thereafter hired some in the offices, civilian assistance, and they provided German housekeeping assistance for some of us who were entitled to it. I lived in a five-story walk-up apartment and I needed a desk of some kind. I asked the maid as best I could by sign language and no German if she could get me a desk. Three or four days later, I don't know how it got up there, it was a massive thing, up five flights of stairs. And then [Laughs] they - You could tell war stories for a long time, but that's...

JW: Let's turn the tape over at this point and we can start over on the other side.

[End of Tape 1, Side 1]

Tape 1, Side 2
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LUCKEY: My bride followed me, on an airplane. I went to New York to meet her and then we took a train across the country. We couldn't find a car then, they weren't available.

JW: Had you met your wife in France?

LUCKEY: Yes, that's right, through mutual friends in May, on V.E. Day [Victory in Europe Day], and the following January we were married.

JW: And she is French?

LUCKEY: Yeah, she's French. So we started across the train and first we got to Chicago, and that seemed miles and miles away and then we cut across Wyoming and she thought she was getting to never-never land, looking for the Indians from the time we got to Oregon, having seen a lot of American Western movies in Europe. And so, she adjusted. She's been back to Paris a number of times.

JW: Did she speak English well when you married her?

LUCKEY: She didn't speak any. I taught her the only thing she said, I taught her, "Scram, dogface!" [Laughs] But she has learned quite a bit now.

JW: What is your wife's name?

LUCKEY: Arlette. But we had two children, a boy and a girl.

JW: So you came back to the United States then in 1946?

LUCKEY: 1946, yeah, right. And that was when I started in the District Attorney's office as I mentioned before, with Bill Bartle. Didn't pay much, neither did the Attorney's or Deputy's and they were both considered to be, believe it or not, at that time, part-time jobs. There was almost a full-time job by need, but part-time job in theory. Conflicts of course would be many, so there was a limit to private practice. [Bill Bartle?] had a couple of daughters growing up to the point that they needed a little extra income to attend college and so he resigned and went into private practice. And I was twenty-seven years old and the Governor appointed me as the District Attorney to succeed him. We had ... first we had one assistant, plus one part-time man to prepare the county tax foreclosure list (we paid for that only). The rest of the job was a combined county council and prosecutor job. So, we were kept quite busy, just the two of us, in Lane County. I don't know how many there are now, I think it's in the twenties. And we then, after the first assistant, who was [Sid Twaine?], who had been in the F.B.I. [Federal Bureau of Investigation] and then he had moved around forever, so he became later a very able attorney in Eugene. Thereafter, when Sid left, or shortly before Sid left, we were able to get a second Deputy and replace the part-time sort of situation, and managed to convince [Roland Rottman?], who recently retired as a Circuit Judge in Lane County after many years, to take the job as Assistant.

So, we worked that for a while and then we got an Assistant to replace Sid when he went into private practice. When I left, we had finally three Assistants and two fine secretaries, both of whom had degrees in English in higher institutions of learning, one from the University of Washington and one from the University of Oregon.

JW: Was your office in the Lane County Courthouse?

LUCKEY: It was first in the Lane County Courthouse, they tore that down. We moved out to a place near Willamette and Eleventh, they tore that down. And then we moved over the Odd Fellows Building, about a block from the Courthouse. And then, after I left, to become U.S. Attorney, they tore that down. So, they've torn down all the previous offices I had in Eugene until I went back as Bankruptcy Court Judge.

JW: What years were you District Attorney in Eugene?

LUCKEY: 1947 through 1954.

JW: Now, you were appointed by the Governor but that is an elected position.

LUCKEY: I was elected twice. It was then a partisan office, now it is non-partisan. I had the nomination of both parties both elections. My total election expenses were \$25 filing fees each time. Now of course everything generally gets contested, although I think the last time the District Attorney in Eugene did run uncontested. Because I had the nomination of both parties a few Democrats - more than I knew actually - wrote my name in. I had a visit by the Treasurer of the Democratic Party asking me for a contribution as their nominee. [Laughs] So, anyway ...

JW: Did you decline that invitation?

LUCKEY: I explained that I was grateful for their support [Laughs], but I hadn't been in campaign expenses, no salary, and didn't feel obligated at that time to make that contribution.

JW: During your tenure as District Attorney, were there any cases that you particularly remember that you prosecuted?

LUCKEY: Yes, I think. The thing I remember most is the fact that criminal trials take so long. I am appalled to read now of a case in Los Angeles extending over five or six years, a lot of time in which one of the defendants was held in jail without bail awaiting trial, and in which they say the cost was between fifty and sixty million dollars and, incidentally, which has resulted in, apparently, some mistrial situations but fifty-two verdicts of not-guilty.

Whether or not -I don't judge the case at all - I'm appalled that any trial should justifiably take five years to dispose of. We're getting to the point that litigation seems to generate time-consuming activities that doesn't seem to produce any better brand of justice than we used to accomplish in a short time. I never tried a case as District Attorney that lasted over five days, and we had numerous murder trials in that time -not as many as they have now because we didn't have the drug problem. But we had numerous trials of murder cases and the longest one lasted five days because it involved a fifteen-year-old boy who was remanded to adult court for shooting a fifteen-year-old deaf mute girl in the back while she was bent over picking kratoms in the woods, where they lived out in a rural area. It developed that the young lady was pregnant and apparently the young fellow felt he had to eliminate his problem. But the reason it took five days was that on the witness stand, in cross examination, the young fellow said that his grandfather had done it. Well, he had two grandfathers. And so, we asked time to verify their positions and the state police had to check out both the fact that they had iron-clad alibis and were not there at the time and so that took five days. The longest case I ever tried as United States Attorney was the Elkins case, which was highly publicized because Portland then had two newspapers and for circulation purposes or whatever they decided to take opposite positions on the case. Editorials and first-page articles were flying around and Judge East was presiding over the trial at the start of the proceedings some mornings. There was some editorial about how the case was hastily brought to trial, or something suggesting - simply placed it in the file, in the record, and move on!

JW: I'd like to get that Elkins trial because I have heard much about it.

LUCKEY: Well, of course it was an interesting thing. But that only took five weeks to try. And part of the reason for that was that it was a trial involving wire taps, and the wire taps had resulted in tapes being taken, and our evidence in the main consisted of these tapes, which have been obtained by a sheriff's deputy in connection with an investigation of Elkins and Clark at the sheriff's department at that time. They — so five weeks is long

enough to try many cases. We had to listen to those tapes first, outside the presence of the jury, through voir dire objections and objections to admissibility, and then after we'd gone through that procedure, had to play them again when they were admitted before the jury. And it took a long time to present. And, so that five weeks is long enough.

JW: Or five days, I guess is long enough, even for a murder trial.

LUCKEY: Well, yes. And this, but this wire tape case was somewhat interesting because of the activities involved. Elkins was...

JW: Had you been U.S. Attorney long when this trial came along?

LUCKEY: I think I had been U.S. Attorney about two or three years. The Elkins trial was unusual in that it started out with a lot of political overtones. The Kennedy family had not yet reached great prominence and the man that became president later, Jack - John Kennedy, was head of the Senate committee investigating some activities of the Teamsters and so he, as the committee head, managed to hire his attorney - as attorney for the committee, his younger brother Bobby, and then during those hearings there was a lot of -- a lot of activity concerning witnesses that were involved in this Elkins trial.

JW: Was the trial going on at the time, or was this background...

LUCKEY: No, this was background. And then when the trial commenced, because of Elkins' cooperation with the committee, apparently there was some sort of quid quo pro to be kindly and friendly toward him in the proceedings in Multnomah County.

JW: Now as I recall, James Elkins was an official at the Teamsters Union?

LUCKEY: No. James Elkins was a fellow who allegedly bankrolled local criminals and stayed out of the burglary activity himself but somehow or other there were reports of disappearing evidence from the Portland police evidence lockers and so forth.

JW: What was his position in the community?

LUCKEY: His position in the community was a financier of illegal operations according to the allegations. And the Teamster activity came when they were alleging that the Teamsters were trying to muscle in on the shuffleboard racket and a few things of that kind, and so Elkins became hostile to the possible invasion of his activities and so they - he went back to the Senate committee and assisted them in whatever evidence he may have had of that. The district attorney in Lane County who was — the guy who was involved in some of the wiretap tapes that were wiretapped and which Elkins was attempting to establish some link between the district attorney and the Teamsters. So, these wiretaps were up in the King Tower here. The district attorney had a room there where these — or the Teamsters did or whatever. Anyway, they were interviewing up there and they had this room, Elkins had the room bugged.

JW: How — you mentioned the Lane County district attorney. Was it Lane or Multnomah County that...

LUCKEY: No, that was U.S. Attorney.

JW: I'm sorry. You were mentioning though that a district attorney, now was that the Multnomah County district attorney?

LUCKEY: No, Lane County. Eugene. Lane County.

JW: That was the person who was involved or who Elkins was trying to implicate?

LUCKEY: No, no, the Lane — the Multnomah County district attorney.

JW: Okay. I'm not - I wasn't clear on that.

LUCKEY: The Multnomah County district attorney here was the one who was alleged - while I was U.S. attorney - was alleged had been involved

JW: Sorry, I was confused there.

LUCKEY: So, anyway, there was -- the Journal was taking the side of the Teamsters, and the Oregonian was taking the side of Elkins in effect, and so they were — there was a battle of the newspaper world of unusual publicity and headlines. And so, we tried the case and, on the rules, as they existed then, with reference to the so-called adoptive evidence rule, which is...

JW: What were the charge against...

LUCKEY: The charge against Elkins was wiretap violation. A classic situation. You're trying to protect the right of the privacy of an individual defendant who invaded the privacy of somebody else by wiretapping. [Laughs] And so, anyway --

JW: I'm sorry, you're getting into the rules of evidence here because —

LUCKEY: Yeah, I mean, that is just a concept. I mean that what you're trying is the theory. Here's a case in which the defendant is charged with the wiretapping, which is really an invasion of privacy problem, and his crime was the invasion of privacy of somebody else.

JW: Right.

LUCKEY: So, anyway, we tried it and obtained a verdict in our favor and through the Court of Appeals he was affirmed and we went back to the Supreme Court with it.

JW: Did you argue the case in the Supreme Court?

LUCKEY: No, I got a call the night before the argument asking me to come back and sit in to spoon-feed facts [Laughs] counsel table and so forth, which was an interesting experience, but they have an old rule in the Supreme Court that everybody buttons their coat. That is historic because nobody could then reach their firearm.

JW: Well, you had mentioned something and I cut you off and I'm sorry -- an adoptive rule was it you were talking about?

LUCKEY: An adoptive rule of evidence was that if the federal officials had done nothing to contaminate their own activity they could adopt what might be possibly illegally obtained evidence by another authority such as a state authority, the county sheriff or somebody else. In other words, the theory of the exclusionary rule was to prevent the use -- discipline police for the illegal activities that they might indulge in obtaining evidence, wrongful searches, of course, interrogation or whatever. That developed the exclusionary rule.

There may be nothing wrong with the evidence but, because it might be subject to Star Chamber question as being oppressively obtained and therefore not credible, the exclusionary rule developed and it prevented the police and disciplined the police by not making available the evidence that they obtained in that fashion. The earlier cases indicated that if you're not disciplining the body of police who were testifying and they obtained the evidence which was perfectly good evidence despite the fact that somebody else may have gotten some of it illegally, then it could be used. And the Court in the Elkins

case, not one of these majority but one of these plurality opinions, with a five to four swing situation, overturned the adoptive evidence rule in the Elkins case, which I suggested to the Department of Justice was at stake before I tried the case because I knew that there was going to be adequate financing because there was newspaper interest in support of Elkins for the publicity tape. [Laughs] And it developed that they did overturn the adoptive rule evidence rule, and so that was the leading case on that.

JW: And this was United States v. Elkins, then?

LUCKEY: United States against Elkins, Clark and Elkins, actually. Clark had a henchman who had formerly been a deputy sheriff here.

JW: What was the involvement of the Multnomah County Sheriff's Office in this? I remember it only vaguely because I was a child at the time, but as I recall, that Terry Schrunk was the sheriff.

LUCKEY: Terry Schrunk was the sheriff, and thereafter was a charge. Schrunk was charged with having accepted a bribe under the streetlight over in East — [Laughs] during - in front of a big crowd over in Northeast Portland at some kind of a police activity that somebody was called out to the sheriff to investigate. And Elkins contended that the Teamsters had left some money for him there or something. In any event, he was indicted for it, and he was one of our witnesses about these tapes. Every time that we'd get a witness on the stand during that trial, there'd be a new indictment, Multnomah County against the witness in order to impeach him. They'd wait til we got the witness on the stand almost before getting [Laughs] to try to impeach the witness. But in any event, Schrunk was tried and acquitted. He was — well, when he was on the witness stand this indictment came over. He was a very humble witness. When during his trial, Bobby Kennedy, before he was Attorney General, still counsel for that committee, voluntarily appeared as a witness, and one of the attorneys, a prominent Democratic who had been an assistant U.S.

attorney years before representing Schrunk, said that he impeached Mr. Kennedy on the witness stand. First of all, Kennedy had, approaching the witness stand, reached his hand out to shake hands with the judge, and the judge instinctively reached out and shook his hand [Laughs] and the next day they moved for mistrial, and the judge didn't grant it, but said he admonished the jury that it was an instinctive reaction, he had no intention of favoring the witness.

JW: Do you recall who the judge was?

LUCKEY: No, I don't recall who it was. In any event, he -- but Kennedy then in examination was asked in cross-examination why he was in Oregon. Well, the Attorney General had. .. Was he under subpoena? Well, he'd come out here because the Attorney General's request of the state of Oregon or something. And apparently the cross-examination didn't establish the factual basis for being there, he was a volunteer.

JW: He was testifying against Terry Schrunk then.

LUCKEY: Yes, that's right. 'Cause Terry Schrunk had been a witness. Anyway, I was still U.S. attorney, and after Bobby Kennedy had become Attorney General, I received a call from a gentleman in his office who said that he'd like to speak to the attorney who was handling the Elkins case. Of course, it was sent back from the Supreme Court for disposition one way or the other, and we hadn't reviewed whether or not we had enough evidence without this particular -- these wire tapes to proceed. So, this party I guess used to large U.S. attorneys' offices asked if he could speak to the assistant who was handling the case, for what purpose I suppose I could divine. [Laughs] I said, "Well, sir, I'm handling the case." "Oh. Well, thank you. Please keep the Attorney General advised of the progress." End of conversation. [Laughs]

JW: I see. This would have been around 1961 or so?

LUCKEY: Yes, it would have been 1961, early 1961. And so that was the end of the Elkins case in my experience. It was dismissed later I think by my successor when they concluded that there was not enough evidence to proceed without the tapes. Thereafter Elkins, I understand, was unfortunately fatally injured in an automobile accident in Arizona.

JW: You were a United States attorney then from 1954 until?

LUCKEY: Sixty-one.

JW: What are the politics of the U.S. Attorney's office when the time comes for the administration to change, for example?

LUCKEY: Well, that seems to vary. I don't know the process by which the present U.S. attorney was appointed. I know when my successor was appointed there was a problem because there were two fine ladies here in Oregon who both held political office, and each wanted the patronage responsibility of representative because she had represented the Kennedys as a campaign chairman in Oregon.

JW: That would be Edith Green.

LUCKEY: Yes. And the other one because she was the senator and felt it was senatorial prerogative.

JW: That would be Maurine Neuberger.

LUCKEY: That is correct. And so they each felt that they had the right to select the district judge who might be available if Judge Solomon were elevated to the Court of Appeals, and so they were holding the U.S. attorney's position hostage for that petitioner's

possible appointment, and while Mr. Lezak had been thought of as my successor, they couldn't get around to making the nomination through the President because of the political turmoil in between those two ladies. When I was appointed, the political process was simply to get sufficient support to have the politician succeed to a nomination by the Department of Justice ultimately by the President to the Senate. That means we were confirmed by the Senate. And it took about a year to weed out all the problems. Some of the politicians had a favorite, [Warren Gill?], who was a very fine fellow in the senate of the State of Oregon, but he had problems because he had taken a position with reference to the right of innkeepers to select their tenants and so forth, and he ran into conflict with minorities because of that. I had no problem with minorities. I had recently convicted a white person of killing a minority individual in Lane County. So, I was appointed when I was 34 years old to the U.S. attorney's office.

JW: Who was your predecessor?

LUCKEY: My predecessor was Henry Hess, the father of the present bankruptcy judge now, and Henry Hess had been a successful practitioner in eastern Oregon and was appointed to succeed a gentleman who had been in office for 12 years named Carl Donough. Henry Hess was anxious to get out of the office because he was considering whether or not he might want to run for some office and decided not to finally, but he wanted out in order to get time for his decision to take place, and he urged me to urge that upon the Washington people when I went back for orientation. When I went back for orientation it was a rather interesting period because Oregon had two very — very well-known judges throughout the judicial system, James Alger Fee and Judge Claude McCulloch, who felt the responsibility of the judiciary to place themselves in a what in their view might be an often situation where there was an overreaching by government agencies, such as the O.P.A. and O.P.S. and things of that kind Office of Price Administration, Office of Price Stabilization and other agencies that they felt it incumbent to make sure the government was on sound footing in taking the positions taken. So, when

I went around in this orientation to the various sections of the Department of Justice, they had a criminal division, they had a lands division, they had a civil division, and so forth. Warren Burger was head of the civil division, and when he invited us to tea — there were five of us who were at, who were not appointees from different jurisdictions, and he was saying the general propositions of the Department of Justice, oh, but you're from Oregon! Judge Fee and Judge McCulloch were in Oregon. Rule 17 in the, with the Lands Division, condemnation is a different proceeding. That Judge Fee has established. In the criminal aspect they had what we called Rule 17, in which a defendant arrested in one jurisdiction but having committed a crime in another jurisdiction could waive the right to be returned to his other jurisdiction and plead guilty in the jurisdiction in which he had been apprehended. Judge Fee took umbrage of that, saying that a fella needs to go back where the crime has been committed for the benefit of the people who have been offended at the crime. And so, Rule 17 was not operative in Oregon. So, after Judge Fee was elevated to the Court of Appeals, I went to see Judge McCulloch and see if we could get Rule 17 operative and he said, well give it a try. And so, the Department of Justice had a bulletin they put out to U.S. attorneys throughout the system, monthly or whatever, and it had bold type across top, Rule 17 now operative in Oregon. But they were both fine gentlemen and excellent jurors.

[End of Tape 1, Side 2]

Tape 2, Side 1
1990 January 20

LUCKEY: Getting to the basic issues of proceedings and a great capacity for expediting litigation. And when he was appointed as [in] District Attorney, Eugene or at least I don't recall actually now at this date, don't recall the calendar event, but there was general opposition, somewhat down state, and Judge Solomon feeling that because it was more conservative than the metropolitan area. General feeling that he was unduly liberal because he had membership in the Civil Liberties Union and so forth. And I came with that background, having a concept that somehow, I would have to live with the stern-ness of Judge Fee and the, perhaps, antipathy of a liberal to me and Judge Solomon. I mean, nothing was, nothing was further from the truth. They were both, both I considered fine friends before I left the office, and Judge Solomon let nothing stand in his way of being a fine judge and I admired him so very much for his judicial ability. I can understand that some lawyers may have felt or appear that he withdrew once in a while.

He had them on the wheel and was about to turn the crank, but he, generally, because of his fine memory, knew what had been had represented to him before. And could not tolerate deceit or could not tolerate people who didn't come prepared to his court. I found that if you were prepared, you were treated well. It was important to be prepared. The litigation would court had to move rapidly because they had fewer judges and there was a great litigation burden. And sloppy, sloppy preparation leads to lengthy trials and poor presentations. So, a lot of the [barbs] with the attorneys received were by reason of lack of preparation. We could use more Judge Solomon's; we could get more done. Sure of that.

JW: As United States Attorney, how large a staff did you have?

LUCKEY: I had seven assistants. How many do they have now?

JW: I've lost count.

LUCKEY: We had in the system for lands, in the Lands Division, we had a chief assistant. When I left the office, [Bob Carney?] was a, before — he left the office before I did. I didn't have any chief assistant for the last few months. But [Bob Carney?], now in practice here, was my chief assistant for a good while, and did a fine job. We had some holdovers, and I think had some part in, well, in establishing the office as some sort of a career, an opportunity for those lawyers who joined the staff if they wanted to be career attorneys, because I didn't dismiss anybody strong staff who were still there when I arrived. But two had gone out into private practice, but that was anticipated that they might their opportunity. But as long as I suggested to them, if they were doing capable work, there was no reason to disrupt the office by having new people come in. And so, we established traditions that followed it pretty well, retaining most of my assistants when he came in. And I don't know what the situation is now, I think it's the same. Years before, there had always been an old system sweep of the office when the new attorney came in. And, it's a professional office, there's no need of that. If people can't carry their politics into the trial of a case effectively, shouldn't.

JW: Are some of your assistants still in practice in Portland? Or anywhere in Oregon, for that matter.

LUCKEY: Well, let's see. I think Jim [Morel?] is still in practice in Oregon. One of the assistants, unfortunately had very serious health and perhaps psychiatric problems in the latter years of his life. Georgia who unfortunately [froze] to death last year, well publicized while we had plenty of funds with which to sustain himself. Another one was Bill [Borgeson?] who recently retired from that office. And I think [Joe Beale?], and I don't think they're practicing, so [Mr. Borgeson?], the other night, he said he was still on vacation. And another one, [Burt Boylan?] died, and a young man named Benton died. That's about all we had. Dave Robinson became a professor back in one of the eastern universities. He

had been a deputy district attorney here. He became a professor and that's about all I can think I had. Didn't have a lot of them.

JW: So, the Elkin trial personally was one of the major ones during your tenure as United States Attorney. Are there other...

LUCKEY: Well, there was a well-known trial here that [Bob Carney?] actually handled for the office. That was the Bonneville cases that involved the Admiralty and [Jones Act] or the questions about jurisdiction under the — because of the that occurred under the Bonneville Dam to some workmen up there. I think that was discussed possibly by some other party in these historical tapes. I had no discussions nor the historical journals that the U.S. District Court puts out, Historical Society. We had an unusual case in which a conflict of interest of a government agriculture department employee who had an interest in some grain storage plants with which he an associate stored grain. That lasted about three or four days or so.

We had another unusual type case for the District of Oregon. We had a contempt of congress case in Oregon because of activity before a committee sitting in Oregon. These people were being questioned by the [Inaudible] Committee which was successor to other committees on un-American activities of some kind and they wanted to question these people what they had felt were dedicated to the overthrow of the United States government. They had refused to even give their names for fear that it might tend to incriminate them. So, there again, we went up through the Court of Appeals. Judge Bolt came down from Seattle to try those cases and we tried one each day — there were four defendants, we tried one each day. Now, there again, it could have been drawn out forever I suppose under practice, but there were convicted through the Court of Appeals and when it got to Washington D.C. the Solicitor General declined to proceed. And so, the convictions didn't get appealed to the Supreme Court, they just vanished. [Laughs]

I don't know what happened. But it was a serious question I suppose as to what may tend to incriminate. What can may tend to incriminate. There were no

searching fees or problems, nothing else, just a pure question of right to withhold testimony. There are a lot of cases that say that you must, you're entitled to ask questions about orientation of the witness that don't go into the activities. But in any event, those were interesting cases, too, and both went to the Supreme Court.

JW: You must have encountered a good number of attorneys during your tenure on the other side, and other activities. Who were some of the memorable attorneys you...

LUCKEY: Yes, yes. We used to know most of them. Times have changed. Now, the numbers are great and the opportunity to know people is diminished.

Rambling and digressing, when I was going to law school, my father went down to work with the Army engineers in Corvallis. Commuting involved a problem with tires in those days which were recent and also gasoline which was recent and carpooling and whatever.

JW: Early in World War II then.

LUCKEY: Yes, and he, also, had time consumption of it, 35 miles an hour, which was the speed limit then to conserve tires and fuel. He and his wife, therefore, rented an apartment in Corvallis. They left me with a large four-bedroom house in Eugene and so we decided we would have a few of the law students join together and we would share expenses in the house. We left the one bedroom free for my parents to return to when they wished and the other three, the two of them were occupied by two other people sharing each of the two rooms.

We had four there plus me. Included in the four were the former president of the Oregon District Court's Historical Society, [Norm Wiener?], and a fellow who became a United States District Judge in the District of Washington, [Morel Sharp?]. Unfortunately, Judge Sharp is now deceased. And two others. One became, I think or I heard, wealthy in Orange County California as a land developer. The other became a doctor. He abandoned

the study of law after two years and went on to medical school, that is [Bobby Paine?]. So, we had divided chores and we decided we should have desserts even with the ladies living organizations.

JW: You were all bachelors at the time I take it?

LUCKEY: Yes, that is correct. Norm was going with the lady that he ultimately married, however. And, getting back to the point that was fine secretaries deviating again. Again, the District Attorney in Eugene. The one that had the master's degree in English from the University of Washington and took shorthand had experience as a district attorney's secretary in Hood River before she came to Eugene. The other one came to me a little round about. A young fellow named Ted Goodwin was going to law school and was a newspaper reporter as an occupation to sustain himself covering the courthouse beat. And he suggested one day that if I had a vacancy, his fiancée was graduating from school and had all the tools and he would like me to interview her. So, I did and I did have a vacancy at that time. We only had two secretaries, but one was leaving because she was going to have a youngster, or whatever. And so, Mary came in and with her fine talents of shorthand and a degree in English served as a wonderful, wonderful secretary.

JW: And later did she become his wife?

LUCKEY: And she later became Ted's wife in, well I do not know what year. In the early 1950s.

JW: Well, since we are a court historical society and obviously Judge Goodwin is now the presiding judge of the Ninth Circuit, or Chief Judge of the Ninth Circuit.

LUCKEY: He is the Chief Judge of the Ninth Circuit.

JW: Tell me a few stories about his early days in Eugene.

LUCKEY: Just shortly after I came to Portland, Judge East was appointed a United States district judge. Judge East had been a circuit judge in Eugene. That left a vacancy which Judge Goodwin, a superior, was appointed to fill. And, he then did a distinguished job as a state court circuit judge and was appointed to the state supreme court. Thereafter, he was appointed United States district judge and then on up to the Court of Appeals.

JW: Obviously, you knew him in Eugene way back when?

LUCKEY: Way back when, right.

JW: The reporter. How did you get to know him?

LUCKEY: Yes, that is how I met him. He was a reporter to the courthouse beat for the Register Guard. And, of course, his journalistic background gives him a talent writing opinions. We were good friends then and are now. So that, together with the meeting of the law professor in England makes it a small world. In fact, I had just saluted him and he had lost many, many pounds and I was uncertain on the parade grounds whether I recognized him. I was just a sergeant at that time, but I went back and looked at the roster and yes. Then I to London that night from Ascot to attend a meeting of what is known as the Miami Triad. It is three fraternities that were all started at Miami University Ohio and we met at the American Embassy building in Governors Square in London. They arranged for a dinner speaker, Edward R. Murrow, who was a well-known war correspondent for the networks in London during the war.

And sitting next to me was a major who indicated that he had just been given the chore of organizing a judge advocates section at [Chaves?], supreme headquarters of an expeditionary force. I mentioned the fact that we were both lawyers. He had been district attorney in Topeka, Kansas. So, during the course of our conversation, when I went to the

University of Oregon he said, "Well, do you know [Colonel Rochester?]" Oh yes, he was one of my professors at Oregon. I saw him today on the grounds and he said well he was mentioning you and as a possible chief clerk for my section. So, I went back to the base and had note on my desk from [Colonel Rochester?]. I went over to see him and he said, "Do you like what you are doing?" And I said, well, yes, except for sergeant major of the weather squadron and, except for practice in the law, section I like it. I would rather be in law, of course. And he said I have a friend, [Colonel Shaw?], who is setting up the section at [Chaves?]. I guess I met him last night. [Colonel Rochester?] was an interesting character. Shaw was telling me one night that they were wandering around London in a blackout and they had flashlights and [Rochester?] was looking for something and was shined the flashlight for an address. Bobby came by, an English policeman, and said don't you know there is war on Yank? And he says what do you think I am doing over here? Anyway, [Rochester?] eventually came back to the States and joined the Antitrust Division in the Department of Justice before the war was over because he had written some critical letter or something about goings on was censored. So, they let him come back to the States to be a civilian. So, it is an interesting world.

JW: Oh, I had started to ask you, and I interrupted myself I think, about some of the lawyers that you had encountered during your tenure, not only as district attorney, but also especially as U S. attorney in Portland.

LUCKEY: Well, they were very good attorneys. A lot of them of course have passed on now. I tried a lot of condemnation cases against [George Mead?]. I also tried a tax evasion case against [George Mead?] and the present [Bischoff's?] father, an attorney here now named [Jerry Bischoff?] and his father was on that case. They were very competent attorneys. That was one of the early cases I tried. The tax evasion case was something I knew nothing about coming from a state court down here. Kids were calling me Mister by the time; I mean my wife was calling me Mister. We had one young child then, but he was too young to speak much. But because we were three weeks we never went home until

midnight. Preparation for that case with the Internal Revenue agents and somebody I had in the Seattle office of the Internal Revenue, an attorney who was spoon-feeding me the law on I.R.S. [Internal Revenue Service] law. It took about four or five days to try. Every morning we frequently had a new motion for [Mr. Bischoff?]. But we did manage to win the case. I did not feel that in my first prosecution in the federal court I should go in and look like an idiot. So, we over prepared, but it was worth it. And, actually, that went to the Ninth Circuit Court of Appeals and we won it there. It established some type of new principal of law and evidence. I do recall what in the tax field. It has been a long time ago, forty some years.

JW: Do you recall the name of the case?

LUCKEY: Edward I think was the name of the case. But they were very able attorneys and I would contest, win some and lose some. [Earl Bernard?] was a very able criminal defense attorney and [Bruce Spalding?], who had been an attorney general here in Oregon. They were in opposition on the grain case I previously mentioned, grain storage case. They were fine attorneys. Fletcher Rockwood was a senior attorney in one of the local firms. When they heard I was nominated and going back to Washington and perhaps going to meet with his friend Warren Burger, who was assistant attorney general in charge of the civil division, because they were acquainted from previous practice when both of them had been in Minnesota, asked me to say hello to his friend Warren Burger. Perhaps, for the record, everybody knows that Warren Burger later became Chief Justice of the United States. But, anyway...

JW: Worth putting on the record.

LUCKEY: Yes, [Laughs] that is right. So, we did that. They, of course, became well acquainted [Bob Marks?], who was an able attorney here. Very, very many of them. When I left the U.S. Attorney's Office of course it was under the circumstances that they were

trying to get somebody in the position of bankruptcy court referee, as they called them at that time, was being opened in Eugene as a new office. That was to be effective July first. They were still wrangling around on this appointment of Sid Lezak because of And Jebbie Davidson who is democrat chairman came in and asked me if I would stay on for a while until they could get it resolved. So, then they contacted the district judges and they said they would keep the position open in Eugene until they got it resolved. I agreed under those circumstances I would stay until they got it resolved and then Sid called me on a Saturday morning and said he had been talking with the Attorney General and he would take it to the assistant U.S. attorney acting in charge until they could get the matter resolved. Then I could have my resignation and that sounded alright except that I suggested to him that the Attorney General consult the statute because he would have to take \$2,500 cut. So, he advised the Attorney General of that and he did not know if he would take it or not. But he was assured with the Attorney General that he would try to get things moving through as fast as possible and so Sid called me back later in the morning and said that he would go ahead and take it on that basis. I said well I will come down to the office, I am a notary and swear in so they won't be without a United States attorney. So, that was done and then we called Judge Solomon, who was then Chief Judge, and told him what we had done. He said fine. He said come on down Ed, I will swear you in. You should be on the payroll too. And so, he down to the office on that Saturday morning on July first of 1961 and I changed jobs. Unfortunately, it took a number of months before they got around confirming Sid Lezak's appointment because of that, through no fault of his and through no fault of the Attorney General as far as that goes.

JW: But because of the wrangling in the congressional delegation.

LUCKEY: That is right. Yeah, but I do not know looking back at history, it is unfortunate that John Kennedy did not serve longer. I was fortunate to have a lot of interesting experiences and we had a number of very pleasant U.S. attorney conferences in Washington which were of course orchestrated by the Attorney General Bill Rogers at that

time. His predecessor was Herbert Brownell when I was first appointed. Bill Rogers was Attorney General and later became Secretary of State at one time. But he was a very decent, honest attorney general and he believed when we got back there, we should work. So, we had a lot of seminars. Later, there was a gentleman who was then a U.S. attorney in the Southern District of New York who became Chief Judge of the court of appeals for that circuit thereafter. But on the occasion of this U.S. attorneys conference, suggested that it was such a tight schedule he did not even have time to go to the bathroom until Rogers said sorry we thought we had arranged it so that you would not have time to get the water. Anyway, they were very pleasant meetings back there.

JW: Did you socialize with William Rogers?

LUCKEY: Yes, we had receptions at the Anderson House, which is a house that has been given by a family for receptions for which they could not have some social accompaniments on a government premises that is used exclusively by agencies for government entertainment. We had very nice receptions over there, very nice place.

JW: I wondering if your contact with the Attorney General Rogers have anything to do the fact that his son ultimately settled in Portland?

LUCKEY: I have no idea. He was just a youngster when I was back there and I am married to his then wife who also came out here and practices law with him. But Bill Rogers was such a decent individual, when I first went back there for orientation, I was very impressed with the fact that his honest approach to his job and our job because he told us that if we had any problems with politicians trying to tell us how to run our office, please contact him. He said it may be politically naive but we happen to believe in this administration that the best politics is to do the best job. [Laughs] And I never had any, I was fortunate, I never had any politician try to influence any decision I made while U.S. attorney in the District of Oregon. I am eternally grateful for that. They would not have

succeeded of course, but it was something that was comforting to know that they did not try. When coming back from that orientation meeting, I crossed planes in Denver with the then governor of Oregon, Paul Patterson, who was changing planes. I had to come back and resign as Lane County District Attorney and be sworn in up here and he was considering my possible successor in Lane County and whatever. But then as he left for his plain, he said remember don't let any politician including me try to tell you how to run that office, which was pretty nice coming from another fine lawyer from Hillsboro, Paul Patterson.

JW: That is true, he was a lawyer, wasn't he?

LUCKEY: That is right, Paul Patterson.

JW: Was he a personal friend of yours?

LUCKEY: He became one. We were just acquaintances at that time of course.

JW: He appointed you to that position?

LUCKEY: No.

JW: Was he governor when you were appointed district attorney?

LUCKEY: No, I was appointed by Governor Snell who was Governor Patterson's predecessor.

JW: I think we are close enough to the end of this side, let's flip the tape over. ...

[End of Tape 2, Side 1]

Tape 2, Side 2
1990 January 20

JW: Practicing time in federal district courts so you ran into all the district judges and some from other districts as well I am sure. You have already talked a little about Judge Solomon. You mentioned Judge East. Would you like to talk a little about some of the judges who were sitting since we are the district court historical society, this is probably...

LUCKEY: Judge McColloch was a very kindly gentlemen. He was inclined to be very brief in his opinions. He told me that he tried to be brief in a certain sense because law books were filled with too much printing. He said that you can get in trouble by saying too much. I remember that he was a humorous fellow and I remember a criminal case in which the defendant was simply charged with manufacturing liquor in eastern Oregon and his attorney said in his defense when pleaded guilty and he was on the sentencing situation. He said this poor man is impoverished and his wife had some sores on her arm and he could not afford to buy alcohol at the drugstore. The judge interrupted him and said I am disposed to place your client on probation. I said judge you don't talk him into a much worse situation [Laughs]. Judge McColloch was a man from eastern Oregon and he didn't believe in the usual trappings of the office. When Judge East was sworn in, it was the responsibility of the U.S. attorney to do some of the preliminary ceremonial arrangements and he said you can tell Judge East that it is up to him whether he wants to have robes or not. If he does, I will borrow one [laughs]. So, he borrowed one. He had one I am sure, but he did not wear it much. He liked some of the agency activities. Once the Food & Drug Administration had seized before my coming to Portland, shortly, had seized some asparagus, canned asparagus, because they were under grade or whatever. They did not have enough tips or too many stocks, or whatever the case may be. In his opinion, Judge McColloch represents that he taken some home and sampled them, and that they were entirely edible, not the best he had ever eaten, but that everybody cannot always afford the best. You can find the asparagus opinion somewhere.

JW: Somewhere in the federal...

LUCKEY: Then I moved back to Eugene then, of course, after Sid was good enough to take U.S. attorney job off my hands. They did not have to hold the position office, but we had no office in Eugene. And so, G.S.A. [General Services Administration] took a little time in selecting a lease property. And, we did not have any furniture then. So, courtesy of some of the Eugene lawyers, I managed to get a spare table and through the courtesy of some grocers, got some orange crates for bookshelves. And we survived until we could do better. I happily started out with one secretary and got two, one of them became the wife of Carl Burnham who is a well-known Ontario attorney. He was going to law school then. We got a little furniture eventually because I wrote the Department of Justice that I would like to get rid of the orange crates and replace them with bookshelves if I could. All bureaucrats are not totally without humor. This reply I got was that they were expedited and when we got through with the orange crates, would we please ship them to him so they could replace the rest aid crates.

JW: Did you have office space, or chambers, or a courtroom?

LUCKEY: They built one for us, yes. That took about three or four months. So, I worked here in Portland because Estes Snedecor was getting ready to retire and wanted to concentrate on a well-known, the Portland Reporter case involving commercial law and to conclude the matters he had without taking new cases. So, Judge Johnson was alone and I took cases which would ordinarily be new cases for Judge Snedecor and went to Corvallis and Medford and so forth where they had been holding court elsewhere anyway.

So, going to those places kept me busy until we got the office in Eugene and working in Portland. And then when they got the office in Eugene, as I say I just had the one secretary and I sent her down beforehand to [Judge Ailers'?] office in Corvallis who was the bankruptcy referee who had had the Eugene district, headquartered in Corvallis

and on south. When I left the office, I had four clerks. I think they have a flooded here now. So, bankruptcy has been a definite growth industry over the years and filings have multiplied substantially.

JW: Well, this point of transition where you were going back to Eugene might be a good point to discuss your family. We have not talked about them yet. You talked briefly about your wife and one son. Tell me about your family.

LUCKEY: My daughter now lives in Beaverton. My son now lives in Grants Pass.

JW: What are their names?

LUCKEY: My son is Raymond and my daughter is Marie. My son is a juvenile probations counselor in Grants Pass. After he got out of the army, or service, he took that job and he was first station in the residential security unit station at Homestead Air Force Base because of the presidential enclave and keep his king. When that was no longer necessary, they moved him to Andrews Air Force Base where the presidential activity occurs all the time.

JW: When were your children born?

LUCKEY: Raymond was born in 1952 and Marie in 1957. And my daughter has a couple youngsters.

JW: One of whom is going to be playing basketball very shortly.

LUCKEY: That is right, about one-half hour or less. I would like more interruptions if you would like to make them.

JW: These are wonderful.

LUCKEY: They are awfully rambling but that is the way you do when...

JW: This is great.

LUCKEY: In the ramblings, setting up an office, I think that may have been one of the reasons the judges might have selected me to go back to Eugene because they might have known I knew something about how to deal with troubles.

Anyway, I think they were very kind. They offered me other opportunities for various other activities and assistance for the court. Judge Solomon was kind enough at one of the meetings we were having on rules development here to tell his colleagues that this fellow (pointing to me) is the only U.S. attorney in my experience who was ever trying cases. I think they do some now. But he was certainly an experience to try cases before. I went up to see Judge Fee when I first arrived to pay my respects. He had been in the East trying some controversial case. They used to send him all over the country to try federal judges under indictment or whatever because of his reputation for being untouchable. He came back. So, I went to see him. He said, well you can come and see me on any procedural matters if you want to. I don't want to talk about any cases. I understand that. He said some of the people may feel that I am a prima donna, but he said Judge Skipworth before you used to practice in Lane County taught me when I was a young lawyer some of the tricks I now use, but I am approved. So, we got along probably because Judge Skipworth, as he mentioned to a bar association meeting one time, taught us when to stand up and when to sit down. He said law school teaches you the law but I tell you when to stand up and sit down. So, I never had any problem with any of the judges. I did go back to Washington D C. to take a deposition one time and I don't like to sound like I am self-aggrandizing here or flattering or whatever it is, but I can't help because it is an interesting experience. I went back to Washington to take some depositions and the head of the agency, a sub-cabinet officer, did not want to his deposition taken. And he was under

subpoena. And so, he wanted me to move to suppress the subpoena. Of course, under the rules, if you want to suppress a subpoena in another district, you make it the district in which the motion has been made. That had not been done because I did not even know about his wish. And so, I said I would try, but I do not think I can accomplish it. And I went to the U.S. attorney in Washington D.C. and told him the problem and so he just went in to watch the proceedings. They were going to be held before the timid judge who had declared Crewman Steel seizure unconstitutional, [Judge Pine?]. So, the attorney from Oregon who was urging that the deposition be taken, Paul Myers, and I appeared. Paul made his pitch and the judge said you know I cannot grant the relief you request, the motion is made in Oregon. I said yes, your Honor, I was unaware that that motion would be requested when I left. I said we would ask for the protection under the next section that the witness may respond interrogatories or whatever and may seek relief if the deposition becomes oppressive. He smiled and said if the deposition becomes oppressive, come back and see me. So, we never got the deposition taken because, unfortunately, when we were preparing for the matter, one of the attorneys for the agency had a heart attack in our presence and died. So, that made it necessary to postpone it. But the U.S. attorney was [Oliver Gash?] who later tried the Hoffa case as district judge in Washington D.C. and some of those others. He said, well [Judge Pine?] treated you very kindly and he said probably the reason is that you did not try to do like the Washington and New York lawyers: run all over him. Judge Skipworth had taught me when to stand up and when to sit down [Laughs]. That is the benefit that sometimes the so called prima donna judges can have on lawyers because I think when you have the opportunity, though it may appear strenuous at times to appear in those environments, I think that an attorney feels comfortable in whatever jurisdiction he may thereafter have to appear. It is true that that is the case.

The fellow who appeared in the Elkins case, now I am rambling terribly, but in the supreme court matter in the Elkins case, the fellow that represented Elkins was a former Solicitor General of the United States, a man named [Griswold?]. He had taken great pains to say that I had agreed that the state court seizure was unconstitutional and so forth. Well, I did not say that. I said assuming that to be the case, assuming arguendo, because the

fact that the law is object evidence rule is available, we tried it according to the rules that then existed. So, the Attorney General, I mean the Assistant Attorney General who was arguing the case, they have to have striped pants and dress coats, at that time anyway, was [Malcolm Wilke?]. He became a Court of Appeals Judge in the Washington D.C. Circuit after that. [Malcolm Wilke?] was an able young man and I only thought he missed one opportunity when he was making his pitch that the federal officers had not been subject to any misconduct or anything in getting this evidence or whatever. If there was an illegal search and seizure, it occurred because the description in the search warrant was for something that was not obtained. They got the tapes and the search was in connection for something else that they got the warrant for. There was not any real overreaching but it was illegal under state law. While the state court search was unconstitutional in state law when we were adopting it, one of the justices said well doesn't this court have rulemaking power? And I said, oh boy, grab it run. He just said yes but and passed it on with his argument. And I just thought yes but rulemaking power is prospective, not retrospective, come on go [Laughs]. Whether it made any difference or not, I do not know.

JW: Maybe it would have.

LUCKEY: In a plurality decision it might have. The Beck case, of course, tried in the District of Washington made a decision, they made a decision on an existing rule and said that they might not intend to be bound by it afterwards. Which I think is perhaps is good judicial logic because if people try cases according to the law, how can a lawyer give a poor, paying, unsuspecting client advice if they are going to change the rules in the middle of the game if there is established law. Now, there are a lot of areas of the law of course, in the common law, that are not established, obviously. But where it is clear, established law, it is costly and damaging to change the rules as to that case. Whereas the caveat is to future cases to put the lawyer in the position where he is not a bumbling idiot and just a best guesser in advising a client. I may be wrong but that it my judicial philosophy. It occurs to me that the law is supposed to be law. The idea of law as a body of conduct by which

people can anticipate the consequences of a given course of conduct and if you don't have law, you have judicial chaos or legal chaos. I feel sorry for lawyers in an area in which they cannot give advice that they can rely upon.

JW: Have you had the opportunity to apply this in your almost thirty years as a judge?

LUCKEY: There aren't many cases that have come before me that would involve the dark really, or I have not felt obliged to try to overturn any established decision. Of course, there is one thing that is often as you, a practicing attorney, know that you sometimes find a case that fully fits the facts. And, if they do not fit the facts, why then of course you have a new situation. Judge Solomon, as I mentioned, was always so very insistent upon attorneys citing cases that they be square on the facts. If they were not square on the facts, they did not help on the decision of the case. It is awfully hard to find what we lawyers call [buggyhovou?] cases. But there are some established principles, such what is the adoptive evidence rule, what is the certain evidentiary rules, the exclusionary rule and so forth. But I think an attorney and clients are entitled to know, if they can, if there has been an established precedent, but that is the law. Now, it may not be the law in the future after this case, but it is unfortunate if the facts are the same or similar.

JW: I have felt that frustration myself.

LUCKEY: But we have had a tremendous expansion of litigation. A lot of it is because Congress never for its own conduct has required a judicial impact statement. So, litigation created by statute has multiplied tremendously. A lot of it has been induced by the fact that judges have lost sight of what, when I was in law school, which seemed to be a reasonable doctrine, of the non-justiciable question. The question that belongs in an executive administrative agency of some kind because they should be deciding those things. The other is the law of the political question which is a political question rather than

a legal question. In other words, if you don't like what's done, recall the school board or whatever.

JW: Throw the rascals out.

LUCKEY: Yeah, that is right. They expanded the area in which everybody can sue for everything now. That makes the judges really the governors in many ways of society, but I don't think we were ever intended to be the society's governors.

I think we were intended to be the arbiters of disputes and the protectors of the rights of people against oppressive government because of the Constitutional rights that people have. But to make law where there is law or where there should not be law at all because of the political question or the non-justiciable question, the doctrines which seem to be eroded completely now for better or worse, seems like a problem, to me anyway. As a result, the judicial system has foisted upon itself a great deal of the multitudinous litigation expansion that now exists which a little judicial restraint early on could have prevented. But now, it is too late to turn back the clock. There are many, many changes that have occurred even in this short life time, and many will be occurring in the future. I have often suggested that we cannot have progress without changed, but change is not always progress. Anyway, we have about 15 or more minutes or so now at this session at least, what else now would you like to ask about me?

JW: Well, I have been curious you have been in Eugene now for about thirty years, having returned to be a bankruptcy judge.

LUCKEY: Well, I returned in 1961 and commuted for a while because I didn't have a house here.

JW: So, you have seen quite a few changes in Eugene. Have you been able as a judge to take much role in civic affairs?

LUCKEY: Well, a judge is limited, as you appreciate, in doing that sort of thing. I have served on some bar committees obviously from time to time, and participated in both instructional and receiving end of seminars of one kind or another. But apart from that, I have belonged to a service club. Apart from that, there is limited activity that a judge can engage in. Political activity of course is something I chose not to participate even after becoming a United States attorney because I felt it was a quasi-political office. I might attend some banquets or something of that kind, but I never felt that it was appropriate. Consequently, I have been removed from that sort of thing apart from my own right as an individual to speak my personal views.

JW: One area that we sort of passed over that I would like to get back to is your college days at the University of Oregon. Who were some of your professors? What were the courses you took? And some of your classmates that might still be around?

LUCKEY: Well, my classmates were few because it was the war years and the class had been decimated by calls to the Navy B2 program where they had naval reserve opportunities and could go into the Navy and obtain commissions. There were two ladies in the class, one of whom did not practice but instead, after her husband died, managed a saw mill interest. The other lady is now a majority leader of the senate in the State of Washington, [Jeannette Haynor?], who was [Jeannette Hayner?] in law school. And her husband was also a classmate in law school, [Herman Haynor?]. But the class was decimated. [John Lubas?] in Eugene, Oregon was one of the many classmates and Cecil Wright who I previously mentioned went to California. Charles Phipps who is in the Dalles. Our class was only eight when we graduated.

JW: Was Wayne Morse the dean at the time?

LUCKEY: At the time. Hollis was dean at the end. Wayne Morse was dean when I started. Wayne Morse taught us a few courses.

JW: Was he instrumental in any way in your becoming a United States attorney?

LUCKEY: He was at that time a democrat.

JW: I see.

LUCKEY: Although, he was very supportive. In fact, the first telegram I got, even before I got the telegram from the republican senator.

JW: That would have been Guy Cordon.

LUCKEY: That was Guy Cordon. Before I even got the telegram from Cordon, previously of course he said he was sending my name over to the President, but when the President sent it down to the Senate, the first telegram I got was from Wayne Morse saying that he had entered his approval. And we were very good friends. My wife was over in Paris not too long after he had been here and he was over there on some senatorial mission and stopped by to see her, to see how she was getting along and when she was going to get back. But he was a friend of mine. We used to exchange letters while I was in the service and he sometimes would start out his letter "Although we may have political differences, I still retain you in personal high regard." But when I was going to leave the U.S. Attorney's Office too, I went to see him because I knew this thing was going on and my appointment as bankruptcy court was in the balance, when I could get out gracefully, and I went to see him about if he could do something to get the successor going. And we had some substantial litigation that I was holding back a little bit because I didn't want to get it in the mill and then have to have it interrupted because somebody else might want

to take a different approach or whatever. And he said, well you are entitled to know, but I am not controlling this appointment, that was between those two women.

JW: Well, very interesting indeed. Well, I think we have probably reached a point where we could break here.

LUCKEY: Alright. Do you want anymore?

[End of Tape 2, Side 2]

[End of Interview]