Robert E. Jones: An Oral History
Robert E. Jones
An Oral History

FOREWORD BY JUDGE OWEN PANNER

US District Court of Oregon Historical Society
Oral History Project
Portland, Oregon
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
</tr>
<tr>
<td>Introduction</td>
</tr>
<tr>
<td>Tape One, September 19, 2005</td>
</tr>
<tr>
<td>Side 1—Family Background; Pearl Jensen and Military Service; Growing Up in Northeast Portland; The Great Depression; Working in the WWII Shipyards</td>
</tr>
<tr>
<td>Side 2—WWII Shipyards, Cont.; The Great Depression; WWII, Portland, and Father; WWII, Military Service, and Race</td>
</tr>
<tr>
<td>Tape Two, September 19, 2005</td>
</tr>
<tr>
<td>Side 1—WWII &amp; Military Service; Post WWII Portland; Home Insurance Company, Hawaii; Life Philosophy; Northwestern School of Law; General Adjustment Bureau</td>
</tr>
<tr>
<td>Side 2—First Home: Woodland Park; Early Law Career; Oregon Trial Lawyers; Federal Court: Gus Solomon</td>
</tr>
<tr>
<td>Tape Three, September 19, 2005</td>
</tr>
<tr>
<td>Side 1—Changing Practice of Law; The Local Bar; Oregon State Court; Oregon Bench: Profiles</td>
</tr>
<tr>
<td>Side 2—Oregon Bench: Profiles, Cont.; Judicial Transitions; The Oregon Legislature, 1960s; Representing Washington County; Oregon Evidence Code</td>
</tr>
<tr>
<td>Tape Four, September 22, 2005</td>
</tr>
<tr>
<td>Side 1—Criminal Sentencing; Sentencing and “James the Just”; Judicial Expertise; Circuit Court: Murder Cases</td>
</tr>
<tr>
<td>Side 2—Circuit Court: Murder Cases, Cont.; Black Panther Cases; Largest Monetary Verdict in Oregon; Circuit Court Administration; National Federal Cases; Oregon Supreme Court</td>
</tr>
<tr>
<td>Tape Five, September 29, 2005</td>
</tr>
<tr>
<td>Side 1—Oregon Supreme Court Cont.; Oregon Supreme Court Cases; Oregon Constitution; Changes in Oregon Supreme Court</td>
</tr>
<tr>
<td>Side 2—Federal Appointment; On the Federal Bench</td>
</tr>
<tr>
<td>Tape Six, September 29, 2005</td>
</tr>
<tr>
<td>Side 1—On the Federal Bench: Eugene; On the Federal Bench: Portland; Pre-trial Preparation; Jury Selection; Opening Statements: Technology</td>
</tr>
<tr>
<td>Side 2—Blank</td>
</tr>
<tr>
<td>Tape Seven, October 14, 2005 (video-taped session)</td>
</tr>
<tr>
<td>Side 1—Cattle Caper Case; Class Action Suits; Marianas and Russia; Out of District: Samoan Mafia</td>
</tr>
<tr>
<td>Side 2—Controversial Cases; Difficult Decisions; Punishment and Reform; Juries; Difficulties in Federal Court; Court Practices</td>
</tr>
<tr>
<td>Appendix A, The Family</td>
</tr>
<tr>
<td>Appendix B, Meetings with the President and the Supremes</td>
</tr>
<tr>
<td>Appendix C, Robert. E. Jones: Almanac of the Federal Judiciary</td>
</tr>
<tr>
<td>Endnotes</td>
</tr>
</tbody>
</table>
The Oral History Project of the District Court of Oregon Historical Society began in 1983. Through the efforts of Judge James Burns and his wife Helen, a gathering of lawyers, judges, and historians took place at the Society’s inception. The Honorable Robert F. Peckham, District Judge for the Northern District of California, discussed the Northern District Historical Society and the inspiration was born for Oregon’s District Court Historical Society, the second such organization in the country. The original Board of Directors of the Society was composed of twenty-one members with bylaws including the Presiding Judge of the Court, the Chief Justice of the Oregon Supreme Court, and the President and a representative of the Oregon State Bar. The original officers and directors included outstanding judges and lawyers – Judge John Kilkenny, Honorary Chair, Judge James Burns, Chairman, Randall Kester, President, Manley Strayer, Vice President, Elizabeth Buehler, Treasurer, Susan Graber, Corporate Secretary, and Robert M. Christ, Executive Secretary, along with many other top names in Oregon’s legal history.

The Society decided to collect, study, preserve, analyze, and disseminate information concerning the history, development, character, operations, and accomplishments of the United States District Court for the District of Oregon. It was therefore logical that the Oral History Project should be established to preserve the histories of the judges, law firms, and lawyers who actively practice in the Court. With the assistance of Rick Harmon and James Strassmaier, the Oregon Historical Society held seminars to educate volunteers in taking oral histories with a biographical and Court-oriented focus. The Oregon Historical Society has been most
cooperative in agreeing to maintain these histories in their permanent collection for study by scholars and other interested parties.

These oral history interviews have been taken by recording devices, and are either transcribed or transcription is underway. A transcript reproduces, as faithfully as possible, the original sound recording that reflects the special value of oral history, namely its free and personal expressiveness. Most of the transcripts in the District Court Collection have been lightly edited and reviewed for clarity and accuracy by the narrators. That process continues. It is through these wonderful oral histories that the story of the Court is told. We now have recorded nearly 120 individuals since the project began. The goal is to record the individual histories of all the judges of the Court, as well as those of participating lawyers. The Court has a rich tradition reflected in the activities of the judges and lawyers of the Court. The recording has been done not only by professional historians, but also by dedicated volunteers. As one such volunteer said, “The opportunity to interview someone that you always admired is truly an exciting experience.”

The history of the Court is being created by the men and women who have participated in its collection and activities. The Society’s goals are to collect as much of that history as possible, because is it the history of the law and those who make it that constitutes the moral development of humanity. All of us who are students of the law venerate it. We are also interested in the people who make it.

Judge Owen Panner
February 28, 2006
Robert E. Jones, Federal Judge for the US District Court of Oregon, was born on July 5, 1927 in Portland, Oregon, just before the Great Depression and only minutes shy of being a “Yankee Doodle Dandy Fourth of July baby.” Those few minutes made no difference in Robert Jones’ long-term service to country, however. He grew up on Portland’s old eastside, attending Rose City Park Grade School and Grant High School, where he met his future wife, Pearl Jensen, “the cutest blonde” in the school. During high school, while dating Pearl, he worked in Oregon’s WWII shipyards and played golf. He recalls being a four-year letterman, winning the Oregon State High School Golf Championship, and the following week—one day after graduation in 1945—joining the Naval Reserves as a Cadet Midshipman. His military service took him to Italy and the Philippines, and he was commissioned as Ensign and as a line officer and later served in the Navy Judge Advocate General’s Corps, retiring as a Navy Captain after service as commanding officer, OR Law Company 13-2.

Judge Jones has had a long-lived and prestigious career in the law. He received his BA from the University of Hawaii in 1949 then attended Northwestern School of Law, receiving his JD in 1953. For ten years, he conducted a private practice as trial lawyer, serving as president of the Oregon Trial Lawyer’s Association in 1959. Jones is among those few who have served at multiple levels in the judicial system. His career as a judge began in 1963 when he went on the Multnomah County Circuit Court, 4th Judicial District, a role retained by him for the next twenty years. In 1983, he became an Oregon Supreme Court Justice, holding that position until May 1990 when he joined the US District Court of Oregon as a federal judge. Meanwhile, he has also served in various civic capacities, including a term in the Oregon House of Representatives in 1963. He has participated in the Oregon Evidence Revision Commission, the Oregon Criminal Justice Council, and he chaired the Oregon Commission on Prison Terms and Parole Standing. He has also chaired the Oregon State Bar’s Continuing Legal Education Committee and the Ninth Circuit Court Judicial Conference.

In addition to Jones’ judicial and civic career, he is a teacher, and has authored several articles. He taught Evidence, Trial Advocacy and Advanced Advocacy at Northwestern School of Law of Lewis & Clark College, where his son, Jeff, now teaches.
the Evidence course he taught for many years. Jones has also served as an adjunct professor of law at Willamette University School of Law and has taught in the federal judiciary at many levels. His community activities and awards are legion and a concise review of those activities, along with noteworthy rulings and lawyers’ evaluations can be found in the appendices to this document.

In this oral history, Judge Jones discusses his experiences growing up in Portland, Oregon, and the role of the Great Depression and World War II in his life. He also recounts the impact of his experience working for the Federal Adjustment Bureau and for Anderson Franklin and the many connections of a background in marine insurance and work as a trial lawyer to his long career as a judge. The majority of the interview is devoted to Jones’ service in the courts, changes in the practice of law, the local bar, and the workings of the local, state and federal judiciary. Because of his many years as a judge, Jones is knowledgeable about, and well connected to, Oregon’s legal history. He has developed friendships among judges at all levels, including the US Supreme Court. Thus, he has a forty-year intimacy with judicial transitions and changes in the courts. It is those connections and relationships that are most fully explored in this series of interviews.

The seven hours recorded here capture but segments of Judge Jones’ long career and personality. Yet the intertwining of family history, personal biography and career provide a glimpse into the workings of the mind and spirit of Judge Robert E. Jones. Because he spent the majority of the interview focused on court operations, when Judge Jones reviewed the transcript he decided to include a segment entitled “The Family,” hereby appended. The inclusion of this appendix and the care with which Judge Jones has created a document for the future clearly indicates how dear to his heart are his wife Pearl, son Jeff, daughter Julie and descendants yet to come. The interview and Judge Jones’ careful review and additions provide some understanding of the man behind the robes, an individual who is both world traveler and local boy, one who holds himself to high standards of civic activity; one who is above all a trial lawyer, but most importantly a family man.

Donna Sinclair
January 2, 2007
Family Background

CH: This is an oral history with Judge Robert E. Jones at the US District Courthouse in downtown Portland, Oregon. The oral historian for this interview is Clark Hansen for the US District Court Historical Society. The date is September 12, 2005. This is tape one, side one. I thought, Judge Jones, that we might start out first by going into your family background as far back as you care to trace it, and how your family got here. I know that you were born here. How did your family end up here?

RJ: Well, it started way back with my great-grandfather, who had the name of Publius Virgilius Jones. All of his brothers and sisters had these very fancy names, and, of course, he ended up being nicknamed “Pub,” although he was a teetotaler. He, in turn, had a large family, one being my grandfather, Burton Jones, who became a Congregational minister. He, after he was married, had started a large family of eight children. They would drop off kids across the country, starting in Jefferson, Ohio, and then Grinnell, Iowa, and then into Kansas. Then my dad, Howard Caswell Jones, was born in a sod hut in Haysprings, Nebraska, on Christmas Day of 1898. So with the brood, they came out West to Morgan Hill, California, and were there during the San Francisco earthquake [1906], which my dad remembers because he was lying in bed and the alarm clock fell off of the shelf and hit him on the head. After the quake they moved up to a small town outside of Portland called Lake Oswego. So, Grandpa Burton Jones was preaching there at the Congregational Church in Lake Oswego and trying to sell biblical books and raise a family. He was not very successful, and the family lived out of a charity barrel, and they built their own home there. They thought nothing, in those days, of doing so. Of course, they had no plumbing or electricity. They did have outhouses, which my dad and his brothers particularly enjoyed knocking over on Halloween—not theirs, but their neighbors’—as part of their mischief, and playing around with the railroad cars in Lake Oswego. Then the brood moved over to Beaverton, Oregon, where my dad met my mother in the third grade. They started their acquaintanceship there.

My grandfather on my mother’s side, Eber Hendricks, was a Civil War veteran, having been shot through the face in the last raid of the war in Wilkesboro, North Carolina. He, in turn, had lost his entire family moving from the New York area and Michigan to Oregon. He ended up in La Grande, Oregon, and had recovered from the wounds that he had received, being shot through the face as a member of the Tenth Michigan Cavalry in Wilkesboro, North Carolina, seven days after Appomattox. He was a farmer, and a very simple one. They owned a farm, which is now, I believe, part of the Nike campus, which is across the street towards
Beaverton from St. Mary’s facility. My mom, Leita Estelle Hendricks, was born in Talent, Oregon, just before they moved up to Beaverton. She was born on August 17 of 1898.

The couple met after my dad’s family moved to Forest Grove. He still found this pretty lady in Beaverton. He left high school to go into World War I, where he ended up as a first class quartermaster—which was a quite distinguished rate for an enlisted man—and acting chief. She, in turn, was a nurse, and primarily did her work out at Edgefield Manor, which is now known as McMenamin’s Pub. She took care of the prostitutes and their babies and washed their eyes to make sure to get rid of the gonorrhea and that sort of thing, with silver nitrate. She bled the livers of the alcoholics and that sort of grungy work. In any event, they were married in 1921. My dad’s mother died and my grandfather also passed away that same year. So it was a sad wedding time because parents on each side had died. They then tried living in Beaverton, Oregon. My dad went into the automobile business and had a wonderful agency selling Marmons and Auburns and Cord automobiles that would make any auto collector drool. They’re beautiful automobiles to this day and real collector’s items. In any event, as might be expected during the Depression, they went broke. My dad ended up doing body and fender work and rebuilding wrecks, and was delighted to get a job with US Customs Service at $150 a month as a customs officer. His boss was Nan Wood Honeyman, who was Erskine Wood’s sister. She was a wonderful boss for my dad.

My sister, “Betty” Leita Elizabeth—named after my mother, was born on September 30th of 1922. Then my brother, Roger, was born on September 3rd of 1925, and I came along on July 5, 1927. I would have been a Yankee Doodle Fourth of July baby, but my folks were enamored with the fireworks out at Mount Tabor and took too long to get to the hospital, so I missed it by a matter of minutes. So that’s how I was born on the 5th. [CH chuckles]

Pearl Jensen and Military Service

As far as my childhood, we lived on Northeast 55th and Tillamook, way out in the east side at that time. The home is still there. We still are in communication with the present owners, who happen to be researchers at the Primate Center [Oregon National Primate Research Center]. The house was a great place to live. I went to Rose City Park Grade School, and graduated there in 1941. I started US Grant High School, and had a great time at Grant. I was not a stellar student, but my brother was a straight A student. I was constantly asked one question by the teachers in math, science, physics, chemistry, Latin, and the like, they’d say: “Are you sure you’re Roger Jones’ brother?” So, as Jake Tanzer put it, I think I graduated in the upper half of the lower half of my class.

In any event, the highlight was meeting my wife to be, Pearl Jensen, who was the cutest blonde in Grant High School. I asked a friend to set me up to meet her under the clock in the central hall, which we did, and had our first date October
30th of 1943. We started going steady and with a kind of an off-and-on relationship, because she was so pretty and popular I’d have to double-park to get a date. I didn’t smoke, and one of my competitors could blow a smoke ring with three smoke ring darters through the center of them, and that was tough competition. The other guy had a Model-A Ford with a rumble seat, and I had an old Studebaker. So again, that was tough competition. Her first boyfriend went off to war and became a pilot, so I snuck up on her blind side and we ended up going steady by the time we graduated.

In high school, I was a four-year letterman in golf and was captain of the golf team. I think we won three city championships, the state championship, and I was the Oregon State High School Golf Champion in 1945. The next week I graduated, and the next day I went into the service.

I had planned to be a Navy pilot, but after passing the physical and all the preliminaries, they closed down the V-5 program. The only officer-training program, Navy officer training program available was in the US Merchant Marine Cadet Corps, where we were sworn in as midshipmen in the Navy, but were assigned to serve on merchant ships. After basic training in San Mateo, I was assigned to a C-4 troop transport, freshly built in Vancouver, Washington. We were designated to be in the invasion of the mainland in Japan, scheduled for November 1 of 1945. They dropped the [atomic] bomb, and the war ended as far as the actual hostilities, although there were many residual things still going on. It didn’t officially end until, I think, December 1946. In any event, we were going to sea and the only way that Pearl could get down to San Francisco to see me, because of restricted travel to the military, was we had her smuggled aboard a troop train as my brother’s wife, who was in the V-12 program. So she came to San Francisco, which is quite an adventuresome thing for two kids who just turned eighteen. So we got engaged at Half Moon Bay, and I went to sea.

Growing Up in Northeast Portland

CH: Okay. Well, I have a few questions. I’d like to go back a ways here and ask you a few things. Going back into your parents’ background, you had said that your grandfather was a Congregational minister, is that right?

RJ: Yes.

CH: So, did you grow up in that church then?

RJ: No, we went to Rose City Presbyterian Church. The Congregational Church was in downtown Portland, and Rose City Presbyterian was within walking distance of our home. I think it was on 47th and Northeast Sandy.

CH: Were you active in the church?

RJ: Oh, just as a kid. We went to Cradle Roll then went to church—a routine
situation. We were not overly religious, but the kids attended regularly. We had Bible school in grade school in those days. People thought nothing of it. It was right next to the Methodist Church, up on 57th and Sacramento.

CH: Were your parents involved in any other kinds of activities, any civic or social activities, aside from all the work that they had to do just to keep the family going?

RJ: Yes. My dad was a golfer, and he put golf clubs in my hands as soon as I could, frankly, walk. We have movies of me as a four-year-old. So, we were buddies on the golf course. He also was National Revolver Champion, and he built a firing range in our basement made out of ship plate. So he’d be down there plowing away with his .22 revolver or .38 revolver. He won both divisions at Camp Perry. We’d go down to the Portland Police Station and fire away. He’d hold me up so I could hold the weapons. So he won all sorts of trophies doing that. So golf—and he also was a very loud piano player. He had played in the Marine Corps Band while he was in the Navy, as a trombonist and a drummer. I ended up being a trombone player and a drummer. My brother ended up being a trombone player and a pianist, and my sister was the pianist. So our family entertainment was at home with our family band.

CH: Did you end up playing the trombone at Grant High School, in the band?

RJ: No. I’d made it through grade school, and I could never learn to read the notes. So I always played about third or fourth position, and I must say, was not successful. [CH chuckles] Once again, my brother was a very good trombonist, but my dad was sensational, and played the piano and organ the rest of his life. The day before he died, he went out and shot his age in the golf course at the Oak Creek Canyon Golf Course in Sedona, Arizona, where they lived, drove his Cadillac and got a speeding ticket, played the organ and piano at the end of the golf game, which was his tradition, and died of a heart attack that evening—great way to go at age eighty-six. My mom lasted to be ninety-five, and she had a social calendar to choke a horse. Unfortunately, we were in the Cook Islands, coming back from Australia and New Zealand, when we got word that she’d laid down to take a nap and didn’t wake up.

CH: That was when she was ninety-four?

RJ: Ninety-five. She did her New York Times crossword puzzle in ink every day.

CH: They say that is one of the best ways to keep your mind active and engaged. When you reflect on your parents, can you describe for me their philosophy of life that they may have had, or that they tried to instill in their children?

RJ: It was almost a military environment. My dad was a very strict disciplinarian. He also had worked in a butcher shop in Lake Oswego and had to
handle all the guts and blood and stuff, and so we were practically vegetarians. When the war came along and they were talking about meat stamps, we didn’t know what they were talking about. We lived on macaroni and cheese [*both chuckle*] and canned green peas. I’ll never forget how bad they were, especially on cold gravy. But I must say that my dad was very strict but never touched me, or any of the kids physically, but mentally he was in command. My mother was an angel.

CH: Did you play your mother off against your father then?

RJ: We didn’t play any kind of games. [*CH laughs*] We did what we were told. We’d sit in the car for hours while, whatever they did. But they did not go out and play cards with other people. We never had babysitters. It was unheard of. We were a close-knit family.

CH: The house that you described on Northeast 55th—since you’ve been back there and have been in touch with the owner—what kind of a house was that? Could you describe it for me?

RJ: It was a great house, but lacked a lot of things. My dad could fix anything, *anything*. He’d built houses as a kid. When they moved into the house, the first thing it needed was an upstairs. So, he laid the hardwood floors and built the bedrooms upstairs. Then when he decided that, because one bath was a little crowded for our family, he built a bathroom upstairs and did all the plumbing. Then he figured we needed a recreation area, so he got somebody to dig out the basement. He ended up digging out most of it himself. They poured the concrete and put up knotty pine and we ended up with a beautiful rec room: pool table, ping-pong table. It was not a big house, but then he needed a garage, so he built a garage. He would never think of hiring a contractor.

The house was heated with sawdust and, of course, we had our usual number of chimney fires. There were an epidemic of those around the neighborhood. The kids loved to go watch the firemen put out the chimney fires. But it was a big deal when we had central heating. So, when we were cold we’d all get around this one square piece of metal in the center of the house and that was our heat. Later on when we got an oil burner, we got piping up into the upstairs bedrooms and the rest of the house and it was great.

CH: This was near Tillamook, right?

RJ: Right on the corner of 55th and Tillamook. The house is still there, and in beautiful condition. The people who live there now have redone a lot of it, as far as decoration, but the fundamentals of the house are still there.

CH: That is which neighborhood then?

RJ: Rose City Park.

CH: That’s considered to be a middle-class neighborhood?
RJ: Very much. In fact, we were very proud, my dad was very proud that we were one of the few families on the block that was not on welfare or working for the WPA. He hated FDR. We had neighbors who were Democrats, and he would hardly tolerate that. He also was intolerant of Catholics. We had a neighbor kitty-corner who was a Catholic, and he would not let me go in the house because they worshipped graven images. So it was a rather bigoted situation, which he inherited from his grandfather. In those days, everybody had a marker on them according to their church or religion. The Methodists couldn’t play cards or dance. The Baptists were very strict and couldn’t do anything, except dunk each other in the water—full immersion. The Catholics were—we didn’t associate with them.

CH: But you could associate with the Methodists and the Baptists?

RJ: My first love was Louise Lovell in grade school. Beautiful girl, but she was a Catholic, and my dad wouldn’t let me have anything to do with her. That didn’t stop me, though.

CH: So I take it then that your father was a staunch Republican.

RJ: Very staunch.

CH: A Hoover Republican?

RJ: Absolutely. In fact, we ended up naming our Dachshund Herbert Hoover just so we’d have a token Republican of his ilk in the house.

The Great Depression

CH: How would you describe the effect of the Depression from—now you were born in ’27, so it began about ’30—

RJ: We hit it. We were Depression kids as much as you can be, and we thought nothing of it. We thought we were pretty well off. We knew that the rich kids lived up in the Portland Heights. Some lived in US Grant Place, and some in Laurelhurst, a few in Irvington—Alameda was definitely a “height-sy,” upgrade. We were middle-class, but we didn’t know it. Everybody worked. Our work history started right at the beginning. I was a caddie at Alderwood Country Club, where Portland Airport is now. I started there probably about age nine. Then I worked for Ideal Dairy down in the Hollywood District, taking care of mostly the buttermilk urns, which was an [laughs] awful smelling task. I think I was twelve. Then I went to work at Poole, McGonegal and Jennings at age thirteen on a reject dumper. We were up on a shaker, and a Cat would push the gravel and mud onto a conveyor belt which would come up to our shaker, where it would shake the mud off so that the gravel could go on and get crushed. It would shake so much that I ended up peeing blood, and wrecking—my kidneys were somewhat damaged from that exposure. Pete Dunn and I got a big kick out of getting to go
down into the shaker area to drive out the big trucks as soon as they were loaded. We were not old enough to drive a car and rode our bicycles to work.

CH: This was where? Where were you doing this?

RJ: This was opposite Colwood Golf Course out in Northeast Portland, on about 60th and Columbia Boulevard.

CH: And the name of the company was?

RJ: Poole, McGonegal and Jennings. We were paid ninety cents an hour, which I saved. I also saved all of my caddie earnings because we were paid ninety cents to pack double eighteen holes. I always packed for attorney Arthur Lewis, who had English brogue golf shoes—English brogues from the London Boot Shop were it. And he always gave me the dime tip, so I was very grateful for that. I was very frugal, saved all that money, which my sister promptly borrowed and spent and I never saw again.

CH: [laughs] How did your sister get a hold of it?

RJ: Well, I don’t know. Then after that job, the next year when we got into high school we got additional work. I was a greens keeper at Eastmoreland and was primarily the greens mower. I’d work all summer and then during the winter I’d work all weekend. I’d have to get up at 3:00 AM. Well, I’d date Pearl until about 2:00 AM, and she lived on 39th and Shaver, and I’d always get involved in her davenport, not doing anything that you might imagine, but just, I think we called it necking. At any event, I’d constantly be a little late trying to catch the bus back home, and I would run across Beaumont Grade School play yard just to see the bus turning the corner. So, I’d then run all the way home, which was about five miles, to my house, to get there at three AM to have a cup of chocolate. Then I’d take three transfers to get to work at Eastmoreland at 5:00 AM to start the mower, and if the damn thing didn’t start, the golfers would be starting right behind as soon as it turned light. So I was mowing in the dark, and by the dew in the ground, and if that mower pooped out on me then I was peppered with golf balls because they had no mercy. The swans on the sixteenth hole, which may still be there in the lake, hated my mower and would attack it and me and scare the devil out of you. Swans, I should say, if anyone thinks they are peaceful, get them around a mower.

---

**Working in the WWII Shipyards**

RJ: Then, I don’t want to beat this to death, but we had a wonderful opportunity in the shipyards. They were desperate for help, so as fifteen-year-olds we were brought into war production training. We were trained for, as I recall, about two days, slapping paint on wallboard and learning how to cut corners and handle paint. Then we got again hired by Poole, McGonegal and Jennings, which was redoing Russian
I was on the red lead gang, again with Pete Dunn, and a whole group of us from Grant. We were painting with red lead, which would drive any OSHA person crazy, because our overalls were covered with lead. We were anointed “Journey” painters, not just apprentices and were required to join AFL’s Local Number 10 union.

[End of Tape One, Side One]

**WWII Shipyards, Cont…**

**RJ:** At that point, the other guys who were not as lucky as we went to work for the other shipyards—Oregon Shipyards and Commercial Ironworks and the like. They got a buck twenty, dollar twenty an hour. We were special because we were in a mobile crew and we got one dollar and thirty-two-and-a-half cents an hour. But we also got to work ten-hour days, so we got overtime—time-and-a-half—and then when we worked Saturday and Sundays we got double time. So believe it or not, as a teenager I was making up to $400 a month, and my dad, who’d been making $150 a month was absolutely astounded. But we worked real hard; we worked in the engine rooms of these Russian ships, painting with white enamel, which would give you a high that would be something that you’d never experience from any alcohol. We painted the Czar’s yacht at Swan Island. I was down in the shaft alley and the next day I came to work and the yacht was at the bottom of the Willamette River. It had sunk; it would have drowned me if I had stayed. In any event, we learned Russian, but we of course learned the street language.

**CH:** But you were learning Russian for what reason?

**RJ:** Well, just because they were talking Russian to us, so we’d talk English to them, and then they of course taught us their dirty words, and we taught them our dirty words. So my wife—then my girlfriend—Pearl was working at JK Gills, and selling books. And as a sweet little thing—this Russian captain and first mate came in and she used this expression, I guess I can say it in Russian, “dobraye evat ver sucinsin” and “dasvidaniya.” That is something you don’t want to [say]. That was offering them sex and calling them SOB’s. The latter phrase means “so long” or “goodbye.” Anyway, we all got a big hoot out of it but she did not.

**CH:** What years were you doing this work?

**RJ:** Just in the war years, after the war years, so we’re talking ’43/’44. Anyway, we also worked on Navy ships, and we painted with zinc chromide, which was also highly toxic, but that was camouflage, yellow and brown. We loved to get the different colors on our coveralls. But you look back and you think about child labor laws, you think about health laws—it’s a wonder any of us are here. We also worked right behind the asbestos workers. So they laid the asbestos on the pipes. Then we’d come right behind them while the asbestos
is still in the air, and paint with red lead over what they had just done, because we were shipping small gauge railroad trains over to Vladivostok. Several of my friends have died from mesothelioma, which is a hardening of the lungs caused by asbestos. I happen to now have some 2,400 mesothelioma cases pending out of the Pearl Harbor shipyard. They’re all dead or dying.

We all had paper routes—

CH: How do you attribute the fact that people were so poor during the Depression and there were these shantytowns in places like Sullivan’s Gulch, and you lived close by, but there was very little crime?

RJ: Yes.

CH: Why do you think that was?

RJ: I don’t know. It was a whole different culture. I think it was a homogeneous culture just like, I am told, it was in Denmark. In Denmark there was almost no crime because it was a homogeneous community. Until recently, the only crime that they’ve had over there has been from outside influences, terrorists and so forth. But back, at least when Denmark was what it was, that’s just a layman’s guess. I have no idea what the influences were.

The Great Depression

CH: So during the Depression, though—

RJ: Excuse me; we jumped from the Depression into the war.

CH: Right, the family stayed employed. Everybody was working. Your father was working all through the Depression.

RJ: Yes.

CH: Did you see the negative effects of the Depression in Portland, or was Portland not hit as hard as other cities?

RJ: We had Sullivan’s Gulch, which is now I-84 Freeway, and it was full of shanties. Bums would have canned heat to get high on. There were always bums coming around the house for handouts, and to do casual work. We just took it for granted that there were bums. They didn’t bother us. We had no crime problems. We never thought about locking the door. No bicycles were stolen, nothing like that.

WWII, Portland, and Father

RJ: But once the shipyard workers came in, once we had Vanport, the crime started to build. There were knifings and there were robberies and there were things that didn’t happen before when we had the influx of non-Oregonian people. When I went to Grant High School we had no minorities. My best friend, Carl Tanaka, was hauled off to an internment camp, but the Japanese were very law abiding, and that was shocking to us. His brother, also interned, became president of the Oregon Medical Association.
CH: Oh. Now, the people that came here came here to work in the shipyards.

RJ: Yes.

CH: So most of these people were employed. And yet, even with the economic situation being the way it was, with people coming here employed with jobs, still the crime rate changed, because of the differences in culture, you think?

RJ: I hate to get into this; I'm way over my head. All I know is that when we were kids we didn't have any crime problems. We didn't have any drug problems except the Chinese and their opium users. My dad, of course, was enforcing that sort of thing, and was trained to control that very limited amount of drug use.

CH: Your father, at the time, was working as a Custom's Officer?

RJ: He did all through the Depression.

CH: Mm-hmm. And did he stay with that after the Depression?

RJ: No. When we were playing golf on the twelfth hole at Lake Oswego Country Club, if you can imagine, the dues were $100 a year for the whole family. I forgot to mention that earlier, that we would drive all the way from Northeast Portland to Oswego to swim—had a little flatty sailboat, and play golf, and that was our family activity. So he stayed with the Customs. We were playing golf on December 7, 1941, with a journalist, and a green car came up from the Oregon Journal and said that Pearl Harbor had taken place. My dad shortly thereafter got his sea time credit from World War I and went to war.

CH: He did? So he left and went—

RJ: He took a T-2 tanker built in Swan Island, the Fort Erie, and went right into combat, and stayed there for the rest of the war, taking high-test aviation fuel from Aruba and Curacao in the Caribbean out to the front lines until the Marines could secure the islands.

CH: Which islands?

RJ: All of them. He was in the Solomon Islands [Guadalcanal], he was in the Marshalls [Kwajalein and Eniwetok], he was in the Marianas, and his ship was hit in Saipan—you name it, the skipper was there. He advanced from third mate to captain in a matter of months. He sailed mostly as first officer, and was almost always on tankers.

CH: Mm-hmm. So, how was it going through the war without a father then? That was difficult.

RJ: [whispers] Yes, yes, yes.

CH: And did he come through then—

RJ: [whispers] Can we take a break?

CH: Yes. Yes, we can. [tape resumes following break]
RJ: We had kind of a family joke with my brother, especially my brother and me. It was great to see the old man come home. It was also great to see him leave. [both laugh] Because we were virtually without a father as teenagers, when we could have used some discipline. But when we got it, we didn’t like it. So, in that sense, I never did live with my father again in a parental environment. My mother was pretty well left to raising us. I was more unruly than my brother, who was always a studious student. He was the whiz kid that could beat Joel Kupperman of the national radio program “Whiz Kids” in any mental game and the like, so it was an interesting situation.

WWII, Military Service and Race

CH: So, by the time that your father got out of the war, then you had gone into the Navy in 1945.

RJ: Yes. In fact, our ships were side-by-side in San Francisco Bay in 1945. He’d go out someplace and when we came back from the Philippines and then we were, again, near each other in San Pedro. We had taken occupation troops into Manila, which were scheduled to disembark as combat troops in Japan. Then we brought back the survivors of Santo Tomas University from Manila, who were in terrible shape, who’d been imprisoned by the Japanese and tortured by them, and they were full of beriberi and dysentery. The earlier ones got out as early as March of ’45, but we were there in the fall of ’45. A lot of these people had been just too sick, or just were the remnants of them. We also brought home a Negro group, as I had recorded at the time, a name that we used at that time, which was interesting because they were still segregated. They had different chow time, they were kept in different decks.

So we got back, and then we took Italian prisoners back to Italy. Italy capitulated in ’43. A lot of people don’t realize that, but some of them were real nasty, Nazi-type, “black shirts” I think they were called—very militaristic. But most of them were just happy singing barbers [laughs] and the like. They had gone to Jantzen Beach wearing Eisenhower jackets with Italia on the sleeves, and our servicemen hated them because they’d had such an easy time. So our troop commander restricted them to two pieces of bread and an orange a day for their diet—the Italian prisoners—to teach these miserable people a lesson. Anyway, they also were the worst seamen in the world, and we had 3,300 vomiting Italians [laughs] with orange vomit all over our ship. I had to sleep in the gun tubs getting over there.

We went to Italy and we were supposed to go around the world and pick up displaced people in Bombay, India, and our Italian pilot backs us into a sunken ship. Our dock was a hospital ship that we had sunk. So we just pushed these 3,300 prisoners off the ship. They walked off of this dock made up from this hospital ship, and walked up a dirt road, into oblivion. There was no accountability, no reception, no “Who are you?” Or, “Where
have you been?" So, Lord only knows what happened to them.

Then what happens, we get this very disciplined group of Japanese-Americans, the Nisei. We brought back the bulk of the 442\textsuperscript{nd}, particularly the 100\textsuperscript{th}, out of Hawaii. Here's the most highly decorated group of American soldiers in World War II. So, here you saw in a microcosm the horrors that the Japanese did to our prisoners, and then you saw the heroes, the Japanese whose parents were imprisoned by us, virtually inexcusably. So it was quite a vision to see the contrast. But it taught me a great lesson: you never judge people by whether they're Asian or Black or what have you. They're people, and it's their environment that controls an awful lot.

CH: At the time you, most people accepted that the Japanese needed to be moved inland, to these camps. Was there any dissension about that?

RJ: There sure was from us. We thought Carl Tanaka had done nothing wrong. His sister, who was in my brother's class, was a brilliant student. The other brother, Gus, was another brilliant student. They all were top of their class and wonderful athletes. Carl never recovered from it; he became a farmer over in Ontario, and a heavy gambler and drinker. The sister became a nurse, and the brother became the doctor. But I thought it was a lousy deal at the time, and I still do. I don't know what the other people thought.

CH: So, there was some disagreement over whether this should be done or not.

RJ: In our grade school there was, and in high school the star was Kay Takeoka, who everybody loved, and yes, we thought it was a bad deal, from the kids' point of view.

CH: Now how were the Nisei able to serve then during World War II the ones that were so highly decorated.

RJ: Well, they were recruited right out of the internment camps.

CH: Were they recruited for which theater?

RJ: Europe. But some went to the Pacific as interpreters.

CH: Mm-hmm. So they were being used for both.

RJ: Both. Yes. Mainly fighters. It was interesting that later on when I was at the University of Hawaii—that's another story how we got over there. But, in my political science class was a guy, a Japanese guy with one arm. I was in political science with a very liberal professor, and I can tell you that Dan Inouye did a lot better in that class than I did.

CH: [laughs] Did you keep up contact with him when he became a senator?

RJ: No, I didn't. No, I didn't. I didn't keep up. Leroy Gordon Cooper, the astronaut, was another classmate. There
were only about half a dozen of us who were “Mainland Haoles,” as they called us, in the whole graduating class. The rest were Asians, and I didn’t know anybody. I’m getting ahead of myself. I was wearing a full business suit with my white midshipman celluloid collar to college while the rest were in their thongs and shorts.

CH: Looking back on this period of time growing up, what would you say the most formative experiences for you were? What shaped you the most?

RJ: Well, I think I had wonderful teachers from grade school, from one on through in high school, especially the teachers were phenomenal. Later on at King’s Point, when I was competing against all the Ivy League prep school guys, we could take them on in any subject and feel quite comfortable. I teased a little bit about the grade situation. Actually I got a wonderful education in high school. Our teachers were superb. Superb. And our class sizes were fine, and then I suppose, the work ethic. You were expected to work. You’d be weird if you didn’t. Everybody went in the service. It was expected. We didn’t even have anybody who didn’t.

CH: The people that didn’t or couldn’t perhaps—was it difficult for them?

RJ: I don’t know, because I didn’t know any. I honestly don’t. The only one who couldn’t pass the physical, is Dr. Paul Kunkel, and he became president of Oregon Dental Association. But then later they let him into the Army, after he served in the Merchant Marine. So, he went through Catalina Island and served as an AB [able bodied seaman]. Then another guy, Bob Sawyer, who was an all-star football player, had one eye. He lost his eye; somebody shot it out with a BB gun when he was a kid, and they took him in the Army.

CH: Really?

RJ: Standards got pretty low there for a while. [laughs]

CH: Well, I know that you have a twelve o’clock appointment.

RJ: Yes, I do.

CH: I think that maybe we’ll stop here and carry on—

RJ: Thank you.

CH: Thank you.

[End of Tape One, Side Two]
WWII and Military Service

CH: This is an interview with Judge Robert E. Jones in his chambers at the US District Courthouse in downtown Portland, Oregon. The interviewer for the US District Court Historical Society is Clark Hansen. The date is September 19, 2005, and this is tape two.

We left off in our last interview talking about your experiences in the military at the end of World War II. Maybe you could carry on from there.

RJ: Sure. Well, after the year of sea duty where twice I was called to serve as the third officer—actually I was the junior third officer, because of illness of some of the other deck officers. I was always amazed that here was an eighteen-year-old kid in command of the ship, the officer in command of the ship essentially, because everybody was off duty or ill. I thought that it was bizarre, although it’s like sitting on your father’s lap and driving a car; you had somebody to help out if you need it in a hurry. But, that happened a couple of times, and then I think I mentioned we hit this sunken ship in Naples Harbor, and then limped—instead of going around the world—we limped back to Hoboken, New Jersey to get a new screw on our ship.

The war had ended and we swung on the hook, so to speak—in New York. We had some fabulous liberties in New York City. Then the next step was to go back to the Academy at King’s Point. That’s the United States Merchant Marine Academy at King’s Point, New York. Just about that time they [extended the program]. It started out to be an eighteen-month training program; you start as a midshipman and you got your Navy commission. Then they extended it to three years, and at that point I’m back in New York. My fiancé, the love of my life, is in Portland, and I’m [laughs] hearing she’s going to some Duck football games with some of my buddies who are already discharged. They’re back home, and I figured I’d better figure out a way to get back home.

Post WWII in Portland

So I resigned from King’s Point, from the program, and went back home and briefly went to the University of Portland. I spent about a year there, and then I needed to work again. So I, of all things, worked on a tugboat as deckhand logger, [laughs] having gone from the extreme of being a deck officer, so to speak, at least pro tem, down to a common deckhand logger. Then I was working on the tug Chief, which incidentally, did sink later. I was working on the tug Chief off of Camas, making up what we called Benson log rafts, the ones that went out to sea. So, you’d have to get out on the logs, and they loved to twirl the new loggers until they dumped us in the water, and that was the great joy of the other loggers. Anyway, I was pulling a steel cable off of a cavel,
which is a metal thing that you hook a tug to; well, you know—

CH: Yes.

RJ: I was working with all Finns, and the Finn next to me yelled, “All clear!” Well, it wasn’t all clear, and I caught my hand and it went right across these fingers [indicates which fingers]. They were just—I pulled off my glove and my fingers were virtually dangling there. I think I mentioned in my last year of high school I won the state high school golf championship. Did I mention that?

CH: Yes, you did.

RJ: Okay. Anyway, so I thought, there goes my golf career. So they took me across the river, and in an ambulance down to the hospital at Good Samaritan. My uncle, Dr. Arthur Jones, came in and sewed those fingers back together. I can’t close them completely, but he salvaged them. So, that took care of that job.

Then Pearl and I were married on May 29 of 1948. So this year we celebrated our 57th wedding anniversary. Then we had a very nice wedding at Westminster Presbyterian Church with Dr. Hudson, who is a wonderful pastor. We had a reception at the Mallory Hotel, which we still like, although now that we go back to Mallory the reception room looks very small. Anyway, we had a dry reception because we weren’t old enough to drink. [laughs] And most of our family were teetotalers anyway, so it worked out fine. Then we spent our honeymoon night at

the Mallory, and the next day we took off from the airport. Well, if you look up in your history books, when was the Vanport Flood but May 30th of 1948. So we were the last airplane off of the Portland Airport before the dikes broke, you know, just like New Orleans, because it just flooded Vanport. That’s where Judge Haggerty was living at the time, our new chief judge. So, we were going to stay at the Claremont Hotel in Berkeley/Oakland. It is now owned by the Schnitzers, I believe. Gorgeous hotel. Anyway, so by time we got into the San Francisco or Oakland airport, I forget where we landed, there’s a headline: “Thousands feared dead in flood in Vanport, Oregon.”

CH: As you were approaching your flight, was there much fear about the dikes or anything?

RJ: No thought about it. No. But as we took off there was—I don’t know if we remember seeing commotion below or what. But all I know is that when we got there, there was kind of like the mayor of New Orleans now who said 10,000 are dead. They had thousands dead and we didn’t know if it got up into Northeast Portland where Pearl’s folks lived, or what have you. Anyway, as it turned out there were, I think, far less, I think there were less than 100, and maybe just a couple of dozen. But Vanport was wiped out totally and never did come back.

So then we got to Hawaii, and on the ship—it was the Lurline—we had a good friend who was the ship’s officer, and he was very lonesome, and a very
handsome fellow, with two stripes on his white uniform. He had no trouble bringing a different girl down every night. \[laughs\] We both smoked pipes, and we lit up our pipes and would tell sea stories until Pearl would get very bored. \[laughs\] Anyway, she changed that and we had a very nice honeymoon cruise. We got to Hawaii and the plan was to stay there and go to the University of Hawaii and finish up school, college. I had a year-and-a-half to go to finish.

**Home Insurance Company, Hawaii**

RJ: So, I went to summer school at University of Hawaii, and through the next year, all the time working for the Home Insurance Company of Hawaii. My designation was “ocean marine underwriter and average adjuster.” Pearl worked at KULA radio station, which was “first in tape” in Hawaii. They could send over programs from the mainland, especially ball games and boxing games. Portlander Frank Valenti was the sportscaster, and he would get the tape and then make up what was happening, imitating balls hitting gloves \[laughs\], and the boxing, that poor guy. So he’d be there with his tape, and they had some jokesters who were salesman, and as Frank was trying to read off the game and recreate the boxing they would sneak in and light fire with their lighters \[laughs\] to his script and, that’s kind of a silly story. But we had a wonderful time with that, the radio group, because they were all entertainers. So we had lots of beach parties.

The people I worked with in the marine department, which was very small, were wonderful. As a result, we examined all the big ships that came through, what we would insure. We represented Lloyd’s of London. We represented a lot of famous marine insurers—Royal, Globe, Queens, et cetera. One time we insured the shipment of an entire sugar plant on a ship and we charged them a million dollar premium, which in those days was a lot of money, on what we called “policy proof of interest,” and shipped it to Vera Cruz, Mexico. If it got there, fine, but if it didn’t we had to pay the value of the mill. And it got there. But it was a different—it wasn’t the kind of thing you think of when you think of underwriters. We didn’t have manuals; it was all competitive and we were one of the big five. We were a subsidiary of Castle and Cook, so we’d try to find out what Alexander Baldwin was doing, or what Theo H. Davies [both insurance firms] was doing. So, it was great fun.

CH: Can I ask you a couple questions?

RJ: Yes.

CH: Going back to your time when you just got out of the military and you came home. Towards the end of your military career, and as you were thinking about maybe going to the University of Portland, what did you have in mind for your career? What did you think that you would be doing?

RJ: I was definitely going to be into ocean marine transportation, particularly
in Lloyd’s of London-type of insuring. I had taken a correspondence course, even in high school, from the London Institute, under the sponsorship of Donald Bates of Portland, of Durham and Bates, who were the big maritime underwriters here. So that was my chosen field, marine transportation, and particularly the insurance—ocean, not two-bit automobile stuff. But anyway, by coincidence my father at this time was a sea captain and he was sailing in and out of Hawaii and so we were in touch with my family who lived there for some twenty-five years. Then, as I was finishing my last year of college, as I was approaching it—did I tell you about taking “American Political Parties” as one of my courses, a political science course?

CH: No.

RJ: Well my big contender in the class was a one-armed Japanese fellow.

CH: Oh yes, you did tell me. Senator Daniel Inouye.

---

**Life Philosophy**

RJ: You asked about who influenced me. I had a philosophy professor, Dr. William Shymer, who was the head of the *American Scholar* and a brilliant guy. He'd have us over to his home—a very intimate group. He was very influential as far as my philosophies were concerned.

CH: In what way?

RJ: Well, essentially he believed that your life—after we’re gone—is measured by the good that you do while you’re here, and that it’s detracted by the evil that you do here. So what you always have to figure is, before you do anything: Is this good? Is this creative? Is it helpful? It was a very simplistic thought, but—and to think if you ever cheated, if you ever did anything that would just be plain wrong, it would detract from what the purpose of your life should be.

CH: Was there a religious slant to that, or purely ethical?

RJ: Purely ethical.

CH: Purely ethical, yet there would be some divine, or greater being, or somehow this would affect you after you were gone?

RJ: Somehow, we didn't talk about that aspect of it. We talked about the pragmatic way to conduct ourselves in our lives, and stayed away from Buddhism, which was probably the majority of the students, or Catholicism. We didn’t get into that, as opposed to Portland U where everything was—

CH: [laughs] Catholic.

RJ: [laughs] Very Catholic, and scholastic philosophy and logic and so forth. Anyway, that worked out great. And then I think I noted we loved Hawaii, but we missed the change of seasons, and we
missed our friends. The tug Ono was one of our risks and it blew up, exploded, and we had deaths, and we had big property losses, and we had a whole bunch of admiralty lawyers from San Francisco fly over, and even some people from Lloyd’s of London. So I got to meet all these people, and I thought, that’s for me. That’s a better route to take than being in a fairly limited field, and also a way to get home. So it worked out, dovetailed together.

CH: So, meeting the lawyers then and seeing the kind of work that they were doing, was an influence on what you wanted to do, perhaps, with your life?

RJ: A big influence, yes. That’s what I wanted to be. So then I came back here, but at this juncture I was trying to go through law school and work, but there aren’t any ocean marine adjusters in Oregon, and very little for them to adjust when they call in somebody else. That’s how I started out as a general insurance adjuster for the General Adjustment Bureau, and there I did fire and marine and casualty stuff—inland marine, which is no comparison to ocean marine.

CH: Now the ocean marine was—you were doing that in 1948 and ’49.

RJ: Right.

CH: And then the General Adjustment Bureau was ’49 to ’51, in that period.

RJ: Yes, mm-hmm. Exactly. Then, at that time, I started with the class of ’49 at Northwestern Law School. It had not united with Lewis & Clark at that time, and at Northwestern I think we had 186 or 168, freshman. I forget which. But John Gantenbein was a sweet man, and I think he got down to five students during the war. So he was thrilled to have all these new bodies, and all the tuition coming in—what was it, $200 a semester or something like that? If you didn’t have the money, he’d lend it to you or loan it to you. And you didn’t have to pass any LSAT. So we had some very unqualified people start in my freshman class, and by the time they got through the first year, we had a huge drop-off of people who just weren’t that motivated. Then the second year, they ran into Tom Tongue.

Now, Thomas Tongue is the son of a very famous Oregonian, and has a very famous son, who’s still practicing here.

CH: And ended up on the state Supreme Court?

RJ: Tom Tongue did, yes [1969-1982]. But the story was that he was a ruthless grader. And in Evidence that was fine, because Evidence was my favorite subject.

CH: How did Evidence become your favorite subject?

RJ: It just always attracted me. It seemed to me to be the hub of everything; everything flows around it. So, he wiped out a lot, a lot of them. [laughs] We ended up, I believe, with about thirty plus
who, out of that original group, finally graduated. I think at graduation we might have had thirty-nine, but we had some transfers, because Orlando John Hollis, the dean of [University of ] Oregon [Law School], would make Tom Tongue seem like a pushover. He really pushed them out. I think they would get down to classes graduating at like fifteen in a class, my contemporaries. So, it was right; you had to screen out things. So things worked out real well. I got the honor of being the speaker at graduation. I'm not sure about class standings [laughs] because it was such a variable, and we just didn’t keep much track of that sort of thing.

CH: What kind of students went to law school at that time?

RJ: Well, I think our average age was thirty-one when we graduated. They were all—we had three women, and all but the women, I think every one of the men were World War II veterans. We had two Blacks and both became administrative law judges. We had one Communist and we had two FBI agents, and we were in the middle of the McCarthy days and those FBI agents were [laughs] keeping a sharp eye on the Communist. And they never did let him be admitted to the bar.

CH: For what reason?

RJ: For being a Communist.

CH: For being a Communist.

RJ: Yes. Anyway, that was a different time. I could name names, but I don’t know if that’s necessary.

CH: Now, Northwestern School of Law—

---

**General Adjustment Bureau**

RJ: They were very mature. We had police officers. We had a lot of adjusters. Adjusters and night law school went together. The only thing I was going to say is that after two years of working for the General Adjustment Bureau and being assigned an Eastern Oregon run, I would—classes would go until ten o’clock on Monday, Wednesday, Friday. They had another group who went Tuesday, Thursday, Saturday at the beginning, until the classes dropped out. We had only two classrooms for the whole student body, and a library with a bunch of old antiquated books that were worthless, and the dean’s office, which was a desk. And that was it. So, I would go to class on Monday night and then leave at ten and head out on my Eastern Oregon run. I had Hood River, The Dalles, and then I would switch over to Condon, Fossil, and then at times over to John Day, then back through Bend, Redmond, Prineville, and calling on agents all the time to pick up their losses and assignments. And then just barely make it back in time for class on Wednesday. And then, right after cases on Thursday, cover the southern route towards Salem on Friday, and then study all weekend. Well that got awful old. And it wasn’t conducive to good time for study and the like.
I was fortunate to get a job as claims manager of Employer’s Group of Boston, and also a big increase in pay, from $225 to—well, at the General Adjustment Bureau I think I finally got up to $250. Well, the claims manager job had a nice title, but it also had a pay of $325 a month, plus a company car, which was a big improvement. Well, I was with them, and I was supervising two adjusters and had a secretary, and we were writing a lot of complicated stuff in employer’s liability law and worker’s comp, besides the general stuff. So, that was a great job. I should have stayed there. But then I got a call to take a higher paying job for Gould and Gould of Seattle, which was a general agency, and that was paying over $400 a month. My employers couldn’t meet it, so I left and went up there, and finished my career as an adjuster there.

CH: In Seattle?

RJ: No, here. But I was the claims superintendent here, then we would assign out all of our adjusting to independent companies.

CH: Was it still your intent at that time to eventually go into admiralty law?

RJ: Yes. The first thing I did when I passed the bar was to try to get work with an admiralty firm. I went to the firm I wanted most, Erskine Wood’s firm, which had the most business. They said, “We only take one Northwestern graduate.” They are mostly Harvard and Yale people, like John Mosser, and they didn’t want to take another one. Schwabe Williamson was then the Mautz firm, and Gene Oppenheimer, who later became a judge, had their admiralty stuff, and they had Ken Roberts, who did admiralty work, and they didn’t want another one. I went to King Miller, now Miller and Nash, and they had Jack Hill, who had gone to a fancy school, and they didn’t want me. So, there was no admiralty job open.

So then, foolishly, I went into a partnership with my two study-mates, F. Darold Windsor and Robert Briggs. Windsor was born in 1918 and had been a Navy officer, terribly injured in a train/auto crash, and was crippled. He was very disabled all through law school. I don’t know how to put this—let’s just put it this way:—he got disbarred for unethical practices and it’s in the Supreme Court reports.

The other fellow was a CPA and brilliant, did almost all taxes and business transactions. Brilliant, but very bad business judgment, and he ended up an alcoholic and finally disposed of himself. Right after we got started, I knew it was a mistake and I wanted to get out without getting burnt. So, I don’t know how many months it was until I pulled out on my own, and then I got real busy, because, in the meantime I was an officer in the Navy, and was in the unit out at Swan Island, and I was the only lawyer in my battalion. So I got all this business from the people in the Navy. They were very loyal. Then I had a whole lot of other life-long friends that were just very supportive.

[End of Tape Two, Side One]
First Home: Woodland Park

RJ: We had bought our first home when I started law school. That’s not true—we lived in a little apartment up by what is now Portland State, and my wife, Pearl, was working as a doctor’s assistant for Jewish doctors, wonderful, lifelong friends. Then we moved and bought our first home at Woodland Park. These were the cutest little “Leave It To Beaver” neighborhoods, with the winding streets—little colonials with all the trimmings, you know, the shutters and the knotty pine in the front room. They had basements, and had an oil burner. But we had a concrete bathtub that you had to paint, [laughs] and my wife’s toes inevitably would cut through the enamel of the paint, so I would be painting that doggone bathtub more times.

Anyway, we had a nice friend who lived two houses away, Paul O’Halloran, who later became a very prominent lawyer and head of the International Moose Association. Dick Deich is also now still a very prominent lawyer, and was the youngest legislator in the history of Oregon at age twenty-four. He and I grew up together at Rose City and Grant [schools]. He was on the same street. These houses were 800 square feet, and they cost $8,250—$1,650 down, and $55 a month with a twenty-year mortgage. And no garages.

CH: [laughs] How big were the lots?

RJ: Just little—50’-by-100’.

CH: So you really couldn’t add too much on to—

RJ: You couldn’t add anything. [laughs] No, and then they had some hot shots come around, because in the war they only had green lumber, and you couldn’t hold paint on it, so we had the house covered with asbestos siding. Think of that today. [laughs] They’d be torn down and then you wouldn’t know what to do with the debris.

CH: [laughs] Right.

RJ: Anyway, we called it “Exclusive Upper Multnomah County Jail Heights.” [CH laughs] They were right across the ravine from the old Rocky Butte jail. That was Woodland Park.

Early Law Career

RJ: So, then the practice was going well and I took in an associate named Tom Thorpe. Tom was a very handsome fellow. He became a captain in the Coast Guard, and was a good pal. But then I got this offer to go with the Anderson Franklin firm, Anderson, Franklin, and Landye. They were then the largest plaintiff’s firm in Oregon, and in the meantime I’d gotten lucky. I’d been trying cases, and happened to get the prayer against some prominent lawyers. One was a partner in the Morrison firm, which later became the Cosgrave firm. It was McGuire Shields Morrison and Bailey. Mr. McGuire was one of the judges at Nuremberg. It was a real good
firm that I wanted to get with, frankly, but I couldn’t get a job there either. [laughs]

So I hit their top trial lawyer, their trial partner, real hard on one. Then another one I was lucky on, I got, in those days, a big verdict against John Schwabe of Schwabe Williamson. I think the reason I did is John was a Marine right to the core, and my client was a Marine. [laughs] He just couldn’t be mean to another Marine. So that was fortunate.

Then I got another one when I got a prayer against John Higgins. That was a case where cross examination really brought about a result; in fact, made the jury so mad at the doctor who testified for the defense, that had misdiagnosed and fully x-rayed, with pelvic x-rays, my client who was pregnant. My question on cross examination was, “Doctor, in taking the history, did you ask her when she had her last period?” And he just turned white. Then, “Would it have helped you to have known that she was three months pregnant when you took the full pelvic x-rays?”

And he just, I forget what he did—put his head in his hands and said, “Oh, woe is me,” or what-have-you. [laughs]

The jury was so mad, they came to me afterwards and said, “You find out—if anything happens to that baby, we want to know about it.”

CH: People at that time knew the dangers of x-rays?

RJ: Yes. Absolutely. Anyway, that apparently caught the attention of Wes Franklin, who was the first president of what is now the American Trial Lawyers. He offered me a job as a full partner in Anderson Franklin, because Jim Landye had just dropped dead at a bar meeting. Jim Landye was a brilliant trial lawyer and labor lawyer. So that was quite a switch. And, Cliff Olsen, fortunately, was still in the firm, and he was a much better lawyer than I was. He had been district attorney, and he had been a Marine pilot. He just could do anything. He tried cases with all the leading lawyers in the state, because when he was in John Day as district attorney, he could have a civil practice as well as being a prosecutor. So he got to try cases with all the leading lawyers in Oregon. He was much more seasoned than I was. One thing I insisted on, is that Cliff become a partner too. That worked out great, because, by that time Wes Franklin had lost his zest for trying cases and he would hand them off to us.

We were in trial constantly in those days. We tried worker’s comp cases to jurors. We could stipulate a six-person jury, and we would always just call our client and then—we only had one system before the three-way bill—the State Industrial Accident Commission was the defendant. They would always call some hack that would come in and testify there wasn’t anything wrong with our claimant, and we could just tear him apart on cross examination. So we had an extremely successful practice. About seventy percent of our practice came from other lawyers who were not specialists in doing this type of work.

So, we were trying employer’s liability cases, even a few admiralty cases.
We represented the sawmill workers. We represented the Teamsters. And the Teamsters’ business agents, for instance, would have all our clients lined up for us. We’d go down to the Tioga Hotel in Coos Bay and they’d have the whole floor filled with waiting clients. [chuckles] And then on the next floor, Frank Pozzi would have a whole floor of longshoremen waiting for him, [CH laughs] in between Bud [Berkeley] Lent, who you interviewed, and Nels Peterson—Nels had quit trying cases too—and so Bud was there too.

So we’d have the three plaintiff’s firms all in the same hotel, all with our clients carefully segregated, and then shuffle them around, so that we could meet the expectations of Judges Dal King and Bob Belloni. Then they’d give us a half-an-hour between—they’d line up arbitrarily to see, okay, Lent will go first, followed by the Franklin firm, followed by the next firm. Then, as the cases would be going, they would be settling or tried. We could never predict when, so we would all meet at night and say, “How far are you on the list?” [laughs] He gives us half-an-hour to stop, after we’d finished our closing argument on one case, to start picking the jury on our next case.

CH: This is in which court?

RJ: This was in Coos Bay, in Coquille.

CH: And generally though—

RJ: That’s one, but that’s where King and Belloni were, and that would also include going down to Gold Beach, which was a beautiful spot to try cases. Anyway, if you lost a case in Coos County, as a plaintiff, it was malpractice. [both laugh]

These people were all dock workers and all mill workers. You didn’t get white-collar people on the jury. So it worked out very well. We also handled a lot of other kinds of stuff. We did wills for all of our clients. We did divorces for all of our clients. We took care of all their drunk-driving stuff. So when somebody would come in and say, “I want you to be my lawyer,” I’d say we want to make sure that we’ll take care of all your problems, and that was fine.

CH: Was it common for people to come in and just ask to have a lawyer to represent them for whatever might come up in their lives? Did they take on a lawyer or were they coming in specifically because they had a reason at that point?

RJ: Almost all of our stuff either came from the unions or from other lawyers. So we didn’t have many people. Of course, I had a lot of friends—having grown up here—that would come in for any purpose. I didn’t know siccum about probate, but we did a lot of divorce stuff. We never enjoyed doing that, but we did it.

CH: I have a few questions for you. First of all, could you give me a chronological rundown of the periods of time when you were in these various firms? You started private practice in 1953.

RJ: Right.
CH: With Windsor Jones Briggs, and then you went into your sole practitioner then in what year?

RJ: Well, probably by the end of ’54, I think, is about the time I pulled out. But I’m not positive. It was either ’55 or ’56 that I joined with Tom. Then I went with Wes Franklin’s firm in ’59.

CH: Fifty-nine. And you stayed with them until ’63.

RJ: Yes, and they were very, very supportive about running for public office. This is kind of, I think, a humorous sideline. Ben Anderson was one of the sweetest guys you could ever know, but a real liberal. He served in the legislature as a Democrat, I think, in 1933, and he was with a very, very prominent plaintiff firm. The chief lawyer was Bill Lord, and the firm was Lord, Molton and Anderson. Bill Lord’s father was the chief justice of the Supreme Court of Oregon, and wrote Lord’s Oregon Laws, which was a predecessor of the Oregon Revised Statutes. He had all of the unions. He had the longshoremen before Pozzi took them away. He had the AFL-CIO, before it went over to Burl Green and Don Richardson’s office. So he had everything lined up from the plaintiff’s side. They also represented Wells Fargo from way, way back. They were there representing the unions during the strike in the ’30s—1934—when they had the big, violent strikes going. Burl Green’s father, BA Green, and Bill Lord were the patriarchs of the workingman.

CH: Wasn’t there a Green and Green?

RJ: There was. Green was AB—that was Burl’s dad—and then Burl. So it was Green Richardson Green and Griswold, and of that group Jimmy Griswold is still alive [since deceased].

Oregon Trial Lawyers

CH: Now, it sounds like you ended up doing a lot of traveling too.

RJ: Yes.

CH: You went to Coos Bay, you went down to Gold Beach. Your private practice involved travel to a lot of different courts.

RJ: Right.

CH: Now, generally, the courts that you did your work in, were they all state court cases?

RJ: With minor exceptions. But it wasn’t just—we would go to Astoria, and I’d have to try a case against Albin Norblad, who was [laughs] Walter’s dad. I’m trying a case before the court and he goes up to Judge Zimmerman, and he says, “Now, judge, I know you won’t be prejudiced just because I appointed you.” [laughs] I’ve always remembered that line. Then we’d go to Tillamook, and Warren McMenamie would hometown us. Then we’d go to McMinnville and Malcolm Marsh’s dad or uncle would hometown
us. \[laughs\] We’d go to Klamath Falls, and wherever we went—we’d go to Pendleton and fight John Kilkenny, who moved for a zillion mistrials, and Albany—the judge there had his pet lawyers. It was a different time.

But it also was a real hardship at home. The serious part was I realized that Pearl—we now had two kiddies—was working and trying to do the yard work and keep things together. I would come home and the partners would always meet on Saturday morning. We all worked Saturdays in those days. Then on Sundays we were so busy, I had a court reporter, a former Marine/WAVE [Women Accepted for Volunteer Emergency Service] Mary Templeton, who later became my court reporter, and with whom I worked for twenty-five years. She came to work as my secretary at Anderson Franklin. So I would dictate to her all Sunday afternoons, all the complaints, all the wills, all the stuff, and she was so good, she was just like having a junior partner. I’d just give her the essentials and then she’d type them all out. Then we’d sign them and then we’d be off traipsing away.

But we did have a lot of practice here in Multnomah County State Court. That’s when we had this great coffee group that met, of all the trial lawyers that you can think of. It became traditional that we would meet when we were in town. It would include all the prominent plaintiff’s lawyers, and all the prominent defense lawyers—I don’t necessarily say all, I’d say a mixture of them. It’s where I think I really learned more about trying cases than anything, just listening to these very experienced people. The group is exemplified by this photograph, \[shows CH photo\], because here is Cliff Olsen, my partner, Randy [Randall] Kester, of Cosgrave Kester, Wayne Hilliard, of the Dezendorf firm, Tom Tongue who is a partner of Bill Dale, and Bill Dale was always there also for coffee in the morning—

CH: And wasn’t there a William Dale?

RJ: Bill Dale. Yes.

CH: That was him? That’s him?

RJ: Yes. It was Hicks, Tongue, Dale, and Strader.

CH: And Dale became a judge as well?

RJ: Yes, he was a circuit judge. So was Cliff Olsen. Then Randy Kester was on the Oregon Supreme Court, later, and of course Tongue was on the Supreme Court only. Norm Weiner, who’s still around, the head of that firm. Bill Crowe, who was with Miller Nash, and now he’s with Schwabe Williamson. Arno Denecke, who became Chief Justice. Walter Cosgrave of Cosgrave Kester. Myself, and that’s Strader, who was a partner of Tongue and Dale, then later Chief Justice Ed [Edwin] Peterson was in his firm with General [Lamar] Tooze, and he was mostly the appellate lawyer, but also a trial lawyer. So, it gives you a flavor. I don’t think there’s a group like that that exists anymore.
CH: Was there a name for the group, or did you meet in any specific place?

RJ: Yes. We first started at Mannings Coffee Shop with—I forgot Bruce Spaulding and Burl Green were very prominent. Bruce Spaulding was, of course, probably the very best of all the trial lawyers. He, of course, did everything. He would represent big Fortune 500 people but he would also represent the most notorious criminal on first-degree murder cases, including the one where a lawyer named Kermit Smith was blown up during a golf tournament at Columbia Edgewater Country Club. I don’t know if you knew about that case.

CH: No.

RJ: And this woman, Smith’s wife, hired a guy to kill him and blow him up. The guy blew him up and Bruce got the wife off. [laughs] Bruce had the Bobby Sproul case in Eastern Oregon, which was a shoot-out among cowboys, and Bruce got Bobby Sproul off. [laughs] He’d always ask, “Now, what do you think about this?” and “What do you think about that?” Fabulous. Fabulous guy. He was with Schwabe & Williamson.

CH: Before it became Schwabe Williamson Spaulding & Wyatt.

RJ: Yes.

CH: Yes. This was during what period of time then?

RJ: It was 1957-1963. This just kept going, even after we became judges. We switched from Mannings over to Fred Meyer, and then from Fred Meyer over to Standard Plaza, and then at Standard Plaza we started dying off. Oh, Don McEwen was another of the ones that were constantly there, and Don Wilson of that Pozzi firm, and Don Atchison of the Pozzi firm. I don’t know if this is helpful with all these names, but they all were great lawyers.

CH: Because you had mentioned that you learned more about trial law there than—

RJ: Tactics. Yes.

CH: Tactics and whatnot. Because these people came from different firms, then did you end up facing off with some of them in cases?

RJ: Constantly. [laughs]

CH: Did you enjoy that?

RJ: One of the funniest lawsuits that ever took place was between Walter Cosgrave and Bill Dale. It was called “Arsenic and Old Lace,” [laughs] and it involved two old ladies that were fighting each other over something, and anyway it was something. There was the famous “lunchmeat trial.” Do you remember that one?

CH: No.
RJ: Well, the lawyers who were trying the case against each other were Tom Tongue [laughs], Ray Lung, Norm Wiener, [Allan] Hart was in there, I think, and it was tried before Judge Belloni: [laughs] Tongue, Lung, Weiner, Hart, and Belloni. [laughs]

CH: [laughs] Is that how it ended up being reported in the news?

RJ: Somewhere along the line [CH laughs] it had been written up, “lunchmeat trial.”

CH: [laughs] Lunchmeat trial. But the admiralty cases, how are things divided in terms of how cases show up in what court? I would think that admiralty cases would most often end up in a federal court.

---

**Federal Court: Gus Solomon**

RJ: They would, yes. I would have loved to have tried admiralty cases in federal court. Never got the chance. We had a few Jones Act cases, which are injury cases of seamen, when I was in practice. Bill White, another guy who was also in our Navy unit, had a small admiralty practice. But most always those cases settled though they’d be filed. So, as a result, I had very limited experience in federal court. Like everybody else, I had my first experience with Gus Solomon, and my first experience was, like almost everybody else’s, horrible. [laughs]

CH: Could you tell me about it? Do you remember it?

RJ: Yes, sure. I remember every detail of it. I went in there, and I was representing some people who had been horribly injured when a big truck hit them over in Vancouver, Washington. The defense attorney was John Schwabe. I missed the ten-day filing for a jury and had a good excuse for missing it. There’s some discretion on that, and I filed an affidavit. So I went up before Gus and he snarled at me and says, “Jones, I don’t believe your affidavit.” I looked just as snarly back at him, and I slammed my briefcase closed and marched right out of his courtroom. He started screaming, “Come back here! Come back here! Come back here!” I didn’t say anything. I just kept going. I figured if he thinks he can call me a perjurer I won’t appear before him. Well, then the next thing is that we get an apology. So, then we end up trying the case at Christmastime, with John Schwabe on the other side, and James Alger Fee is the judge. James Alger Fee could almost outdo Gus Solomon for being irascible, mean-spirited—everything I would not want to be as a judge. So, we tried that case, we tried it without a jury. I don’t really remember the end result, except that my clients were very satisfied with the result. They became lifelong friends for the short remainder they had in their lives.

Then the next federal case I get was a real good case. It’s against Bruce Spaulding. Now, at this point, Solomon, I think, is still
feeling guilty as far as his conduct with me. I think he, underneath, admired that I stood up to him, that he couldn’t bully me. At least that’s my subjective [both laugh] feeling. So I put on my case. I have no jury, and because he wouldn’t let, you know, on my first motion, and so he said, “Okay, I’ve listened to Jones’ case. Mr. Spaulding, I think it’s foolproof. You can put on your man from Seattle if you want to, but you’re wasting the court’s time.”

CH:  [laughs] Oh, gee.

RJ:  Spaulding hit the ceiling, and I forget all the things he said, but they had something to do with [laughs] expressing great displeasure. Then the next thing I heard was that Gus had disbarred Bruce Spaulding from practicing in federal court.

CH:  For what reason?

RJ:  I’ve heard various descriptions, but I thought it was because of his retort in the case that I had with him. But it may have been another case.

CH:  And Bruce Spaulding was a friend of yours?

RJ:  Oh yes, and his wife Jo and my wife Pearl sang in the same choir group, the Legal Larks. But anyway, Jo Spaulding is a marvelous lady, we know her very well, but Bruce and I were adversaries.

CH:  Did you talk to him about the situation?

RJ:  Oh, I think he finally let the guy—it’s vague. I’m just not going to guess. My vague remembrance is that he finally did get his man put on after the remonstrance. Then Solomon was generous in his awards. He was a good plaintiff’s judge. So that was all.

[End of Tape Two, Side Two]
CH: This is an interview with Judge Robert E. Jones at his chambers in downtown Portland, Oregon, at the US District Courthouse. The interviewer for the Oregon US District Court Historical Society is Clark Hansen. The date is September 19, 2005, and this is tape three, side one.

So you were talking about what cases you had in federal court. I’m wanted to follow up, actually, with a few questions about the legal scene in Portland, or in Oregon, at that time. First of all, you worked for a firm that handled a wide variety of cases. Maybe some of the larger firms in Portland still do that, but I know so many firms that specialize in divorce law, family law, or accidents—

RJ: Immigration.

CH: Immigration or whatever. How common was your situation in those law firms at that time, and how has that situation changed over the years?

RJ: Well, a lot of the practice in those days involved automobile litigation, and that has almost disappeared because of arbitration, mediation, the expense of the litigation, the debunking of a lot of cases that used to bring in judgments that jurors won’t buy, such as whiplash. Neck injuries used to be a big thing and now you hardly ever hear of one. So, instead of having a whole cadre of lawyers trying that sort of litigation you’ve got a whole new area of new laws, especially in employment law. We had virtually no employment cases during my practice time, or my time, even, on the state court, for the next twenty years after I went onto the bench. Then, employment law just boomed, starting about the late ’70s and early ’80s, and now it’s twenty-five percent of our calendar.

CH: What caused that? What was the reason?

RJ: The law. The Congress and the state legislatures both passed very strong laws to protect people who are employed. It’s a fascinating field, and it’s also very complex. The other thing is, the more laws that have been developed the [more the] worker’s comp thing has vanished from the trial arena. That’s all handled, now, through worker’s comp claims and administrative judges. There’s a tremendous difference in when cases are settled. In federal court, for instance, [cases] almost never have a last minute settlement. All of that has to be done earlier, and there has to be a meeting of ADR—alternative dispute resolution. That clears those cases out, so that if we have a case that’s durable then we will try it. In state court, it was rather lovely in the sense that you had [laughs] a vast majority of the cases settled the morning of trial. You knew pretty well that the best offer would come when everybody knew that they had to go ahead one way or the
other. In some cases, it was very difficult to get past a judge who didn’t want to try the case, and wanted to settle the case. The judges would get involved in the settlement process.

CH: So this was a form of arbitration then?

RJ: Not arbitration, mediation.

CH: Mediation.

RJ: Or coercion. [both laugh] The most famous one was Ralph Holman, who is still alive—just saw him last week. Ralph is ninety. But, we’d call it “getting Holmanized,” because he wanted to go fishing. [laughs] He’d be looking out his window, out at Oregon City, and seeing how they’re biting. [both laugh] But anyway, it was very hard to get past him when he got through knockin’ heads. Judge [Alfred T.] Sulmonetti, on the state court, was equally as persuasive. You just knew you shouldn’t line up your witnesses because he’d work you over. Finally, one lawyer finally said to him, “Okay Judge, how much will you take?” [laughs] So, we had that situation.

As a younger judge, I had a dark courtroom a good percentage of the time, even though we would have the cases lined up for trial, and we wouldn’t get the case until the night before under that central assignment system. It still would filter down and then we’d get the call at four in the afternoon, so too late to get a jury or a case going the next day.

CH: By referring to it as “a dark court”—

RJ: It means there wasn’t any trial going on.

CH: There wasn’t any trial, yes.

RJ: Nor, for that matter, would there be pending opinions to write, nor any of the legal aspects, because those were all handled by the presiding judge beforehand. And summary judgments practice was almost zero. In fact, we didn’t have summary judgment in state court until Bill Knudson from Lewis & Clark kept telling us it was a good idea. Then we started getting summary judgments. Then the judges on the Supreme Court, the majority, had set a precedent to say summary judgments should rarely be granted. The cases should be submitted to a jury. Contrast that to now. Although our statistics have been questioned, we dispose of the cases either fully or partially by summary judgment, or partial summary judgment, up to fifty percent of the cases here. So it’s a huge part of our practice here.

CH: So they don’t actually go to trial?

RJ: A lot of them don’t, no. We settle in federal court up to ninety-seven percent of our civil cases, and about the same percent of the criminal cases. In state court, by contrast, my son started as a circuit judge August 15th of this year. Today he is in his sixth jury trial—and this is a homicide case with multiple expert witnesses—and this one is a two-week trial. He had four
trials to the bench in between, plus sixteen divorces. [both laugh] I thought, my god, your statistics look better than our whole court. [laughs]

CH: I was told by one judge that I had interviewed some time ago that the tendency to settle out of court, and maybe summary judgments, that’s not really settling out of court, I guess—

RJ: Resolving it.

CH: But it’s resolving it. It may not allow the understanding of the law to evolve. I’m not sure if I’m paraphrasing what he had said to me—that there is some trouble in this. There is some problem with this tendency to settle out of court in that certain fundamental issues then do not become decided.

RJ: I think it’s not necessarily the summary judgment, but just the whole problem of litigation these days that has caused us to settle or dispose of too many cases pre-trial. We are not trying a sufficient number of cases to even know what cases are worth, particularly in the employment field. We don’t have a solid base as to what these cases are worth. Steve English of the Bullivant firm has written an article on the disappearing jury, and nationally it’s been written that we’re settling too many cases. Judge Panner has been passionate about this, that we’re settling too many cases. So the result is that the senior judges, who are usually the targets to do settlements, have considered going on strike [both laugh] and say we’re not going to do anymore ADRs because we need to try more cases. Well, we mouthed that the first of this year, but we still succumb when somebody says, well, they’re awfully close, and we just need a real judge to get the attention of these people.

We have a tremendous number of private arbitrators out there. The corporate world has realized, and the insurance companies have realized, that it is so expensive to try cases now, with people billing $400 and $500 an hour for their trial lawyers. Then they don’t just have one lawyer like we used to have. They’ll have two or three. I’ve had up to seven on one issue. We have lots of cases with multiple defendants, multiple lawyers, and it is so expensive. So if you get a case [like this], you can win it ninety percent of the time. The judge asks the defense lawyer, “How much is this going to cost to defend?”

“Well, it would cost between $100,000 and $150,000.”

The plaintiff: “How much will you take to settle this case?”

“We’ll take seventy-five [thousand].”

Now you require the claims manager or the corporate executive to be in chambers and say, “What’s the best business decision to make?”

CH: The judge will actually ask the lawyers these questions?

RJ: Yes.

CH: Huh.

RJ: I think it’s almost blackmail, to probably overstate the case. But as a result,
if I get into a mediation I say, “Don’t feel any stress that you have to settle this case. We are not trying enough cases, and we would like to see you earn it.” The other problem is that we have great lawyers and we have not-so-great lawyers. We know the not-so-great lawyers will usually cave in and settle. As a result the mediation process awards to the not-so-great lawyers verdicts that they couldn’t have received. I don’t want to have this sound like a one-way street because it cuts both ways, but—I think that’s all we need to say about that.

CH: But it’s an interesting way of getting people to settle. I would imagine that part of this has to do with the burden on the court of the number of cases coming before it.

RJ: I think our court needs to be burdened [with] more with trials. I find that some of our judges are spending more time on ADR than they are in trials. I agree with the philosophy that we need to try significantly more cases and spend less time trying to screen out a case. If you’ve got a lousy case, you can try the case rather than grant a summary judgment. You can try the case before a jury and get a final resolution faster than granting a summary judgment and having it go up on appeal. It takes two years for that—and then get a disposition one way or another. Why not get it faster with a trial? But you have to appreciate that my background is trying cases; I love the action of the courtroom.

CH: Many of the private arbitrators are actually retired judges aren’t they?

RJ: Yes, and very good.

The Local Bar

CH: And very good. So, going back to what I was asking you earlier about the local bar in this area—how informal were your contacts between members of the local bar?

RJ: Our contacts were extremely informal. Your word was gold. If you called up for an extension of time it would be granted. There’d be no paper trail, and you could rely on it. We knew who the SOB litigators were that you couldn’t trust, and then at that point you’d verify everything. Now, nobody seems to trust anybody. We have motions filed, and cross motions filed, and motions for extensions of time, and crabbing about this and that— petty stuff. You build up files that are two-feet thick that have no reason to be more than two inches thick. Maybe I’m sounding like one of the grumpier old men. I don’t want to be [laughs] Walter Matthau or Jack Lemmon. But it’s really true, and every judge here in this court would say that we get so many unnecessary motions, and so much stuff. It’s driven, I think, in large part—let’s throw it over on the defense for a change—by billable hours. Each person in the law firm—if you’re going to pay a newcomer $150,000 a year or better,
they’ve got to have so much billable hours, maybe up to seventy a week. If you’re going to have people billing [chuckles] ten hour days for seven days a week—of course that’s impossible—but you’re going to have people building up billable hours. You’re going to get a lot of junk coming in.

CH: Do judges see through this and try to eliminate as much as possible?

RJ: When they come in, if they prevail and they’re looking for attorney fees we look real close as to what they really did.

CH: Can you tell during the middle of a case whether that’s where they’re headed?

RJ: You can tell very early, and we can tell who’s going to do it in advance. We can anticipate it. But the idea of the way we used to practice law is totally antiquated now, as far as the camaraderie. We never noticed a deposition. I never once noticed a deposition. You know, formally. What you do is say, “Hey, I want to take the deposition of X. Do you want to do it in your office or my office?” Then you’d work that out. Then you’d go in, the deposition would be very brief, they’d get a feel of the person. Now the depositions—we finally had to limit them to seven hours for each day. Then you can put a limit on the number of days. In the breast implant litigation where the people were claiming mental distress, the defense was taking these women who were distressed about their implants and they would have them in for three and four days, asking them about every personal question in the world: about their sex life, about their financial investments, about their children, about anything that could cause them to stress. I know the litigators who will overdo that, so I say, “In this case, all depositions will be taken in my conference room down the hall, and I will be available to resolve any objection on the spot.” Well, when they know that the judge is so close, and then I’ll also allocate, and I’ll say, “You can have seven hours to ask all the questions you want. But that’s as far as you’re going to go, and if you can’t do it in seven hours then you’re going to be out of luck. You better trim down what you’re going to ask.”

CH: Have lawyers challenged that? That this is somehow unconstitutional? It [doesn’t] allow them to defend their clients properly, or whatever?

RJ: There’s, of course, a lot of snarling, and trying to make you think that the judge is being a little too harsh. But it seems to me that it’s taken a lot of stress off the litigators and they’ve gotten the job done.

CH: But the tendency of all these developments over time—the increasing costs, and these things that you’ve been talking about on depositions, and unnecessary motions and whatnot—what kind of impediment do you feel that that has placed upon the average citizen in terms of trying to seek remedies in court?

RJ: From my perspective, I think that the costs of litigation have reached such a proportion that it makes it very difficult for our citizens—whether they be individuals
or corporate citizens—to have their day in court.

CH: And is there anything that can be done about that?

**Oregon State Court**

RJ: Oh, you know, it’s not for me to say. I think I’ve given my philosophy that I think that the judges have to be more aggressive, especially in state court. In state court we’re still in trial by ambush. You don’t know who’s going to be your opponent. Witnesses, you don’t know which experts are being called. You can sit back and call in any old hack in the world, and not have a chance to screen him until trial time. Then by trial time you’ve got a jury sitting there, and you’ve got some person that should be screened out as being non-qualified, and you have to have either rush through the procedure, or hold up the jury and make them sit around unnecessarily. The state court has to be changed. The state court system is totally antiquated. We already have a rule—and Judge Robert Paul Jones and I have talked to the bar over and over—you’ve got Rule 104. And we’ve talked to Judge [Jack L.] Landau and other presiding judges.

When you get a complex case in state court, you don’t assign it out to a trial judge the night before a trial. You’ve got to assign the case at the beginning of the case and then have the judge set these pre-trial hearings along the way—summary judgments, set the motions in limine, get all the exhibits marked in advance, take care of all the evidentiary issues, all the leading evidence issues in advance, take care of all of the screening of the experts under the Oregon Rule of State v. Brown and State v. O’Key. I wrote Brown ten years before Justice Blackmun wrote Daubert for the feds. O’Key—Justice [Richard L.] Unis, my evidence buddy, wrote that for the state. You’ve got two strong state cases that says these things should be screened pre-trial, and the bar should be following it, and they aren’t, and that’s the judges’ fault. From our perspective over here, we are allowing just too much wasted effort. We should, you know, follow through on this stuff and make the aggressive calls earlier, even though they aren’t popular.

**Oregon Bench: Profiles**

CH: [laughs] We talked a little bit about the local bar during that time. What about the local bench? You’ve mentioned some of the lawyers, some of the judges that you’ve gone before. Has the situation with the local bench changed? How is it different, or is it different, than it was when you were in private practice?

RJ: Well, I have before me the photographs of the fifteen judges that I started with, and I’ll just go through them if you don’t mind.

CH: Please.

RJ: Dean Bryson, a successful business litigator—he’s more of a practitioner than a litigator—became an Oregon Supreme
Court justice. Dick Burke—a decorated combat veteran [World War II], a district judge, a heart of gold—became a circuit judge. Charles Crookham, who became, of course, Sir Charles, was one of the most distinguished presiding judges in the history of the state. He was also a litigator with the Vergeer and Samuels firm, handled all of their appellate work, and he handled all of the complicated issues with aplomb. Alan Davis, although he had a short temper, was right most of the time. He was my High-Y advisor in high school [laughs], and he was president of the Oregon State Bar.

We had Carl Dahl, who loved domestic relations work. In fact, the reason I got on the bench was because he didn’t like trial work. He liked to handle work with children and divorces. But he had that wonderful disposition, kind of paternalistic, in the good sense. You had Bill Dickson, who handled estates, who was a genius. His father did the same work. None of us knew what to do in estate [in estate assignment, e-state assignments and mental commitments] until Bill Dickson [laughs]. Paul Harris was a very famous trial lawyer. Gene Oppenheimer was a senior partner in the Mautz firm—Wilbur, Beckett, Oppenheimer and Mautz was the name of the firm. Then we had Virg [Virgil] Langtry, who was a very strong judge, but also did a lot of domestic and juvenile and trial work, and later served on the court of appeals.

Jean Lewis was a state senator, and our first woman judge in the history of Oregon, appointed by Hatfield. Judge [John] Murchison had vast experience on the municipal court. He’d been a district judge and was a circuit judge—had a wonderful disposition. Judge Charles Redding was our presiding judge, and he was a very distinguished gentleman. He served pro tem on the Supreme Court. He just missed out on the federal court, when Kilkenny beat him out at the last minute. Herb Schwab, who died October 2005, became a full colonel in the Army when he was twenty-nine. He was a genius, and the chief judge, and shaped the Court of Appeals of Oregon. Judge Sulmonetti was our presiding judge—a happy Italian. [laughs] He had a wonderful disposition. He always let the lawyers try the case if it ever got to the trial level. As a matter of fact, I probably tried more cases in front of Judge Sulmonetti than any of these folks, because he just let you try your case.

Before that we had some very questionable judges. We had judges—I don’t need to name—who were alcoholics, incompetent. They went away, and this group came in. This group was complimented by Judge Jack Beatty, who also missed being a federal district judge because Bobby Kennedy got killed just before Judge Beatty was to be elevated. Then you had Cliff Olsen, my partner, who was president of the Multnomah Bar. Beatty, by the way, is a Princeton graduate, and very, very smart. Of course, Cliff Olsen was president of the Bar and a great litigator. Bill Dale was the partner of Tom Tongue—a great litigator. He was American College of Trial Lawyers, a Stanford graduate.
CH: This is an interview with Robert E. Jones in his chambers at the US District Courthouse in downtown Portland, Oregon. The interviewer for the US District Court Historical Society is Clark Hansen. The date is September 22, 2005, and this is tape three, side two.

When we last left off the other day, we were talking about the judges on the circuit court at the time that you came on to the court, and you were giving little profiles of those judges. I believe you wanted to continue with Judge Dick Unis.

RJ: Yes. Well, Judge Unis came on through the municipal court. Then he was on, at that time, the District Court of Oregon, which is a limited jurisdiction court, and then eventually on to the circuit court. When he got to the circuit court we had what I consider the strongest court in Oregon's history. We had Judge Jack Beatty, who was a Princeton graduate and a captain in the artillery in World War II. He, I believe, succeeded Arnold Denecke, who had been a partner in the Mautz firm, and went on to the [Oregon] Supreme Court as Chief Justice, but he had been a circuit judge. Then we had Bill Dale, who was a Stanford graduate, a star athlete, and an outstanding trial lawyer, and vice president of the Oregon State Bar. Then Clifford Olsen—he was my law partner and was president of the Multnomah Bar, and a very strong trial lawyer, as I mentioned earlier. We had Jim Burns, “James the Just” Burns—and he came on, I believe, in 1965. He was the student-body president at the University of Portland, the leader of his class at Loyola Law School, and a very distinguished scholar. He wasn’t a trial lawyer, but he represented the Oregonian and other media. Then we had Judge [George] Van Hoomissen, a full colonel in the Marine Corps decorated with the silver star, who had been the district attorney, and then he went on the juvenile court, and eventually over to the regular trial court. I’m sure I’ve left out someone, or several. Oh, Harlow Lenon was probably the most popular judge. He handled domestic relations, by choice, but he had a tremendous judicial demeanor. He was so bright. By the way, he had two silver stars as a tank commander in World War II, a real hero, and he’s still alive. But Harlow Lenon—everybody sought to get before him, because he’d never embarrass anybody, and if a lawyer goofed up, he’d say, “Counsel, let me call your attention to an obscure statute.” [both laugh]

Well, anyway, it was a powerhouse court, and it’s never been the same. I attribute that to not getting the leaders of the bar and the leaders of the trial lawyers onto the court with the rapidity that we used to. We still get some fortunately, like my son, who is a very strong litigator with almost twenty years of experience as a litigator and a professor of Law of Evidence. He just came on board this year. But they’re rare, and I attribute that to the fact that they consolidated the district court, which is essentially a low-limit civil court and traffic court, a misdemeanor court, and put it together with the circuit
court. I think that diminished the stature of the circuit court, in addition to the legislature almost totally neglecting the economic level of pay for state judges.

CH: So, the trial lawyers were not coming onto the court, in part, because of the pay, and also because of the—

RJ: Types of cases they were required to handle.

CH: Types of cases, because they were getting district court cases along with their circuit court cases.

RJ: Right. Instead of having a menu of very important civil cases and high-level felonies they were getting [chuckles] dog court and traffic court. Now what they’re doing to get away from that is hiring referees, at a very low pay, to take care of those minor cases—the Judge Wapner, Judge Judy\textsuperscript{5} type of stuff.

Judicial Transitions

CH: The consolidation of the courts came about for what reason, and by whom?

RJ: By the pressure from the district court judges to get a higher status.

CH: And who did the consolidation?

RJ: Just a lobbying effort in the legislature.

CH: So then the legislature passed something that said, "Okay, we’re going to consolidate these courts."

RJ: I don’t know of any sitting circuit judge that favored the merger. It’s a matter of politics.

CH: Right. Right. Now all these judges that you’ve described, did they come on to the court during the same period of time? There are quite a few judges there.

RJ: Yes.

CH: Why was there such a turnover—or was there an expansion of the court—that allowed so many new judges to be coming on in this relatively short period of time?

RJ: There was a lot of deaths and retirements, and also new judgeships created. I think when I started there were fifteen, and today I think there are close to forty in Multnomah County alone.

CH: Who was doing most of the appointing of these judges? Was that the governor?

RJ: It’s always been ninety-five percent of the judges are appointed by the governor and then stand for re-election. In my memory only two were ever defeated. I think we mentioned that earlier.

CH: Would you attribute the high caliber of these judges then, in part, to the appointments that Governor Hatfield was making since he was elected in 1958 and then held two terms. So from ’59 until he

Jones, Tape Three, Side Two 39
went into the [US] Senate in ’67 he was governor during this period of time. He would have been making many of these appointments.

RJ: Yes, and another powerhouse was Bud Lent—Berkeley Lent—who became chief justice of the Oregon Supreme Court. I think a lot of it was a combination of wanting to do public service and burnout. Being a trial lawyer is like being a professional football player or basketball player. You get only so many good years [laughs] unless you are a phenomenon like Bruce Spaulding or some of those. But it’s extremely hard work. It’s just like being in surgery day in and day out all day. But I do think most of them were motivated because of the types of cases we got then, and that you didn’t have to do domestic relations, you didn’t have to do probate or estate, so you didn’t have to do juvenile. So without the divorces, which they call “the liars and criers” court, [both laugh] you handled almost all quality cases. The people by then had been able to build up, I think, enough of an estate to carry them, to stand the cut in pay.

RJ: Right.

CH: What was the motive for doing that?

RJ: I think I got very involved with the Trumpeters group that I mentioned earlier, that we wanted to have moderate Republicans. We didn’t want a lot of socialistic programs that were promoted by some of the Democrats, and we didn’t like the “protect the businessman at all costs” that we saw run by the rich Arlington Club people. So, we wanted moderate Republicans as represented by Hatfield and Packwood and McCall. We felt that there was a real need to change the image of the Republican Party. So I got caught up in that, and was very privileged to run with such stellar people as John Mosser and Vic Atiyeh. They are clearly two of the greatest legislators we ever had.

RJ: Yes. It was the rich man’s party.

CH: The Republican Party had a much more conservative image earlier—then?

RJ: Yes. It was the rich man’s party.

CH: And even the Democrats had had a much more conservative image prior to 1956 when Pat Dooley was elected and became Speaker of the House, I believe. Of course, he later became a judge.

CH: But it was in that election of ’56 where the Democratic Party kind of flipped over to a more liberal side of things at the
urging of Richard Neuberger, who got people like Bob Straub to run for office, and so on and so forth.

RJ: I always thought that Bob Straub was a really decent person, and I didn’t consider him to be “a left winger.” I thought you could hardly tell him from a moderate Republican.

CH: Well they used to have the “Bob and Tom shows,” when Bob Straub and Tom McCall would be debating each other. They ran against each other, I think, three times for governor—at least two times, and maybe three. Well, Straub ran three times, because he eventually got elected. Their views were so similar.

RJ: Yes, that’s right.

CH: That there wasn’t much difference in terms of that part of their side. But the change in the Republican Party in Oregon—and Oregon had this reputation as being a progressive Republican state—was this something that was happening outside of Oregon, as well?

RJ: I don’t know. I really don’t have a feel for the national scope. We had Edith Green and Bob Duncan, who I think were probably as close congressmen as we have now with Senators Wyden and Smith. They agreed more than they disagreed. [They each have] a building named after them. But I’m not an astute political observer. I said I had the most undistinguished career in the history of the Oregon legislature. I served on some great committees—the judiciary committee, which was chaired by Bud Lent and was shared with Jim Redden and Mosser and John Dellenback—very distinguished people. I then had the privilege of serving on the constitutional revision committee, that was reviewing the commission’s work. I served there with people like Tony Yturri, a senator from Ontario, a famous Basque leader of the Republican Party. And really all of the heavy-hitters of the legislature served on that committee. But I was trying to decide what would I do after the legislature, at that point having the disappointment of having all of my bills killed, and contemplating going back into the litigation practice. I decided to become a judge.

CH: What bills did you have before the legislature in that term? Do you recall?

RJ: Yes. Some dealt with local situations as benign as an irrigation district in Washington County. The uninsured motorist bill, I was practically the father of, and I didn’t get it through. At the last minute it got killed, and it passed the next session. We were trying to raise the wrongful death limit; I think that at that time, if you were killed driving to Salem by a drunk driver that the maximum you could recover was $10,000 or $15,000. There was a cap, which is ridiculously low today. If you can imagine, at that point if you were one percent negligent in a case where the other side was ninety-nine percent at fault you recovered nothing. There was no comparative [cap] fault.
These caps were, in my mind, the babies of the Republican Party that was protecting the insurance industry and the business end of things. So in that sense, I suppose I was a renegade.

CH: But the strong group of people that were behind you—presuming that they were behind you, and maybe they weren’t—you know, John Mosser, John Dellenback, Vic Atiyeh, Bud Lent, Tony Yturri—were you able to persuade these people to support your bills?

RJ: Sometimes yes, sometimes no. The bills that they didn’t want to pass they would put into a burial committee and you wouldn’t see it. The bills that they did want to pass, Senator [Thomas] Mahoney put in his pocket and never let come to life in the Senate. So, I was not successful. None of my bills passed.

CH: The legislature has a strong speaker system. Who was the Speaker of the House?

RJ: Clarence Barton from Coos Bay. He was a character. He once hit the gavel so hard he broke it up there [laughs] on the podium.

CH: He was a Democrat?

RJ: Yes.

CH: I presume he appointed primarily Democratic chairs to the committee?

RJ: I don’t know. I seriously don’t know. I do know we always teased Bob Packwood for not being on Judiciary, but for being in Elections. [laughs]

CH: [laughs] Well Bob Packwood was another one of those Trumpeters.

RJ: Oh, yes, as was Lee Johnson who followed, and later became a court of appeals judge and advisor, aide to Atiyeh.

CH: Was this the same Johnson that was attorney general as well?

RJ: Yes.

CH: Did it have any effect? Did it influence you at all in terms of your career or your thinking about things, having had direct experience with the political system in Oregon?

RJ: Well I certainly became very well acquainted with the key people, including Governor Hatfield, and Vic Atiyeh, the people who later helped me, and Bob Packwood—all who were very influential in me getting every judgeship I’ve attained. All of them.

CH: That’s been true with a number of judges, hasn’t it?

RJ: Yes. They say, how do you become a judge? They say, you go to law school, pass the bar, know a governor or senator, and go to Grant High School. [laughs]

CH: [laughs] Go to Grant High School?
RJ: We had a majority; at one time, I think, we had seven Grantonians on our circuit court.

CH: [laughs] After having gone through the legislative experience, what did you see were the strengths and weaknesses of our system?

RJ: At that time I thought that the glaring weaknesses would let any reprobate like Senator Tom Mahoney get control of anything to the level that he did. I don’t know if you can slander the deceased or not, but I had serious questions about what was motivating him to do the things he did. I saw that there would be a group of people that would be able to steer—no pun intended—but that were in the farming, cattle, hog-raising business. If it had anything to do with feed, seed, and fertilizer, they always had the exception made that “this tax will not involve feed, seed, and fertilizer.” [laughs] We called it the Joe Richards, I think it was, or Joe Rogers, I forget the name. They just revered Staf Hansell, who sat in front of me. He was a hog farmer they said was one of the greatest legislators of all time. I didn’t think so, because he killed every measure that would give the judiciary any economic relief. [CH laughs] Although we were good friends, he was an enemy of the judges from an economic point of view.

CH: At this point you were representing—these were all single member districts?

RJ: Yes.

CH: And you were representing the entire county of Washington County?

RJ: Right.

CH: Now the districts are drawn differently. We do not have the same type of system. Do you feel we are better off, or worse off, for these changes?

RJ: I’m not a good observer of local politics any longer. I couldn’t even tell you who is running Washington County, or even my own Clackamas County, I’m ashamed to admit. So I don’t know.

CH: The reason why I ask is that when I was interviewing Vic Atiyeh, he lived in Raleigh Hills, which is a Portland suburb not far from downtown. But he was representing all of Washington County, as you were, and he saw that as being a very strong point for the legislature, because Washington County, at that time a large part of it was agricultural.

RJ: Right.

CH: So beyond Highway-217 in Beaverton you started getting into this rural area.

RJ: Right.

CH: So your understanding of the issues of the legislature had to be much broader, and you were representing people from

---

**Representing Washington County**

CH: And you were representing the entire county of Washington County?

RJ: Right.

CH: Now the districts are drawn differently. We do not have the same type of system. Do you feel we are better off, or worse off, for these changes?

RJ: I’m not a good observer of local politics any longer. I couldn’t even tell you who is running Washington County, or even my own Clackamas County, I’m ashamed to admit. So I don’t know.

CH: The reason why I ask is that when I was interviewing Vic Atiyeh, he lived in Raleigh Hills, which is a Portland suburb not far from downtown. But he was representing all of Washington County, as you were, and he saw that as being a very strong point for the legislature, because Washington County, at that time a large part of it was agricultural.

RJ: Right.

CH: So beyond Highway-217 in Beaverton you started getting into this rural area.

RJ: Right.

CH: So your understanding of the issues of the legislature had to be much broader, and you were representing people from
these other interests. Therefore, issues were not so divided between the urban and rural as they are now, which they talk about as this great urban/rural divide. Did you see that?

RJ: I see Washington County as a completely different county now than it was then.

CH: Very true.

RJ: If you drive out, you can’t believe all of what was farmland are now townhouses and industrial parks and the like. I had the advantage that neither John nor Vic—we all lived within a couple miles of each other. We lived in West Slope and John lived just up across Canyon Road. But my roots were Forest Grove—where all my family went to school, were raised—and Beaverton, which was then out and away—it was a small town still at that time. Then it was great to go out to the grange halls and out to Timber. My campaign committee would go out in all these wild places putting up signs.

I do have one quick story. When I was running for office, I had represented a guy who had got unhappy with another man, and he hit him over the head with a sledgehammer. He killed him and was charged with murder. But the other guy was an aggressive fellow, and this happened in a downtown hotel. Anyway, I got him off. He didn’t have any money to pay me, and at that point we didn’t have appointed counsel. So I said “Okay, you work it off.” So I took this fellow out. We were out in the farmlands of Washington County having him with a sledgehammer pounding my political signs into the ground. [both laugh] I thought, much better use for that sledgehammer. Anyway, we went out and we’d ask the farmers’ permission to put up my signs. My main supporter was Leon Davis, who was a long-time person from Hillsboro, who had known my family. So he was very cooperative. Since you wanted to sound like an incumbent, but I wasn’t, we came up with “retain responsible Republican leadership.” We had a big “retain” and under that “responsible republican leadership,” then it said, “Elect Robert E. Jones.” I don’t know if that’d pass muster today. [both laugh]

---

Oregon Evidence Code

CH: In addition to the constitutional committee and the other committees that you mentioned, you were also on the—and I’m not sure if this is connected to the legislature or not—but the Oregon Evidence Revision Commission, you were chairman of that?

RJ: Yes. That was a totally different deal. That was after I was a judge.

CH: What period of time was that?

RJ: Seven years that Judge Unis and I worked together on that with the most stellar trial lawyers and trial judges in the state. It was Saturday after Saturday after
Saturday that we worked on that. Then Justice Unis and I were designated to carry the Oregon Evidence Code through the legislature. So we went to all the meetings of the House and the Senate explaining the provisions of the Oregon Evidence Code. I guess that’s why later we received a commendation letter from the chair of the Senate Judiciary [Committee] saying that he considered us to be the co-authors of the Oregon Evidence Code. Well, that’s not fair to the dozen other people that also worked diligently on the code. All made significant contributions to the code that exists today.

CH: How so?

RJ: Well, for instance, it’s technical stuff but [take] habit evidence. Burl Green, who I mentioned was such a prominent lawyer, said it has to be a unique habit. It should be, but we don’t have what somebody does habitually good, like you stop at all red lights. It’s if you [laughs] ran all the red lights that would be different. So we diverted from the feds. We did not adopt an under hearsay, an exception of present sense impressions, which was the number one exception under the federal law.

CH: What is a present sense?

RJ: A present sense means an unexcited utterance while perceiving an event. So I said this gets to be technical stuff and not interesting to the average person. But I can say that we also didn’t want to adopt the medical treatise exception under the hearsay rule, because again the plaintiff’s bar—or the defense bar, rather—I believe it was Don McEwan who didn’t like this one, didn’t want to be able to prove a malpractice case with a medical book.

[End of Tape Three, Side Two]
Criminal Sentencing

CH: This is an interview with Judge Robert E. Jones in his chambers at the US District Courthouse in downtown Portland, Oregon. The interviewer for the US District Court Historical Society is Clark Hansen. The date is September 22, 2005, and this is tape four, side one.

So, we were talking about some of the things that you had done [when you were in the legislature].

RJ: Right.

CH: But then, some of the other things that you did in terms of commissions. You were also on the Oregon Commission for Prison Term and Parole Standards.

RJ: Yes.

CH: When was that?

RJ: That, again, was while I was on the circuit court. At that time, I believe the chair was Dave Frohnmayer to begin with—no, I guess I was the chair. We were trying to set up standards that would make some sense, because I had been a very tough sentencing judge. I’d been chief criminal judge in Multnomah County, I think, seven different terms. I was taking between 400 and 500 pleas a month and sentencing them, which is incredible.

In 1970, I became the second chief criminal judge—Jack Beatty preceded me. At that time, the district attorney was setting the calendar and the cases were getting very antiquated. There was a lot of cherry picking being done in the prosecutor’s office, and they’d let the dogs lie there and neither be dismissed or tried. So, believe it or not, I ordered the district attorney to physically put the files all on the floor in his office. Then we picked them all up and took them to the seventh floor where we inventoried them, and found cases that they had tried, had been appealed, had been reversed, and were ready for another trial, but had been lost and fallen through the cracks. We found cases that were over two years old. A lot of those were dismissed for lack of a speedy trial. In any event, we just cleaned house. It made me very unpopular with a lot of people because we just changed the whole system. We changed the time from indefinite arrest to trial to the point that we got it down below sixty days from arrest to trial, and at one point an average of forty-three days. But it was a killer assignment, you know, day in and day out. One day I did thirty-three felony pleas in one day. Especially at Christmastime, you just get so mentally bogged down, you just wonder if there’s another decent person left in the world.

I also got a reputation to the point that the cons called me the “Ice Man.” I don’t know how that moniker started, but it certainly has lasted [laughs] through
the years, because I just got tired of these people that were committing these terrible crimes and getting off with soft sentences, or if they got a sentence they’d get paroled. I was sentencing these people to twenty years, and then I’d say, “Okay, you’re going to do twenty years in prison, but because this is drug-related, we’ll put you on probation now and send you to a hospital environment or to a drug rehabilitation center.”

We tried the state hospital. We tried the Conquest Center in Seattle. We tried the Freedom House in Portland. We tried the federal program under the Alpha House. We tried New Beginnings for the women. We tried all these things, and then it would seem like I was running about a ninety-nine percent failure rate. So when they came back I said, “Remember what I told you: that if you go back on the junk you will do your time. Now your sentence is twenty years.” Well, they couldn’t believe it. So an awful lot of people got some horrendous, draconian sentences, but they’d been given the opportunity out. Well, unfortunately, that didn’t work. Then, to compound it, the parole board was—if you gave somebody a twenty-year sentence you might turn around and see them on the street in twenty-four months. It was a vicious circle.

So we formed the Prison and Parole Board Revision [Committee] to try to set some standards to stop this revolving door, and we had some very wonderful people to work with—citizens as well as legislators and judges. Then we went from there to setting sentencing guidelines. That was under the chair of Dave Frohnmayer and Jack Beatty. So, I guess what I learned in retrospect is that we judges are lousy sociologists. [laughs] I tried everything I could think of, including taking drug addicts out to high schools, grade schools, conducting “you be the judge” programs all over the state, where we would set up, give simulated pre-sentence reports of drug abusers and ask them to sentence the individuals, to let them know what it’s like from the judge’s end.

Then we set up a program at my home, because we had a paucity of probation officers who were handling the women felony offenders. All they were doing was just reporting instead of getting any counseling. I think we had forty-four volunteers in probation, and they were trained in our home on a monthly basis. They’d all take assignments of one to three women felons. They would counsel these women who, some were college trained, some who had never been anything, but they’d been mothers and parents. One young woman had low esteem because she didn’t have a front tooth. You can imagine how distracting that would be for a young woman to walk around, you’ve seen them on TV. So, what did we do? We got a dentist friend to donate the time and the tooth, and got her a new tooth, and so far as we know she’s done well ever since. In fact, the lady who counseled her still keeps in touch with her.

The women taught the offenders about birth control, about personal hygiene, about not impulse shopping, about dieting, about regular exercise, about child care, the horrors of child neglect, since most of them had been neglected children. It was
a spectacular success, but the problem is our volunteers burned out. They’re doing this and they’re going into some very dangerous parts of town. I was catching a lot of heat from the spouses who were worried about their wives being exposed to, visiting these people in their homes, or wherever they were living. So we got it transferred over to the proper authority, back to the government. They continued the program for several years, then I think it essentially burnt out and went back to whatever they’re doing today. But we did try to do a lot of things. If I had to do it over, I would think that’s not the job of a judge.

CH: Right. But there is some governmental agency that has assumed those kinds of responsibilities?

RJ: Well, I, everybody thinks they’ve got a great idea. You read about it now, it’s the “Drug Court.” So, Judge Redden is now running a drug court, which matches the drug court that Judge Harl Haas ran, and I think it’s doing the same mistake that we went through. You’ll see a few successes, and you’ll see the losers, and then you wonder—who should be doing that? I don’t see that that’s the role of the judiciary, to get involved in corrections.

CH: Right. But there is some governmental agency that has assumed those kinds of responsibilities?

RJ: Although I confess to have been one of the worst offenders.

CH: But it’s still something that did help some people.

RJ: Yes, it definitely did.

CH: You mentioned that also you were involved with a revision of sentencing guidelines with Jack Beatty and Dave Frohnmayer.

RJ: Right.

CH: When was that?

RJ: That was towards the end of my tenure on the circuit court. So, since I started sitting on the Oregon Supreme Court in December of ’82, this would probably be the late 70s or early 80s.

CH: You hear so much about the federal sentencing guidelines—

RJ: That were. [laughs]

CH: That were. [laughs] How did your attempt at sentencing guidelines here on a state level compare?

RJ: I don’t know what the comparison is to the state level since I really never had to work with the state guidelines.

CH: Oh, because you were just revising them then, and—

Sentencing and “James the Just”

RJ: Yes. There was one other thing that we did which I do think is quite wonderful, is that under the originator, James M. Burns—“James the Just”—we
started setting up sentencing councils. Judge Burns said we should have at least two other judges look at the pre-sentence reports of every felony offender, so that you wouldn’t get somebody running off, being too liberal or too strict. That was unique to the nation. Then when I was chief criminal judge, I had a sign-out for sentencing after taking the pleas, the cases, to sentencing panels. My panel was Bill Dale and Cliff Olsen. We had Portland State do a study. We’d all write down what we thought the sentence would be. We would discuss it, then we would write down what our consensus was. Then we would write down, finally, what was the actual sentence after we heard all the proceedings. It turned out over a three-year period of time that I changed my sentence substantially in a statistically meaningful way, thirty-five percent of the time. So that means that it had a moderating effect in both directions. Then, we had all of the judges participating in that, but once again you start something and it’s working, then the judges would say, “Well, that’s an awful lot of work, to read everybody else’s pre-sentence reports. I’m overworked already,” and it petered out. But it lasted for at least twenty years.

CH: Of course, Judge Burns then went on to the federal court and became involved with the sentencing.

RJ: Yes, and he brought that procedure here when he came on the court in 1972 and it exists today. The judges meet every Monday morning in our sentencing councils. So far as we know, it’s still the only one in the country.

As a corollary to that, Judge Burns and I, as circuit judges, taught at the National Judicial College. Then he continued to teach there after he was a federal judge. We would bring in brand new judges, who had just been appointed, for their first month-long training at the National Judicial College in Reno. We would show them a movie of the life of a person who had stabbed another guy in a bar and killed him. We told the audience—which would run over 200 judges—we’d say, “Now you write. You’re unfettered by any statute. Just do what you feel should be the appropriate sentence for this individual having seen this movie.” The movie was a killing and it wasn’t in self-defense, although the victim was kind of a bum, well, an unsavory character.

We found year after year that we’d do that the ranges would run from probation to death depending upon which judge you caught. We’d even have probation to death in New York. We’d get a liberal from Manhattan and a hard-nose from Syracuse, and you’re talking about two different worlds. So that gave us our start to teach the subject, or present the subject, all for the next thirty days until we could have people start thinking in less aggressive tones. Bless his heart, he kept that up for, I think, twenty-five years. I think he got an award. I burnt out after about three years because my field was evidence. [proudly] I had the privilege of having Sandra Day O’Connor as one of my students [laughs] in Evidence. She was a state judge then.
Judicial Expertise

CH: It's interesting how judges acquire expertise in a certain area of the law—Judge Burns in Sentencing, you in Evidence. When would you say you were considered to be an expert on evidence?

RJ: I'd say that that was my favorite subject. I had to learn Evidence as a trial lawyer, so I kept up and made a special study all the time I was a lawyer. Then after I became a judge I became an adjunct professor at what was then Northwestern. Tom Tongue, Sr. was still teaching Evidence, so I taught Insurance Law and, of all things, Mortgages and Secured Transactions. Now that violates the Eighth Amendment about cruel and unusual punishment—to teach Mortgages and Secured Transactions from eight to ten PM on Friday night, [both laugh] especially when the teacher didn't know a heck of a lot about the subject. But Denton Burdick, who was a professor, lost his voice and John Gantenbein—the registrar or whatever you call them—asked me would I please take over the subject. [laughs] I thought, well it's a little more income, which I desperately needed at the time, and I did it, foolishly. But anyway I survived that. I enjoyed the Insurance, because I'd had a background in that, but I was waiting for the slot to open up.

So when Tom Tongue went to the Supreme Court in 1968, I took over the course, and then taught it until my son took over eleven years ago. But then classes got so big when we moved to Lewis & Clark that I'd have 120. So we split them up. I got Justice Unis to take half of them. Then I was teaching five hours a week every week, and sometimes six, which made you a part-time full-time professor, because those were long classes. I taught evening division for many, many years. Then I got Dick Unis to come in—oh, I was teaching Trial Advocacy, which was a three-hour course, and Evidence was two hours. Then Dick Unis took over the evening Evidence session. So I would teach morning Evidence—going to work, eight o'clock classes, and then three-hour classes once a week on trial advocacy. That I've kept up off and on. I still pinch-hit when needed, whenever Jeff has a conflict. That's been a pure joy.

CH: That makes for very long days what with your job here, and—

RJ: Yes. Yes it did, and the pay of the adjunct professor violated the Thirteenth Amendment against involuntary servitude, [laughs] service without pay. The pay was very low, but at least it was something. Thanks to the administration there, they gave my son a complete free ride to undergraduate school at Lewis & Clark because I taught so long, which is a full-faculty perk, so I can't complain about it. [laughs]

Circuit Court: Murder Cases

CH: No. During your tenure on the circuit court, what cases would you say were most important that came before you?
RJ: The very most important one that was the most notorious murder case, I think, in Oregon’s history, was the case of the State of Oregon vs. Colin Hockings. He’s a Native American Indian. He was working in a state office. This happened out in Southeast Portland. If you could stomach it, I would show you my death box. In teaching Advocacy, I make my students look at the murder weapons and the autopsies and the dead bodies, the victims, as they’re first found and after they are autopsied, because they’ve got to do that if they’re going into the prosecution or defense of criminal cases.

So, I have all the photographs to this day, as well as the sketches of all the key players. The prosecutor was Mike Schrunk. The defender was Steve Houze. Don Bourgeois and Steve Houze had just gone to work with the public defender under Jim Hennings, and here’s this kind of scruffy looking kid with long hair. [disapprovingly] I thought he should have cleaned himself up for the trial, but he happens to be, I would say, Oregon’s leading criminal defense lawyer at this time, and a person of great talent and intellect and integrity. And Don Bourgeois has always been a very stable guy, and of course we all know Mike Schrunk.

Well, that case shaped my thinking later on a nationally recognized case—the Brandon Mayfield case. Because that case of Colin Hockings, somebody broke into a home, in not far out Southeast Portland, in a very nice neighborhood. There was a young couple there who had the neighbor children come over and stand by until the school bus came by, because the parents went to work a little earlier, and there was a baby in the crib. So, the parents were just getting up, shower and shaving, and this person, the murderer, broke into the home and for no motive that’s ever been found, he hog tied the mother and then killed her with a hammer until her brains were thrown up to the ceiling. He then went in the bedroom and hog tied the father and killed him. They found phosphate in his rectum but they were never able to tie it up with anything, and so they never brought it up in trial. Then he did the same thing and killed the two little boys with the hammer. So you’ve got a quadruple murder, and you’ve got this guy who is the most stoic person you could ever meet. So, all he’s told the police, he said, “You’ll never find any identification of me in that home because I’ve never been there.”

Well, when they did the investigation, the police found a fingerprint on the dresser next to the father’s head, and it turned out to be Colin Hockings’. So the local forensic people, on a case of that magnitude, sent it back to Washington DC, to the FBI—does that sound familiar? And they verified that this was indeed his fingerprint. So we went to trial and the entire case was circumstantial. This guy had worked with the wife in the same state agency. He had no prior criminal record. He had a prior episode where he had been up all night smoking marijuana and broke into a home in the morning. But other than that, which was later ruled to be inadmissible, the case was totally solved by one fingerprint. Colin Hockings was sentenced to life imprisonment, where he is to this day. I have seen him a couple
of times when I visit the penitentiary. He doesn’t look at me and I’ve had no communications from him, and we have not had one leak from him as to give us any clue about his involvement. So that was a real whodunit and it was in the headlines every day.

As you know, when we had the Brandon Mayfield case recently where they had the false identification from bad fingerprint work by the FBI, one of the reasons that I held Mayfield was that the FBI was 100% sure that the fingerprints they had found on that satchel that carried the detonators from Spain were Mayfield’s. I commented at the time, I said “I’ve handled a murder case where the only connection was the fingerprint.” So that was certainly the motivating factor, one of the motivating factors for holding him as long as we did.

Well, that was a key case. Another key case was another murder case. This involved a fellow named Christopher. Christopher was a member of the Outsiders motorcycle gang over in North Portland. The Portland police decided to raid the place, and in the raid, Christopher, who was upstairs, took a shotgun and killed this Portland police officer who was in the raiding party. We had all these Outsiders—motorcycle gang members—and they were real bums, just animals, and their girlfriends, all I can say is, they were as rugged or unsavory as the gang members. So we tried the case—

CH: It was called what?

RJ: State v. Christopher.8

RJ: Yes. I still have the transcript of it. I tried to write a novel based on it and didn’t finish, so I offered it to Phil Margolin, because it belongs on the [laughs] bestseller list. So, we tried the case to a jury, it’s defended by DesConnall, who is the former prosecutor. In that case, Christopher made a pretty good witness, but we had all the stuff—what the Outsiders were doing; you know, feeding mice to their pet snakes and pythons, and all the other stuff, their drug connections—

[End of Tape Four, Side One]

---

Circuit Court: Murder Cases, Cont…

RJ: Are we on? Well, for Christopher, we try him. The jury felt that because it was not pre-planned, because it was a knock-and-announce raid, that he acted spontaneously, not in self-defense, but not with premeditation. So they convicted him of manslaughter one. I sentenced him to the maximum provided by law. So we went along, and while the appeal was pending, John Bradley, Mike Schrunk’s chief who prosecuted the case, came down to see me and said, “Judge, we want you to immediately release Mr. Christopher from prison.”

I said, “Why?”

And he says, “Because we found that our own police officers and this Mormon boy who was the murder victim had gone there with Sergeant Gearhart and salted

Jones, Tape Four, Side Two  53
the place.” The police had brought their own drugs to the bikers’ place, planted the drugs there, planned the raid, lied to the magistrate to get a warrant based upon lies, and essentially were there as trespassers and set up a fraudulent raid. Well, I released Christopher. He left for his home back in the Midwest. I see Des Connall from time to time, and he said as far as he knows he’s been a law-abiding citizen ever since, and we’ve never heard from him again.

CH: Amazing how things can switch and change in such a short period of time.

**Black Panther Cases**

RJ: Sure. Another case that was very interesting involved the Black Panthers. In that case, the Rose Festival was on and this young fellow threw a firebomb into the Grandma Cookie Factory right over here across the river and burned it to the ground, put 220 people out of work. Nobody saw it except one little boy. So we come to trial, and who’s in my courtroom when I get there but the entire Black Panther group, filling every seat, standing elbow-to-elbow, to intimidate any witnesses and probably the jury. Well, they’re members of the public, and they weren’t saying anything. They weren’t creating a scene like we’d had with the Outsiders, who were running people up and down the elevators, and French-kissing each other—the men—in the hallways, and doing all sorts of raucous stuff. In this case they were just there with steely eyes. So we get into the trial and we got the little boy on the stand. They say, “Who are you?”

He said, “I’m a little boy.”

They said, “Did you see anything?”

“Yes, I saw a person throw a firebomb into the Grandma Cookie Factory.”

“Do you recognize that person in this courtroom today?”

And he looks around, and he said, “No, I don’t.”

“But, did you recognize somebody right after the event and tell the police who it was?”

“Well, yes,” and we have the report here.

“Well, yes, I did do that. But, Judge, can I please leave now?” [laughs] So, we let the little boy off the stand then called the police officer, and the police officer said, “Yes. The little boy identified the defendant and described him.

“Objection: hearsay.” I look under the state law. That is hearsay under Oregon State Law, but under the new federal rules, this is an exception to the hearsay rule under prior identification. So I figured, well, it’s time to get into the twentieth century. So I adopted, for the first time, a new rule of evidence for Oregon, without going against ancient precedent that said it was hearsay. I allowed it; it was upheld.

CH: It was upheld?

RJ: It was upheld. He, so far as I know, served out his full term, which was very
substantial. Well, Virg [Virgil] Langtry had another case involving the Black Panthers right down the hall. He saw what happened in my case and he didn’t want that. So he went to the Multnomah Club, met with the Oregon Duck Club, and invited them for a day in court. So when that defendant—which was another set of facts—came on trial, he had the entire group of ex-football players from the University of Oregon sitting in every seat in his courtroom, [laughs] and there was no room for the Black Panthers to come in and try and intimidate the jury. They were left out in the hall. [both laugh]

Which I thought was very clever on his part. Involving the Black Panthers. That’s when I also got involved with the father of Patrice Lumumba Ford—one of the Portland Seven, that we just got through trying and sentencing, and is now doing eighteen years in the federal penitentiary—Kent Ford. He was the leader of the Panthers. So at that time they wanted to block off, for some reason, entry to the McDonald’s restaurant over on the east side. They were all crowded together, and I said, “You can’t do that; you have to leave space. You can go through peaceful picketing, but you must allow the customers to come in and out without harassing them.” So I assumed that that was happening. Unfortunately—and I don’t know who did it, I’m not saying the Black Panthers did, and I’m certainly not saying Kent Ford did—I’m just saying that there was an unknown explosion that followed shortly thereafter, and it ceased to exist. But I’ve never had any problem with Kent Ford. The only times I’ve had him before me he has prevailed legally. But in the Portland Magazine, the other day, he called me his nemesis. [laughs] So, I don’t know. He’s a very bright guy, and his wife is a very bright person, and the son speaks fluent Chinese and is a very, very bright guy. So I can’t comment anything more about the son because that case is on appeal right now.

Well, we can go on and on with the different cases. We had the highest verdict in the history of Oregon—

Largest Monetary Verdict in Oregon

CH: Highest verdict?

RJ: In a civil case. At that time it was 600-and-some thousand, by a guy who had lost both hands due to a downed electric wire that was caused by someone else’s negligence. Burl Green was the plaintiff’s lawyer, and the guy was so terrific. There he was on the stand, and he didn’t have either—no hands. He [Green] said, “What are you doing?”

He said, “I’m running my farm on my tractor.”

He said, “Well, how are you getting along in life?”

“Oh, just fine. You know, they got me these hands if I need them, but I can run my tractor with my arms, and I’m just doing fine.” Well the jury just loved the guy; he didn’t whimper or whine. He put on a straightforward case—big victory for Burl, and it was paid.

CH: I would think that at the moment
at the beginning of the trial when you’re asked to—I don’t know if they actually do this or not—put your hand on the bible to swear in, that something like that would be a very dramatic moment.

RJ: We never use a bible to swear people in and we don’t have them swear, “So help me God.” We just say, “Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?” Then that eliminates any problems, it’s a perfectly valid oath, and then you don’t get in this hassle that—

CH: Do they raise their hand at that moment, when they’re doing that?

RJ: Yes.

CH: So he would be raising his?

RJ: His stump.

CH: His stump.

RJ: Yes.

CH: Yes.

______________________________

Circuit Court Administration

RJ: So I guess that’d be a good summary of the, of nineteen-and-a-half years of fabulously interesting work on the circuit court.

CH: What was your staff like at the time? What did you have for a staff?

RJ: Well, my first staff consisted of my former secretary, court reporter Mary Templeton, the tough old Marine who had a tremendous capacity of non-verbal conduct. Did we cover that?

CH: You mentioned Mary Templeton.

RJ: If some defendant was getting up there with some cockamamie excuse or alibi, she would [laughs] not say anything but she’d hit her hand on her forehead, and [laughs] roll her eyes back. I had to caution her, “Now, Mary.” She was the first woman to wear a pantsuit in the Oregon Circuit Court, because only dresses were allowed. I hope that feminists would enjoy that, because she was a real leader. She wore wild hats. I hated to let her out during hunting season [CH laughs] because she’d have pink peacocks on. But she was a tough old Marine, and was married to a Marine, and we worked together for a quarter of the century—member of the family.

My first law clerks were Dick Noble—Richard Noble—who became a multi-millionaire medical malpractice lawyer. He’s been retired for several years. He also is an opera singer. The other clerk was Ed Warren, who became the chief of his panel on the court of appeals. We just saw him this last month. He’s now living in Florida and comes to Oregon in the summertime. He’s retired. So they’re both the top of their class. So I started out with two law clerks and Mary was my court reporter and secretary. Then I went to one law clerk and a secretary, and Mary being the reporter. So I had wonderful law
clerks throughout the years. There are just too many to mention. We had them at my investiture here, and my retirement party here, and they put on robes and [sang] songs to tease me, but a great group. My one motto is, always hire law clerks who are smarter than you.

CH: [laughs] So, looking back then, over those years, as you compare it to sitting on the federal court, what do you see as the difference in your life between the way you lived your life at that time, and the nature of your work at that time, and the nature of your work in life on the federal bench?

RJ: It’s the old cliché, night and day. Here we have all the resources in the world. You can see beautiful chambers, beautiful courtrooms, a high-tech courtroom, real-time reporting, all the law books—as you can see, I’m the repository of all the Evidence books in the library, so I have all my babies here. I have a fabulous staff: a judicial assistant/secretary [Cindy Schultz], two full-time law clerks [Candy Wells and Amy Blake], two externs, and cases that are of national significance. In many cases, very high profile cases, much more challenging cases: anti-trust, intellectual property, patent infringement and the like, copyright law, admiralty law. I try to get all those I can get. And then a full twenty-five percent of our calendar are employment cases. We have, of course, some very significant white-collar crime cases. We had the Eastern Oregon caper. We had 5 million documents with our high-tech court. We were able to scan those and reduce them down to about a thousand documents we actually used. We used CD-ROMs to pick up the—the jurors had about a thousand hardcopies on top of that. The case was scheduled for four months; we tried it in sixteen days, and in sixteen days the jury saw 25,000 electronic images on their own monitors in the jury box. The case was beautifully tried by the prosecution that had everything. We had probably five people assisting on that end, with the paralegals and the assistant US attorneys assisting the lead attorney. We had the media specialists on both sides that would coordinate the visual presentations. We took testimony through television conferencing from witnesses out of state.

CH: So many, many different—

National Federal Cases

RJ: Yes. Then we have these mega-cases. In that case we had five defendants. I’ve had as many as seventeen defendants. You know, you have seventeen non-English speaking defendants, you’ve got to have seventeen interpreters, seventeen defense lawyers, five prosecutors. Where are you going to seat them all? [both laugh] With the high profile cases—the Portland Seven—just managing the media, we would use the big ceremonial courtroom up on sixteen, and fill the jury box full of the media people. We would pump out into other courtrooms the proceedings so those who couldn’t fit into the courtroom could see them from other courtrooms.
In the breast implant litigation, we were with Judge Weinstein in New York, the first significant use of our own expert witnesses. We hired our own specialists, not to use as trial witnesses but to use for screening scientific evidence. My cousin, Dr. Richard Jones, who was Linus Pauling’s protégé, and was head of the med school before Lasiter, and head of the BioChem Department up there forever, and is recently retired—he was an MD and a PhD. I said, “I want a rheumatologist, an epidemiologist, a polymer chemist and an immunologist who are unconnected with the law.” He picked them out for me.

We couldn't use any rheumatologists from Oregon because all eighty-eight of them had signed on for the defense as to whether the silicone in breast implants causes atypical connective tissue disorder. They all said it did not, except for two of them, who were in the plaintiff's camp. So, we couldn’t use any locals because they’d either committed themselves in a big ad in the Oregonian, or had committed themselves to the plaintiff’s side. So we got a professor/practitioner from the University of Washington. We got the head of the Reed Chemistry Department as the chemist. We got a PhD immunologist from Lewis & Clark. We had an epidemiologist from OHSU. Incidentally, we ended up teaching the class to med school students after the trial [laughs], because we got so immersed in this stuff. We could tell them about the medical-legal aspects of epidemiology.

So then Judge Weinstein used Dr. Richard Jones for his panel. They picked out another panel in New York. We worked and coordinated, and both panels came up with the solution that atypical connective tissue disorder is the plaintiff’s lawyers’ invention. It doesn’t exist in real science. We finally convinced the person handling the national case, Judge Pointer, to use a panel, and he did. We did our little thing in four months and came up with the same solution as Judge Weinstein. So we threw out all of the cases—hundreds of them—that we had from around here, and he threw them out from the New York area, or the East Coast area. Finally Judge Pointer appointed his group and they spent two years and over $2 million—we spent $85,000 in contrast—and came up with the same solution. In the meantime, the scientists in England did a similar study and they came up with the same solution, but after us, and before Pointer’s group finally got it together. So, that eliminated over 300,000 claims nationwide. Perhaps, internationally, it could be close to a million. That’s big stuff [laughs] and there was great satisfaction, and that was the end of those cases.

I just finished the claims of 6,000 Farmer’s Insurance adjusters that were claiming overtime pay under the Fair Labor Standard Act. This was assigned to me, not locally, but from the multidistrict level group which meets in Washington DC.

CH: But this is on the federal bench.

RJ: Yes. You asked me what’s the difference.

CH: Yes.
The difference is we’re dealing with national cases now. They were impressed with the way we handled the breast implant stuff; I went back and lectured to their MDL [multidistrict litigation] group twice on handling mass torts. As a result, they assigned these MDL cases. That’s where I picked up this Farmers litigation. We just finished that case. I allowed it to some and disallowed it to others. I’m not positive who won or lost in [chuckles] the long haul, but both sides are appealing. I awarded benefits of about $58 million. The attorney fees requests are up over $20 million.

We had the Louisiana Pacific litigation. In that case I was able to, again, hire a special master, my dear friend Dick Unis—Justice Unis—and my little joke is he had six months to go on the Supreme Court before he retired at a very modest retirement, on the Oregon system, after thirty-some years of fabulous service. I said, “How would you like to be my special master?” I called him on the phone. “Pay: $200,000 a year, guaranteed for five years?” [both laugh]

And he said, “Bobby, I just quit.”

So he did, and he took over. We just finished our seventh year—he says it’s the ninth year—but we’ve just exceeded 200,000 claims of defective Louisiana Pacific siding. Thanks to his genius the people actually got a recovery instead of a coupon. So I think that the average return was between thirty-five and forty percent of the loss. The attorney fees in that case I think were $28 million. The pay-off is approaching the billion-mark by the time we get through everything, the payments and the costs of all of the adjusting of these nationwide.

So those just give you a feel. You say what’s the difference? Pretty close to night and day, isn’t it?

---

Oregon Supreme Court

CH: Yes. But after the Circuit Court you then went on to the Supreme Court.

RJ: Yes. I think we kind of jumped—you asked me what’s the difference between the trial courts. Well, we’ve compared the trial courts, and we can start talking about the Supreme Court if you want.

CH: Well we have a little bit of time on this tape. We could get into that.

RJ: Okay. Having come in second a couple of times for this federal job, I had always thought that this was my premiere spot where I wanted to be. I turned down three appointments to the Oregon Court of Appeals under three different governors. Tom McCall asked me to be on the original court of appeals when he formed it and I turned that down. Then Bob Straub asked me to be on the court of appeals. Then Vic Atiyeh said, “If you want to get on the Supreme Court you’d better serve in the court of appeals.”

I said, “I’m not going through that punishment.” [both laugh] I didn’t want to sit in a court of limited jurisdiction and have the Supreme Court looking over my shoulder. It’s a real boiler factory
down there in the court of appeals. It's the busiest court in the United States, and I think the judges there do miracles. I have the highest respect for all of them. But it was not the court for me. I like the people and the action—or I wanted to have the last word. [laughs]

So Vic first appointed Jake Tanzer and Ed Peterson, then Wally Carson. At that point, I was getting discouraged because I thought I'd earned my stripes. Then Vic came around and appointed me, which was a godsend, because I'd done my duty on the circuit court and then some. I wished this had happened sooner but, you know, you take life as it comes. I was delighted to serve on the Supreme Court. I started in December as a pro tem and then my official term started the first of January of '83, so I actually started writing opinions in December '82.

The first opinion I was assigned, I think it set an all-time record for the Supreme Court, in, I think, twenty three days from the time it was argued to the time the opinion was published. I tried to set that as a pace. I felt the Supreme Court was much too slow in getting out their work product and keeping stuff under advisement. So that first year, I believe I wrote thirty-six opinions. That would be unheard of today. Not to sound braggy, but I just think the court should be taking more cases and writing more. I do see, especially with the recent court, an uptake in production. For a while there, it looked like all they were taking were ballot titles, and being very slow about getting stuff out. But it was exciting. I was able to write almost all the evidence law because I had Bud Lent—who was a dear friend—who'd assign out the cases, and then Ed Peterson, who was my aerobics partner along with Wally Carson down at the YMCA. They had the three of us, and twenty beautiful young women, which made it very much of an incentive to get my exercise in. [both laugh] They had a tendency to assign me the evidence cases, so I was able to write almost all of the evidence cases of significance.

Then, for some reason, we also got assigned a lot of the first employment cases, because up to then employment cases were zilch. Then we got to write the seminal cases in employment law, which we cite to this day. I also had enormous battles with Hans Linde who has a completely different mindset than mine. I'm much more conservative, he's much more liberal. He's very bright and we consider ourselves friends, but we did have our clashes on the court.

Bud Lent was a genius. He had total recall. He would get to work first thing in the morning and have every case read and understood. We had Wally Carson, who is probably the world's sweetest man, and a great friend. We had Ed Peterson, who is just probably one of the most outstanding justices we've had on that court. He could do everything—concert pianist, jazz piano player, French horn player in the symphony.

[End of Tape Four, Side Two]
Oregon Supreme Court Cont...

CH: This is an interview with Judge Robert E. Jones in his chambers at the US District Courthouse in downtown Portland, Oregon. The interviewer for the US District Court Historical Society is Clark Hansen. The date is September 29, 2005, and this is tape five, side one.

In our last session we were talking about your tenure on the Oregon State Supreme Court, and you had been talking about Bud Lent and Ed Peterson and Wally Carson and some of the other people there that you had—I think it was in your first year that you had thirty-two court opinions, which would be unheard of now, that kind of productivity. But you were starting to talk about Doc Campbell, so I thought we might begin from that point.

RJ: Well, fortunately with Doc, and with Justice Peterson’s assistance, we created the Oregon Court Historical Preservation Society. Then we formed a corporation and we got donations, and in the process interviewed the Eastern Oregon judges—or cowboy judges, the John Day judges—which included, prominently, Doc Campbell, also known as Bob Campbell, and Cliff Olsen. Doc was a cowboy in every way. He wore cowboy boots up on the trial bench as a trial judge, and he kept up that same style in a very modest chambers at the Supreme Court. He was not a scholar, didn’t pretend to be, but he had probably more common sense than the whole rest of the court put together. So he was very dependable for a no-nonsense approach to the law and simple writing.

So, when I first went on the court, my first case was argued and submitted—I note, from four volumes of opinions that I wrote in my tenure in the court—was argued on December 29, before Lent, [Hans] Linde, Peterson, Campbell, [Betty] Roberts, and Carson. I wrote the opinion, which came down January 25 of 1983. So I think you [chuckles]—take off the holiday—that’s about a three week hiatus, which Justice Carson, Chief Justice Carson, often quotes as setting some kind of a record. The very next case that I drew was against the senior partner of what is now Schwabe Williamson, but was then the Mautz firm. It involved the disciplinary complaint against William Kinsey, who was a very wealthy, very prominent business lawyer. He got involved in an airline in Germany. I was assigned to write the opinion for the court that reprimanded him for unethical conduct. So it was a fairly heady jump to go write an opinion involving a senior partner who wouldn’t hire me [laughs] when I was a boy lawyer. I thought it was a funny experience that Bud Lent, in his perverse sense of humor, always picked out the toughest tax case to assign to the newest judge. So along comes Southern Pacific v. Department of Revenue. This involved evaluating the ad valorem taxation
of all of the Southern Pacific Railroad and all of its cotton belt subsidiaries. So I look at this mass of material of which I know absolutely nothing about. Fortunately, Judge Linde had a clerk—who is now a partner in the Stoel Rives firm—who had a PhD, I believe, in taxation. In any event, the opinion came out under my name—brilliant piece of work [laughs]—but not my work, in name only.

CH: Did Bud Lent know that?

RJ: I remember after filing it with the court, and getting a unanimous approval, I sheepishly walked my little tax forms over to my CPA to help figure out my simplistic tax problems. [both laugh]

I would say that most of the 1983-84 terms were things of not great historical moment. Until the case came along which still is the leading case on the state side, in the United States, for adopting what we now know as the Daubert Principle of screening scientific evidence. This is State v. Brown, 297 Oregon, 404. I took great delight in researching this case. I did all the work myself. I didn’t resort to any law clerks at all. I studied polygraphy— took three weeks to understand polygraphy and its strengths and, mostly, its weaknesses. But that wasn’t really the total thing; polygraphy just happened to be the example we were using at the time, because it applied to screening out junk science or junk expert opinions. So it’s a very extensive opinion that’s still the seminal case on screening out unreliable expert testimony.

CH: How did you determine that? How did you determine what was junk and what wasn’t—the standards that you applied to this case?

RJ: What we had at that time—I don’t want to get into too much detail—it’s the old Frye Rule, which happened to be another polygraphy case from 1920. In that case is what is being proffered as generally accepted in the scientific community, period—whatever that meant. It meant everything, it meant nothing. As a result, all kinds of people could be called as experts. We used to have a guy, an alleged expert I’m ashamed to say, we used in our own firm. One day he’d be a hydrologist, the next day he’d be a mining engineer, the next day he’d be something else, a metallurgist, and on and on. Then we had some very questionable, I thought, experts in the medical field. It seemed like they could tie a hangnail to a heart attack [both chuckle] on causation. So we set out very carefully in Brown the criteria for evaluating expert testimony. Then, ten years later the Supreme Court of the United States in the Daubert case—Daubert v. Dow Merrell [Merrell Dow Pharmaceuticals]—set off the case that has now had thousands and thousands of interpretations and has now been codified in the Federal Rules of Evidence in a revision to Rule 702. My dear friend Justice Unis extrapolated onto Brown, maintaining the essence of Brown, and gave it even further emphasis in State v. O’Key after I left the court. We will be
lecturing this next month for the Oregon Law Institute on “Oldies But Goldies,” talking about Brown, O’Key and Daubert. So the lawyers are still gathering to get more and more information on how you go about screening out this stuff.

We also had an opportunity to write at that time, beginning in 1984, Holien v. Sears. That case was one of the seminal cases on employment law. We had almost no employment cases up to that point, or minimal, and for some reason, not through any design, we just kept inheriting one employment case after the other after the other. So, during my time in the Supreme Court, I spent a lot of time writing in the employment field on cases that are cited to this date, and, of course, in the evidence field. It was great fun. Here’s another employment case, Delaney v. Taco Time. Those cases were a joy to write. I guess that’s all I need to say, except that my present permanent law clerk, Candy Wells, a former student and was my law clerk on the Supreme Court and drafted most of those opinions. She is still an expert in this field.

CH: Was Bud Lent the chief justice during the entire time that you were there?

RJ: I will double check that. He didn’t like the job. He hated being chief justice because he liked to write and he didn’t like personnel matters. So he got out of it as soon as he could [laughs] because of that very reason. Let me see, if he was still chief. I don’t know exactly when his tenure was. Ed Peterson had taken over as chief justice at least by January of ’84, so I was with Bud Lent just about a year.

CH: Then, after Peterson, Carson came on?

RJ: That was it—Carson didn’t become chief until after I’d left the court.

CH: Until after you’d left. Yes.

RJ: He had a nice write-up in this morning’s Oregonian. I don’t know if you saw it.

CH: No.

RJ: On Chief Justice Carson being the longest serving chief justice in Oregon’s history—fourteen years. So I said, my connection with him—he was my aerobics partner and we were usually on the same side of the fence.

CH: Aside from your expertise in evidence, what would you say you brought to the bench in the Supreme Court?

RJ: Well, I had always hoped to have a legacy of being a moderate conservative, if we can use labels, but some people thought I was a wild-eyed Leftist when I wrote State v. Henry—which became infamous—accusing Oregon of permitting obscenity and pornography without restriction, which is not the case, whatsoever. I was assigned the case out of the blue and I wrote the opinion based on my study of Oregon history; that our pioneers were not interested in adult censorship of what
they wrote and what they chose to see. This involved an adult bookstore over in Bend. It had, by then, been through the trial court and the court of appeals. By the time it got to the Supreme Court and I started to examine the exhibits, they were the most well worn exhibits you’d ever seen in your life. [laughs] I think every clerk and every judge looked through them. Anyway, it was just trash, you know, usual stuff that no decent citizen would ever spend money on. But the issue was: were we going to adopt the US Supreme Court’s decision on obscenity or not? We were operating on, “What about the Oregon Constitution?” Of course, the US Supreme Court decision in Miller is still there. But, I’ll ask you: you’ve traveled all over the United States. Have you been to any hotel in any city in the United States where they don’t have the after hours adult channel with total obscenity? [laughs] Of course, you don’t have to answer that.

CH: I don’t usually turn on the television at all.

RJ: No, I meant just what’s even advertised.

CH: Yes. Right.

RJ: This same trash goes on nationwide. You can pass all the laws you want. But it makes a lot of difference whether you are dealing with child pornography or purveyors of that, or whether you are going after the actors for prostitution, or whether you’re trying to screen out certain businesses through zoning, whether you’re going to have nude dancing. Those are questions that Henry did not solve. So, Henry came back to haunt me when I came on the federal bench. I think we’ll get into that in just a little bit. That was a unanimous opinion of the Oregon Supreme Court. We were taking the traditionalist approach, the originalist approach, the Scalia approach, saying that when the people wrote our free speech amendment, did they intend to have adult censorship? The answer is no. They were concerned with blasphemy, they were concerned with all sorts of other matters, but they were not concerned about this particular area.

CH: Does the Oregon Supreme Court deal with the same kinds of freedoms and liberties that the US Supreme Court deals with, or is it much more of a technical document in terms of laws regulating the business of the state?

RJ: I really think we should always defer to Justice Linde [laughs] who is the nationally recognized expert on state and federal constitutions. He teaches the subject and is very well-versed, and Justice Peterson is certainly much better qualified to answer that. But the answer is that we in Oregon are unique people. We Oregonians have our own constitution and we can say what Oregonians meant when they adopted our constitution, and whether we, as constitutional enforcers, are going to look at this on the national level or on the state level. If, as in the case

---

Oregon Constitution

RJ: I really think we should always defer to Justice Linde [laughs] who is the nationally recognized expert on state and federal constitutions. He teaches the subject and is very well-versed, and Justice Peterson is certainly much better qualified to answer that. But the answer is that we in Oregon are unique people. We Oregonians have our own constitution and we can say what Oregonians meant when they adopted our constitution, and whether we, as constitutional enforcers, are going to look at this on the national level or on the state level. If, as in the case

---
I had yesterday, they are arguing strictly on what’s in the state constitution we’ll defer to the state court. On the national level, as you know, there’s the great debate between those who think they wish to solve contemporary matters such, that are sort of feel-good types of opinions that meet contemporary standards. Or, are you going to be an originalist like Scalia? Or sometimes they don’t—it’s definitely against the wave of current popularity but not what it was originally intended. So it depends on who’s on the Supreme Court. Are we talking about the Warren Court, or are we talking about the Rehnquist court, or are we going to be talking about the Roberts Court? That can vary. Whereas here we have our Oregon Court, so we have a separate jurisprudence. Did that answer your question? I’m not sure.

CH: No. [laughs] Yes, it did, in a way. But what I was leading up to was the obvious distinctions between federal and state law. I mean, there are certain domains [in which] federal law trumps state law—when you get into interstate commerce, and all these things, you know. But in terms of these basic rights of individuals, what do you see as the distinction—having served both on the Supreme Court of the state and in the federal courts—between the constitutions in terms of rights of individuals? Because you’re talking about rights of individuals here with these cases, with Daubert and Brown—what do you see as the main distinction, the main differences?

RJ: All I can say is that it’s a subject all of it’s own. It’s beyond what I can tell you from a historical point of view that would be of value. I don’t have a real good contribution to make. The distinctions are, as I said, we’ll interpret our constitution in accordance with how our constitution reads and how its amendments read. I think there are 111 amendments. One time we tried to tighten it up and change it—a lot of archaic stuff in there. But the difference is the background of the constitutions. If, for instance, someone says we have a free speech issue—as we had yesterday with a schoolteacher speaking out and being fired by that school district council—are you arguing under the US Constitution or the Oregon Constitution? If they say both, then it’s under Michigan v. Long,13 which was written by Justice Sandra Day O’Connor, then the Supreme Court will look at the federal issue. If they say, we are looking at this solely under the State of Oregon Constitution, the Supreme Court will deny certiorari and won’t even review it.

CH: Of course, this case that you’re talking about is already in federal court, but had this case started in a state court, had they not gotten the judgment that they wanted when they went up through the state court system, then could they then try to apply federal laws on free speech and go through the federal court system?
RJ: No. You made your bed and that’s where it is. We get a lot of removal cases that started in state court and then they’ve been removed due to diversity or something of that nature. But if it’s strictly a federal question, then of course federal law will apply. That’s what we have with assisted suicide, which is pending before the Supreme Court right now. The issue in that case didn’t even reach the constitutional level. We avoid reaching the constitutional level if we possibly can, and that involved interpretation of federal law. Was this law ever intended—a federal law involving drug trafficking—ever intended to impose itself upon a state making a decision by popular vote as to whether or how people wish to terminate their life? I held, and the court of the Ninth Circuit held, that the federal statute did not apply, did not trump Oregon law. We will see, probably by Christmas [laughs] what the final answer will be. You’ve got a similar issue with the California Medical Marijuana Law.

CH: This jumps into the federal court system. While we’re on that subject then, what was your reasoning why federal law did not apply to the situation in Oregon?

RJ: Can’t we defer that? [The opinion explains the reasoning in great detail as written by Justice [Anthony M. Kennedy], with [Clarence] Thomas, [Antonin] Scalia, and the new chief justice, John Roberts, dissenting.]

CH: Yes, we can.

Changes in Oregon Supreme Court

RJ: Okay. Just to finish up on the Oregon Supreme Court, while I was there, [the court] had a dramatic change in personnel. One of the changes that happened was that we had Justice [Edward] Fadeley elected by popular vote, defeating a very experienced trial judge, Judge [John] Jelderks, and then another politician, Vern Cook. So, we had two politicians with no judicial experience of any nature running in a popular vote—both with name familiarity. So, suddenly we had a politician on the court—Justice Fadeley. It certainly changed the complexion of the court. On the other hand, we had people who had both been politicians and judges, such as Judge Van Hoomissen, added to the court. We had Justice Unis come to the court, who had vast experience in both the state district court and state circuit court. So, we had a lot of changes take place. We lost our female representative, Betty Roberts. So it was surprising—when you think of the US Supreme Court, how stable it’s been in personnel for, say, a decade—just in the seven and a half years that I was on the Oregon Supreme Court, we had a multiple changes.

CH: How does that make you feel about the nature in which judges get onto the court in the first place—election versus appointment?

RJ: Well, I noticed in the morning’s paper that Chief Justice Wally Carson is going to let his term run out, so it will be
up for popular vote. I’m not a populist as far as judicial selection. We had, I thought, a disaster when Fadeley was elected. I thought it would have been equally disastrous to have Vern Cook elected. Then we had Bob Tiernan, who was worse than those two, who almost got elected. He withdrew at the last minute or he probably would have won. He had absolutely no competence to run for that court or be considered for that court. So, it may sound good to have a popular vote—and I have a lot of dear friends who believe in it, including Justice Lent, and I think Justice Unis and Justice Van Hoomissen. I respect all those people. I just have a different point of view.

CH: Not having read the article on Justice Carson, I can’t—

RJ: It’s just a little article.

CH: I interviewed him many years ago—maybe twelve years ago or ten years ago, something like that. And I can’t recall his feeling about election versus appointment. But I know a lot of judges feel the same way that you do, for the very same reason. A governor appointing someone to the court is often going to be looking at that person’s experience and name familiarity is not going to be an issue. Once the judge is in that position, then they have the advantage of being an incumbent.

RJ: Right.

CH: So, why would Wally Carson allow his term to run out—having been on the legislature and having been in the court for so many years? Why not resign at a certain point to allow Governor Kulongoski, or whoever is governor during that period of time, to appoint someone?

RJ: You’d have to ask Wally. [laughs]

CH: [laughs] It’s an unfair question because you can’t answer it. I understand. When you were at the Supreme Court, did you have the feeling that you were at the pinnacle of your career, or did you want to go on to federal court after that?

RJ: I always wanted to go on the federal court. I came close to going on in 1987. There was, again, a cliffhanger up until the last minute. So, no, this is where I wanted to be. My wife reminded me again this morning, this is where I should be and not at home. [laughs]

CH: [laughs] In other words, don’t retire too soon?

RJ: Well I’m seventy-eight and have forty-two years on the bench, but I find much comfort right here working—

[End of Tape Five, Side One]
Federal Appointment

RJ: I would have been content to have stayed on the Supreme Court, and I probably would have stayed on the Supreme Court, until I was seventy-five, because the law is my life—and my family. But I would, frankly, rather be here working with the action, the drama, the challenge, the people, than playing golf or mowing the lawn. [both chuckle]

CH: In looking over the judges that have come on to the federal bench—

RJ: Are we through the state bench?

CH: We’re in that transition.

RJ: Oh, okay. That’s fine.

CH: We’re getting on to the federal bench, and you’re at that point in your career—looking at the people that came onto the federal bench—how many of those people actively participated in getting themselves onto the bench? And how many percentage-wise, would you say, were simply appointed because somebody chose them—picked them off the list and they had nothing to do with themselves being on the list?

RJ: Well, I can just be contemporary about it. We have Owen Panner, who is probably Oregon’s very best trial lawyer, highly respected statewide. He was asked to serve on the federal bench. They went through a bar selection situation in 1979. I think he led the popular bar vote. He had to decide whether he was going to sacrifice a very substantial practice in Bend, which was statewide, to come on the bench. So he was solicited.

We can look at Jim Redden, Attorney General of Oregon—again highly re-spected, although [laughs] nobody can accuse Jim Redden of not being a politician. But I didn’t perceive that he did anything in respect to having an organization or anything of that nature.

CH: But some people go through the process of getting into the legislature, getting involved in the political party—

RJ: Those things do happen. The other person who was selected to start in 1980 was Helen Frye. She was, again, requested. She was the most prominent and capable female we had on the state bench at that time in the minds of most people—a wonderful lady.

CH: Who was she requested by?

RJ: I think she was requested by our senators, and certainly I think that President Carter wanted to have more diversity on his appointments. But I didn’t perceive that anybody resented any of those three appointments, or that they came through undue influence. I think Judge [Edward] Leavyiseverybody’sfavorite. He’sprobably the most popular judge in Oregon’s history—a lot like Doc Campbell—doesn’t pretend to be a scholar, but a very smart guy, and tremendous judgment. But he still says “ain’t” [laughs] and mangles his verbs. But there’s a person that is capable.
of handling any type of litigation.

I said the only thing about Ed Leavy—he can’t hold a job. I think I mentioned he started at age twenty-seven on the district court, and then he went on the circuit court in a general election against an incumbent. He beat Judge Reid, I think it was, in Lane County. Then he served pro tem on the Supreme Court. Then he came over as a magistrate judge, then as a US District judge, then as a Ninth Circuit judge, now he’s on the Foreign Intelligence Surveillance Act Court—one of three in the nation—and he handles all of our major mediation. So, he was selected. The senators wanted him. I think if you look back, Mark Hatfield’s reflections, I think in the Ninth Circuit Historical Society, that he wanted Ted Goodwin—he was his number one choice. So I would say that all of those people that are on the bench that I mentioned came through recognition as outstanding lawyers or jurists by the bar and the public.

CH: Did you do anything yourself to advance your cause or to get yourself in to a better position to be appointed onto the federal bench?

RJ: Well, you know, we all have friends. Fortunately, I had the strong support of Bob Packwood. We’d been freshmen in the legislature together, and he had nominated me to the federal court way back in ’69. I think I told you I married him, [laughs] so we were always close friends. But it didn’t help me when these other interim appointments came along. I might say that Malcolm Marsh is another example where both Otto Skopil and Senator Hatfield wanted him, and I think everybody wanted him. Judge Marsh is another very successful practitioner and a tremendous, wonderful human being, humanitarian. As far as my situation is concerned, I liked doing trial work, I liked teaching, I liked writing. I was doing that. I turned down appellate positions that would have promoted me faster. I liked doing the Supreme Court work. I would have been content there, but definitely this has always been my target.

CH: So how did it all come about?

RJ: It came about because—in spite of my ancient age—I’d been too long on the circuit court. Things just didn’t work out. So I was sixty-two when I was appointed to the federal court, having been fifty-five when I was appointed to the state court. Some people thought I was too old, but a joint letter from both Senator Mark Hatfield and Senator Packwood was sent to the president that said “This is the most qualified person in the state of Oregon for the job, and he’s our man, he’s our selection, and we don’t want you to consider anybody else.” It was a very nice, strong letter. So that’s how it came about.

CH: The US Senators nominate, and then the president appoints and the Senate confirms.

RJ: Right.

CH: Do you know how they decide between when the senior senator gets to
nominate and the junior senator gets to nominate? In this case, Packwood, being your closest friend, being the junior senator from Oregon?

RJ: Well, this was a joint letter from both the senior and the junior. They both signed on.

CH: Oh, it was? How well did you know Mark Hatfield?

RJ: Extremely well. I was close to him back in the legislature, I said. I made speeches for him. We’ve been in good contact throughout the years. Where we ran into trouble was not locally, but nationally. Once it went to the White House, we had some people try to derail my appointment based upon two opinions that I had written on the Supreme Court. The same thing happened in the Department of Justice, and that took sixteen months of action to finally convince [John] Sununu [White House Chief of Staff] and [Richard] Thornberg [US Attorney General] that I was not some radical. The story behind it, I think, is very interesting. Because here I had the unanimous—not only the support of both senators, I had the support of all five congressmen—all signed a joint letter. And, I had not only the support of the present governor, [Neil] Goldschmidt, but I also had the support of Vic Atiyeh. Atiyeh went back to speak to the president on my behalf, and they asked Colin Powell, who was also waiting to see the president, to stand by for a minute while Vic Atiyeh went in to promote my cause. [laughs] That’s what Vic tells me anyway.

CH: Colin Powell being the National Security Advisor at the time.

RJ: Yes. Anyway, the upshot was that we had this real Right-wing group—they’re a very, very, I think, scary group. And they tried to label me as a Left-wing “Linde liberal,” as I was called. Here I was, the conservative or moderate voice on the Supreme Court of Oregon all that time and they’re mislabeling me completely. Then they get Focus on the Family to join in on that, then it just kind of steamrolled. I got into the Department of Justice with some Right-wing ideologues who interrogated me ruthlessly for between five and seven hours. Then finally Sununu said, “Well, we’ll submit Jones’ opinions to [Robert] Bork.”

So, Bork looks at my opinions, and he says “I can’t tell, so I won’t vouch one way or the other.” I thought, thanks a lot, pal!

At that point we had the dean of the University of Oregon Law School, Maury Holland, and his assistant, David Schuman, who is now on the state court of appeals as a constitutional scholar, with a PhD in English from Chicago, in addition to being a brilliant constitutional scholar. They took all of my opinions and analyzed them, particularly the Henry opinion and Smith and Black v. the Employment Division,¹⁶ which was the one that dealt with Native American Indians using peyote. They wrote that letter to everybody—Thornberg particularly. Then finally Sununu said, “Isn’t there something that will give me comfort that this person is truly a moderate conservative?”
Well, at that point, Packwood took over to Sununu, personally, a medal I had received [laughs] for giving a noon speech to the Sons of the American Revolution. It was a beautiful ribbon—like a Congressional Medal of Honor—and underneath the medal said, “Patriotism Award.” He said, “Here, look at this. The Sons of the American Revolution think Judge Jones is a patriot.”

Sununu said, “That’s good enough for me.” [both laugh] That’s how I got in. Isn’t that funny?

CH: It is funny. You know, Judge Leavy mentions the story that when he went through the process, that when it came to confirmation and he came into the Senate chamber there was only one senator there, and that was Jesse Helms. Jesse Helms went over to him and said, “Now don’t worry about this. I just have my little thing I want to say, but as far as I’m concerned you’re in.” And he said that, you know, his confirmation was just as easy as could be. He said it was only a few months later that the Bork nomination came up, and Congress became so divided and the issue became so hot, and the hard feelings from it so strong that after that, then the scrutiny on the nominees became much, much tougher. And, of course, that’s when you came along.

RJ: Right. One of my meanest interrogators was a fellow that’s being considered for the US Supreme Court appointment, J. Michael Luttig, who was about thirty-six years old. He treated me, a Supreme Court justice, like dirt, and in my mind is unfit to serve on any court. He promoted himself onto the Fourth Circuit, where he’s been sitting since.15 But after getting appointed to the Fourth Circuit, he withheld and stood his time to fight the Anita Hill and the Clarence Thomas battle, which I thought was totally inappropriate. If he’s a judge, he’s a judge. He wasn’t a politician, especially one at that level. So, they say nice things about him. I don’t say nice things about him.

CH: Why do you think it is that things have become so divisive?

RJ: I don’t know. It’s sad, and I think Sandra Day O’Connor has mentioned this in many of her speeches. It’s unfortunate that it’s become so divisive. Fortunately, I think this Roberts matter [confirmation of John Roberts as Chief Justice of the US Supreme Court] will be through today, but then the next battle will be a battle royal unless they pick a nice, moderate woman—smart, with a good record. I know several that would be wonderfully qualified for that job, without getting into the ones that have already become too controversial to be resubmitted.

Let’s skip on. The point was, my confirmation was a piece of cake. Both senators were there; it was wonderful. Bob Dole was there. Strom Thurmond asked his usual thing of, what do you think
about judicial demeanor? I didn’t use Jim Redden’s response, “Tell him demeanor debetter!” [both laugh]

CH: Strom Thurmond wouldn’t have liked that, would he?

RJ: No, but you know Jim’s sense of humor. Anyway it worked out fine. Everything went great. I came back and I was teaching law school and we were ready to get sworn in, and suddenly Senator Grassley sent a big protest. This was after I’d already been through the committee and—

CH: This was Charles Grassley [Senator from Iowa].

RJ: Yes. So we tried to find out, where is Grassley? Well he hadn’t even read the letter that was written by one of his clerks who was in this clique with this group of right-wing people. It was the nastiest accusatory letter. Anyway, wisely I had David Schuman respond to the letter, and that quietly went away. But Grassley wasn’t even there. It’s politics, but it was a last minute pimple I didn’t need to pop. [laughs] Didn’t want to have to. Oh, and I got a wonderful warm call, by the way, when I was nominated by President [George H.W.] Bush, which I have recorded. Just one cute story. It said, “White House Operator Number One calling.” So they said, “The President will be calling you at X hour.” So we got all our recording devices set up at the Supreme Court waiting for the call. They said, “Sorry, he got tied up. He’ll call you after the weekend, on Monday.”

So I thought—well, I’m not going down to Salem again. I’ll just be at home. So finally the call came through. “White House Operator Number One?” “Yes.”

“Stand by for the President.” Stand by—” the recording going on and on, “Oh, sorry. He had to go down the hall.” [both laugh] So, we know what that means around here. Anyway, after an appropriate pause, he came on the line. He was very warm. We talked about [Alan] Punch Green, Ambassador to Romania, and he wished me the best. He’s just a lovely man, and he didn’t have anything to do with all these other shenanigans I talked about.

On the Federal Bench

CH: Right. So how was the transition for you going from the State Supreme Court to the federal court?

RJ: Fast. [laughs] I was at a state judges’ meeting in Bend. I drove to Eugene. I was told that I was confirmed by the Senate that day. Within an hour, Owen Panner swore me in over the telephone. He asked if I wanted to and I said, “No, I’ve got an anti-trust opinion.” It was very complex and I had to file with the Supreme Court the next day. So he patiently let me file that the next day, then he swore me in over the telephone. They immediately gave me a bank robbery involving a young woman bank robber within an hour of my time getting on the bench.
CH: How was it going from being a judge reviewing cases to going back to being a trial judge?

RJ: It was wonderful.

CH: You liked it?

RJ: Oh, I was in heaven. This is what I always wanted. This has been my life’s ambition. Everything was just golden. The only difficulty was that I had to pay my dues. They had set up a southern division for this next position, and I got the next position, so I spent two years commuting. That meant getting an apartment in Eugene and being away from my sweet wife and family and Portland. I would leave Sunday evenings and be in Eugene all week. Usually, I’d try to get through there by Thursday night so I could have a long weekend, but it didn’t always work out. We had lots of cases, lots of trials. I think I began something like thirty-six trials that first year. We inherited 448 cases, which is an enormous number. I think the present caseloads around here are about half that. But they’d been piling up. Judge [Michael] Hogan could not have been more gracious; he was my chief competitor for this job. I told him that I’d do everything I could to back him, and we never had a bad word in the two years that I was there. I had wonderful people to work with, a wonderful job, but the I-5 commute, I’ll never miss.

CH: [laughs] Was there any difference that you could mention or notice between a trial that would be taking place—like you had this bank robbery case, that was your first case—that was going through the state system and one going through the federal system? Did you conduct your trials any differently?

RJ: I did not, mainly because I wasn’t fully versed in the federal rules of trial procedure. So I simply went ahead and tried my cases the way I had before. I didn’t find it a great task to make the change because I had the people waive pre-trial orders, I had the people waive Rule 16 conferences, and we just set the cases down for summary judgment hearings and trials, and to this day I’m still doing the same thing. [both chuckle] We save an awful lot of paperwork that way. But, you know, we gradually were into the nuances. The biggest battle, I find, in the federal court is keeping the paperwork down and simplifying the procedures. Yes, it was a great blessing to get away from the “trial by ambush.” We used extensive motions in limine. We used extensive final pre-trial conferences. We had tremendous assets. Everything you could ask for was at your fingertips.

CH: How would you describe the organization of your staff and office and chambers?

RJ: Odd. [chuckles] The federal system is, I thought, totally screwed up. They had your courtroom deputy—who didn’t have to be law trained—handling legal matters, such as exhibits and filing orders and

Jones, Tape Five, Side Two  73
doing things that required a lot of legal savvy, and they were not your employee. You didn’t get to hire or fire them. They were hired and fired by the clerk of the court, who has control. We didn’t have our own court reporters. I always had my own court reporter. So I had to take a floater. Then I had two law clerks, which was fine. I’d had law clerks before. That hadn’t changed anything.

But it seemed to me there was an awful lot of loss of autonomy. I was used to controlling my court reporter; if I wanted a transcript immediately I’d say give me a transcript. Well I told this court reporter on a motion to suppress down there, give me a transcript. “Oh, well, that’d have to be ordered by someone. One of the parties have to pay for it and I’m backed up, so I couldn’t get one out for two months.”

I said, “Well that’s all very interesting, but I’m going to have my transcript here within two days or you’ll hear further from me.” We had to get a little bit rough with them. They were just used to just letting things drift. I found a tremendous disorganization of matters where the judge had clerks handling your calendar, and court reporters who are not your own, and the law clerks were fine. But anyway, we worked it all out. I finally got a real-time reporter that I hired who’s still with us, Amanda Gore. She’s our chief reporter here now. I screen the reporters for their talent, and we got rid of the old ones that wanted to still not have real time, and take their sweet time as to when and where they did their work. We worked it out with the courtroom deputies so that the courtroom deputies would respond to us, to me, and not to some clerk in a different area.

CH: Was there any kind of process of initiation or orientation that you had coming on to the federal bench?

RJ: If I had any questions that were unique to the federal bench, Judge Hogan was an invaluable resource. He had vast experience; the poor fellow had been running that court all alone as a magistrate. Of course he’s such a wonderful judge that he had terrific local support. He couldn’t handle criminal cases—that’s why I tried so many, because they were backed up and we had speedy trial problems. So I spent most of my time trying criminal cases and Judge Hogan spent most of his time with the civil calendar. He’s a tremendous mediator, which I am not. He could settle these massive civil cases, multiple party cases, and he would settle them not only for the southern district, but also, virtually, between countries. I know he had one with Canada and the United States. He handled those terrible I-5 field-burning cases, where they’d have something like seventeen people killed or horribly injured. He’d have 100 lawyers down there and he’d keep them up all night. Anyway, he has marvelous mediation skills, so I couldn’t ask for—

[End of Tape Five, Side Two]
On the Federal Bench: Eugene

CH: This is an interview with Judge Robert E. Jones in his chambers at the US District Courthouse in downtown Portland, Oregon. The interviewer for the US District Court Historical Society is Clark Hansen. The date is September 29, 2005, and this is tape six, side one.

Was Judge Hogan assigned to you?

RJ: No. He was the magistrate judge, just as now Judge [Thomas] Coffin is the magistrate judge down there for Judge [Ann] Aiken. It’s the same set up.

CH: Is that how it’s organized, where a magistrate is sort of oriented towards a particular judge?

RJ: No. There’s just a magistrate’s position and there’s a judge position, an Article III position. That’s how it works out. No, we are not assigned. But of course down there that’s all there is.

Anyway, to get on with the experiences in Eugene—we had lots and lots of heavy drug cases. It seemed like all I was doing was bank robberies and drug cases, and the bank robberies were driven by the drug cases—huge meth cases and huge sentences. Average sentences were 262 months on the meth cases. But we kept getting these same kind of cases. The drug lords would start their Hispanic—we called them “mules” or “couriers”—out of LA. They’d put some young kid in a new Blazer and say, “Here’s a new Blazer. We want you to drive this up to Yakima, Washington, with this load of cocaine, and we’ll store it in some part of the vehicle,” usually around the rear lamps, or somewhere easily accessible with a Phillips’s screwdriver. “And we’ll pay you $3,000 or $5,000. If you get stopped by the police, don’t argue with them, but don’t tell your source or we’ll kill your family.”

Well, so then they didn’t tell them that at milepost 43 Officer Johnson will be there, a state police, who’s had two years of Spanish. He’d speak to them in Spanish and it would be a pretext stop usually. He’d say, “Well, now, I’m not going to give you a ticket, so you’re free to leave. But, by the way, do you have any guns or drugs in the car?” They’d say no. “Well, if that’s the case then, there’s no reason I can’t search it, so do I have your permission to search the car?”

They’ll remember what they were told, and they’ll say “Si,” and then he’ll get out the Phillips screwdriver and pick out a half-a-million dollars of pure cocaine and arrest them. Then they come to court. Instead of pleading guilty they’d hire a silk-suiter from Beverly Hills or Las Vegas who represented a lot of these drug traders. Who’s paying for the attorney fees? These aren’t court-appointed people. These kids don’t have any money. So where’s the money coming from? The logic is the drug lords, obviously.

They bring them up there and run them through a trial. When you run them
through a trial under these guidelines you zoom the time they spend incarcerated way up and you don’t get any acceptance of responsibility or cooperation, because their family will get killed. So, day after day you’re sentencing these kids to these horrendous sentences. But it’s always a consent search. The trial argument is that it wasn’t a true consent. So they’ll bring in the defense lawyers—and they’re all very good. I’m not demeaning their talent. They bring in the professor of sociology of the University of Oregon to say, “Well, in Mexico these people are told not to ever say anything contrary to the police. This is a forced consent—nothing voluntary about it and it should be quashed under a motion to suppress. And besides, this trooper’s Spanish is very poor and they didn’t understand him,” because he’d only had two years of Spanish.

I figured out the answer. “Trooper Anderson, next time you stop a car like this you get the consent in writing and in Spanish, and have the person sign it that they understood it, and we’ll eliminate these motions to suppress.” My last case there—US v. Manos\textsuperscript{17}—the Blazer, the half-a-million dollars of cocaine. When I went in I said—this was tried in the court—“Trooper Anderson, did you get that consent in writing and in Spanish?”

He snarls back, “Wouldn’t do no good, Judge Jones.”

I said, “I told you don’t come back to this court without one. What’s your explanation?”

He says, “Because the defendant’s an Italian!” [both laugh]

Oh, boy, did that break up the marshals. So they took the transcript and they put it up on the Most Wanted poster as you enter the Eugene Courthouse. Judge Jones, goof. [laughs] Anyway, so it was nice to be in Eugene but it was nice to say goodbye.

CH: [laughs] So you were actually down there in Eugene. You were stationed, so-to-speak, in Eugene, before you came up here?

---

**On the Federal Bench: Portland**

RJ: Yes. Since then it’s just been golden. Just golden. I had a beautiful chambers up on the seventh floor, in the Gus Solomon Courthouse, with its black cherry wood and leather doors—Judge Burns’ former quarters—beautiful chambers and pillars and it was majestic. Then I go from there to this palace. I was on the fourteenth floor and I had a beautiful, unobstructed view up there, and every law book the librarians had given me, all the evidence treatises they have, I’m the custodian of, so this is where we have our day-to-day challenges.

CH: You were saying that there were a lot of robbery cases and drug cases. I’m presuming that the robberies actually had to do with drugs as well.

RJ: Ninety-five percent.

CH: There had been a big shift over the
years in cases coming before the federal court, in that many years ago—back in the '60s and '70s—there really was a lot more of the civil rights oriented cases. Then it became more and more drug cases. Why was this shift happening? What was going on in the country that it seemed to go more from civil rights to drugs?

RJ: I don’t know. You ask me these broad questions and I don’t know, really. I’m not competent to answer them. We know that we went through the revolution of drug use in the '60s, and the hippies, and McIver Park and all of that. Then we had big heroin problems. That’s kind of petered out. We’re into meth and we just hit one dealer after another. For every one we take out, there’s two more to take over. My son, after being a prosecutor and an insurance defense lawyer, took up criminal defense work on the federal panel. So I took myself off the criminal calendar several years ago and I just went back on this last week. [laughs] Not for a full load, so I’m not competent to say that. My calendar has been, fortunately, complex litigation. As you know I’ve had some very high profile cases, one right after the other. You could write a novel about any one of them. That’s been very joyous because some of these cases were assigned individually because somebody didn’t want to be tied up with a prolonged case. Some of them just came on the wheel. Some of them were assigned to me nationally from Washington DC—multidistrict level cases. So, of those—

This is a good point to maybe have a cup of tea. ....

---

**Pre-trial Preparation**

CH: Looking at your own work here, as you came onto this court and over the years, how would you describe what your pre-trial preparation for a case was? What would you do?

RJ: What do I do for pre-trial?

CH: Yes.

RJ: First of all, we study the case, determine its complexities. If it’s a routine case, we always send out a standard order. But what’s unique about my way—I do not want to meet with the lawyers and talk about the case early in a Rule 16 conference, and I waive that. I figure that they’re busy figuring out what the case is about. I don’t need to know anything about it at that point. Then I also tell them I don’t want them to waste a lot of time with a pre-trial order, because it’s too much too soon. I don’t want to know all about what may happen to the case after it ripens. So I just really want a joint status report as to where they are.

Then they have to make a report that they’ve met and conferred. Then we set discovery deadlines. Then they’ll meet the deadlines or they’ll ask for extensions or they’ll ask me to resolve the discovery disputes. I rarely have any problem with the discovery disputes. I don’t hold open court hearings. I just have them get on the telephone and say, “What’s up?” and settle it without any folderol. Then I’ll say, “Now, where are you?” The discovery is
going to be ending here. They have to go through mandatory mediation. Then after that I’m looking for the durable case.

As I mentioned before, we’re settling over ninety-five percent of our civil and criminal cases—close to ninety-seven percent, actually. But in order to have the cases settled you have to give them a trial date. That’s absolutely essential. So you’ll see from my calendars, the cases that I have, I’ll talk to the lawyers and say, “When’s this case going to be ripe?” Then we’ll set the trial date and the dates Then I’ll set a time for the pre-trial conference—final pre-trial conference. At this point, vast numbers are gone. They’ve settled and they’ll call in that they’re settled.

But once we get to final pre-trial conference that means that this is a durable case and this case isn’t going to settle. We go through the final pre-trial conference, at which I require them to be fully prepared. They have to have all their exhibits. They have to tell me who their witnesses are, what their witnesses are going to say, just in one paragraph form. At that time, we’ll have our Daubert hearings to screen all expert testimony and motions in liminie. We’ll have all of the exhibits listed. They have to list their exhibits, and they have to list which ones they object to and which ones they don’t object to.

So, now, on all the evidentiary issues they have to have them briefed—what are the specific issues? Then we’ll sit down in the conference room—and these hearings can last an hour or they can for last seven days, depending on the complexity of the case. I make all my rulings then, all the evidentiary rulings, which are frankly very easy for me, because that’s what I’m doing in all my spare time—keeping up on all the current evidence cases. So we clear the evidence cases, we have the Daubert hearings in all sorts of forms, sometimes over national video conferencing, or international, or we have live witnesses or what-have-you. We clear those out, we never mess around with authenticating exhibits. If you get somebody who’s a rambling litigator that wants to force somebody to call somebody in to say what is an obviously authentic document, I will tell them: “You’re going to pay the cost of this if you’re just playing games.” So we get their attention in a hurry. I say, “Just because you have an exhibit that doesn’t mean you have to offer it.” So they’ll come in with hundreds of exhibits, and I’ll say, “Which ones do you really want?” You know, this old story of putting the jury asleep. I say, "I'm not going to help you out. If you put them to sleep, you’ve got to wake them up.

CH: How informal is this process?

RJ: This is a fairly formal process in the sense that we meet in the conference room and it’s always with a court reporter. I never have any ex parte communication with lawyers on cases. That just doesn’t happen. I’m not interested in chit chat. I’m interested in getting down to business. They know that. We set our trial date and then that’s firm and they can rely on it. I tell them that I enjoy trying cases. This looks like a durable case, so don’t knock yourself out trying to settle it. Other judges, they’d prefer that cases settle and
keep hammering on the people all the way through, but I don’t. At that point, we have the questions that they want me to ask the jury, then we determine how many jurors we’re going to need, how many trial dates we’re going to need, and we arrange for the court reporters to be available. Then we call in the venire—the jurors.

---

**Jury Selection**

CH: Why do you call it a venire?

RJ: It’s a legal term. In some cases, I’ll need 120 jurors. In some cases, I’ll need thirty. We try all of our civil cases to an eight-person jury with no alternates. We try all criminal cases with twelve jurors and usually one or two alternates. Sometimes, if they’re really complex, maybe with three alternates. But I’ve never gone more than that. Then, when the jury comes in, I go down and talk to the entire jury and tell them that this is a case that’s projected to take three weeks, usually not longer than that, and that a lot of people can’t serve. I tell them, “Don’t think you’re not going to do your civic duty. If you get off of this case, you’ll just be assigned to a longer case at another time but for a less lenient judge. So, keep in mind, you’re not going to be excused because it’s against the law.” So we kind of shame them. Then I say, “All those who can’t serve line up over here.” Then I get a big line going. I just go down—then let them go with instructions they’re to report back for reassignment at another time. So, they’re really not off of jury duty. That way we get rid of the people who truly can’t serve. Then the others we bring up to the courtroom. In the courtroom, we call off the jurors as to the numbers we want. Since in a civil case each side gets three peremptories, we’ll talk to twelve, plus six. I’ll have each juror give their life story, and use the life-sketch method of picking a jury. I don’t know if you want to want to go into this detail, but it’s the way I work. You’re the juror now.

CH: Mm-hmm.

RJ: This case involves what we call white-collar crime. This is a case I inherited yesterday—Medicare fraud. So what we’re going to be dealing with is a criminal case, and in a criminal case each side has their own theory of why they’re here. So I’ll ask the prosecutor to tell you folks here, an entire venire, what this case is about, why the government has brought it, what they expect to prove—limited to no more than two or three minutes.

For the defense, “Will you please tell them your position?” That way I don’t have to make a neutral statement. Then they get the feel of it. “Okay, now, Mr. Hansen, I’d like you to start off. First of all, will you give us your full name again and spell it for the lawyers? Tell us where you were born and raised. You don’t have
to tell us when. Tell us the extent of your education. Tell us what your work history has been. Tell us what you are doing now. Tell us what your family consists of and what they’re doing. Tell us if you’ve ever been in a courtroom before for any reason, even for traffic matters, before any judge. And tell us about any litigation you may have had or any claims you may have had. Tell us if you’ve had any relationship to any law enforcement people, in any capacity. Tell us if you’ve had any experiences working with doctors and billing, and problems with Medicare or Medicaid. Tell us if there’s anything in your life that you think we should know about your serving on this jury.” Finally, “Just relax and tell us what are your outside interests and activities.”

Now that’s a big order, but one way we pick our jurors is how well they are able to retain questions, and even complex questions. So, “Just talk to the lawyers. Don’t talk to me, because they’re going to decide who sits on the jury.” We hand them a mic [microphone] and they’ll mumble in the mic, and we’ll say, [stern voice] “Please speak up. You’ll want the witnesses to speak up. Just relax, don’t be nervous, and talk to them. If you get stuck I’ll help you, but the other jurors, I’ll warn you, you’re going to be on your own.” [laughs]

So away they go, and they tell them and then you get all sorts of information. How smart is this juror? How well do they retain a complex question? Do they do it chronologically? Do they think in a logical fashion? What do they forget? They often forget their spouse. They forget their kids. They can’t keep track of their job history. Or you could learn—someone who’s got a PhD in physics or something—they’ll really tell you about their background. But if somebody doesn’t tell you about their education, they probably didn’t go too far in school. That’ll tell the lawyer a lot about what they don’t tell you. So I tell the lawyer to sit back; don’t take a lot of notes and listen and maintain eye contact with the jurors.

So they get through, then I say, “Okay. Now you’ve all gone through,” and if I find someone who has a challenge—that would be a challenge for cause—I just simply sometimes on my own, sua sponte, say, “Well, I think you’d best not sit on this case,” and counsel will never object. Once in a blue, blue moon do we get somebody to challenge at this juncture. Then I’ll ask, when we get through with all of the jurors, the sixteen—let’s say it’s a civil case instead of a criminal. Then I’ll say, “Now counsel will have follow up questions.” I’ve already warned them this is not going to be a jury selection like in state court. You don’t get to ask every juror a question, and you don’t repeat anything that I’ve already asked them. Any answers they’ve given that are follow up, or any special problems you might want to bring out, such as your client having committed some heinous crime or something—I tell them in advance, “You’ll have about ten, fifteen minutes max for your follow up, so use it efficiently.”
Opening Statements: Technology

RJ: Okay, by now it’s coffee time. The jurors have given their life story. The lawyers had their follow up. We send the jurors into my jury room—all of them. Then I say to the lawyers, “Okay, you have a fifteen minute break. Take your peremptories and write them out and hand them in simultaneously to the clerk. If there are no dupes we take the first eight.” Or, in a criminal case if there are no dupes, we take the first twelve plus the alternates. That way it expedites it.

So, after the coffee and potty break, we’re ready for the opening statements, inevitably, and we get the opening statements in, usually before noon. I tell them, “This is not time to argue the case.” The media always screw it up. They call it opening arguments. We don’t allow arguments. This is a lawyer’s opportunity to tell you what the case is about. Usually that’s a ten or fifteen minute exercise. On the other hand, in complex litigation such as the Eastern Oregon Cattle Caper,18 the prosecutor made an opening statement for an hour-and-a-half without stopping—with a perfect subject/verb transition, just a tremendous job.

In the case involving Planned Parenthood v. American Coalition of Life Advocates,19 Maria Vullo from New York used five different mediums in her opening statement, because I tell the lawyers they can use their exhibits that have been pre-admitted—since everything’s been pre-admitted—during the opening statements. So she started out with a guy, some defendant, making some God-awful admissions on television in Australia. The next thing she’d show a deposition of another defendant making admissions in a pre-trial deposition. Then she’d go along for a while, then she’d say, “This is an outline of my opening statement. This is what I’ve covered. This is where I’m going.” Again, I limited her to an hour-and-a-half. She ended up right on the money. I don’t run a clock on them; I just tell them generally. But they just are so good.

Then in the litigation we have capacity to use the monitors in the jury box. So the jury doesn’t have to see our exhibit. We never stop to authenticate a document in front of the jury. What does this depict? Depict? When’s the last time you depicted something? Well, we get away from that sort of trash. So the documents are just flashed up onto the monitors. We use CDs and we use our system that we have there that gives the ability to use John Madden pens to write on exhibits. We color-code them. When we get through, we can take a photograph of it to preserve it for the record. We have videotape capacity, CD capacity, and smart lawyers use all of that stuff. We have a lot of PowerPoint presentations, both in opening statements and in closing arguments. All the jurors get their own set of exhibits. In a complex litigation, jurors might have four double three-ring binders for the hard exhibits, but then we might have a thousand exhibits on a dolly that are available, which match the exhibits that they’ve seen visually. In the Cattle Caper case, we started out with 5 million documents. They were scanned in advance. Then when we got through
scanning those, we reduced them. That case was scheduled for four months. We tried it in sixteen days. In sixteen days the jury saw—according to the media specialist, not me—25,000 electronic images. Well, an image doesn’t mean 25,000 documents. You can have twelve images they look at that are highlighted in one document.

And so it goes. It’s a whole new world. I have real-time reporting. As you know, I have a hearing deficit. I not only have my digital hearing aid, but I also have real-time reporting, so I read what’s being said as it’s being said.

CH: You’re reading that on a screen?

RJ: On a screen, right in front of me. So all of our reporters are real-time reporters. Then, I always instruct the jury before arguments. I think Judge Hogan and I are the only ones that do it. That’s just because the Oregon State courts have done it backwards for so many years. I follow the Washington State procedure where you work your instructions out in advance. You give the instructions in writing to the jury. Then you read the instructions to the jury so they can follow it—much more retention. We’ve tested it over and over. Then the lawyers are free during their closing arguments to blow up any instruction, or tell the jurors to pick up their instructions and turn to page nineteen, and so forth. Then we’ve already agreed on our verdict forms. We send the jury away. We never keep them overnight. We just have them work—

[End of Tape Six, Side One]
Cattle Caper Case

CH: This is an interview with Judge Robert Jones in the US District Courthouse in downtown Portland, Oregon. The interviewer for the US District Court Historical Society is Clark Hansen. The date is October 14, 2005, and this is tape seven, side one, video tape one.

In our last conversation we were talking about the Cattle Caper case. I was wondering if you had anything else that you’d like to say on that, and what other cases you might like to focus on.

RJ: Sure. On the Cattle Caper case, as we call it, we had this gentleman who was the largest employer in Harney County—hired a lot of cowboys and had a lot of Hereford cattle. The problem was he kept selling the same cattle over and over again to people. Then they would take write-offs on their income tax. As a result they would suddenly be faced with bankruptcy because of the huge penalties that were involved and the interest that had accumulated on their tax returns. So, almost 200 people came to court, and there were thousands out there that had been duped in this scheme.

In any event, Mr. Hoyt was a very sympathetic person. He was sixty-one years of age. He had a bad heart. He had been highly respected in his community. I think he was the leading Mormon in that area, a bishop, I believe. He had a gorgeous home up on the hill, the best view in Harney County. [laughs] So, when we got through with this case I had to sentence Mr. Hoyt to twenty years in prison without parole. He was so sick they had to send him to a prison hospital back in Boston. So far as I know he’s still there.

I also had a sentence which was even more wrenching. His secretary, who was in her seventies, I had to put her in prison, I believe for four years, up at the Geiger Facility in Spokane. She was a tough old cookie, but she stood right by her boss and, unfortunately, got involved in the caper. The other one was his technician, who was blind, but drove a car in Eastern Oregon. I guess he had some peripheral vision, or semi-vision. But it was an interesting group of defendants, let’s put it that way.

The case was scheduled for four months, I think we mentioned, and with all the high-tech we tried it in sixteen days. We had a wonderful jury. They were out five days, but they were trying to resolve, I think, fifty-seven different criminal counts, which they decided. So that was that case.

While that case was going on, Louisiana Pacific was still chunking along. It started, I think, eight years ago and we’re just now finishing up. I had Justice Unis in yesterday as my special master. He reported that they expect to have it wound up December 31 of this year [2005]. That will complete at least seven active years involving some 200,000 claims. The payout’s getting up in the multi-millions. Not quite a billion, but substantial. Beautiful job of management by Justice Unis. He’s working.
very hard on the final details with some arbitrations and technical legal points. But he's led us through that whole situation without any cases of any significance getting up on appeal. He deserves a real pat on the back.

CH: One question on the cattle case. Do you know what the reaction was for the people in Harney County, or in that part of Oregon, for such a prominent person to go to trial and be convicted?

RJ: There was no sympathy because all these people were broke. He hurt an awful lot of people—devastated them.

CH: So this was local people in addition to people in other parts of the country.

RJ: Yes, all around the country, but the local people seemed to be the most vulnerable. They were right there; they trusted him as their leader and he let them down.

CH: What was the issue in the Louisiana Pacific case?

RJ: Oh, well that was a case where Harry Merlo, a prominent businessman who used to be with Georgia-Pacific, [and who later] became head of Louisiana Pacific, developed an inner seal siding that unfortunately became a “mushrooming” business. In other words, the siding grew mushrooms and it rotted and fell apart. As I said, we had 200,000 separate claimants. So a lot of people were awfully unhappy with LP. Fortunately, we were able to get the case settled after quite a few hearings and jockeying around. Settled, I think, the attorney fees at $28 million—the payout to the lawyers. But contrary to the usual class action, the people who suffered the loss didn’t end up with a coupon or a pittance. I believe they recovered about forty-percent of their actual loss, if you try to round out numbers. Of course, nobody is happy to take a sixty percent whack on their claim. On the other hand, that’s an awful lot better than the bankruptcy they would have faced if we had let that case go to litigation instead of approving a master settlement and adjusting the claims individually.

CH: So the company would have gone bankrupt?

RJ: Oh, I think no doubt about it. And then the claimants would have received virtually nothing. Mr. Suwyn, the president, has now resigned and moved on. He came in and did his job and the company seems to be stabilizing and developing new products and getting along pretty good.

CH: Are they still in the house siding business?

RJ: Yes. They’ve got a new product that seems to be working. [CH laughs] As far as other interesting cases are concerned, I don’t know if we’ve talked about the Farmers adjusters’ cases. This is another class action. We get these cases not assigned here locally, but assigned to us from
Washington DC, from the multidistrict level litigation group. That’s made up of some very veteran judges who handle nothing but complex litigation. Then they pick out the judges around the country to handle these class actions. They were very kind to me, and had me come back and lecture to them twice on the handling of the breast implant litigation, of hiring your own specialists.

You know, it’s tough duty. You have to go back to West Palm Beach, Florida, in late October. In fact, I’m supposed to be there next week, but I won’t be there because my son is having his reception as the new circuit judge in Clackamas County, which conflicts with us going back to West Palm Beach. But after the horrible torrential rains they’ve had, and all the disasters, who wants to leave beautiful Oregon, especially today with the mountains out and the sun out?

So they sent the Farmers case to me. It had an original population of 6,000 Farmers Insurance adjusters nationwide, except for California, and we had to corral all of that. We had the help of two stellar Oregon lawyers who became lead counsel. We had dozens of lawyers on both sides. Bob Stoll on the one side, S-T-O-L-L, and then Barnes Ellis of Stoel Rives. The two of them corralled the rest of their brethren and “sisterns” and we got the case tried to the court. They waived a jury. Normally, on a MDL assignment, the judge does all the pre-trial matters and then, after resolving all the summary judgment—discovery and all that—they ship it back to the court of origin. Well, the lawyers didn’t want to go all over the United States, because we had adjusters from all over the country. It was much more efficient for them to waive a jury and try the case to me, which they did. It was fascinating. Having been an adjuster, as I think we discussed, I had an intimate knowledge of exactly what they were talking about: What is an automobile material damage adjuster? What is a casualty adjuster? What’s a fire adjuster? What’s a general adjuster? What is a personal injury adjuster? What is a products liability adjuster? And so forth. So the question became—were they entitled to overtime?

So we took that original group—and this was technically a collective action. We had the people opt-in instead of opt-out. Those who opted-in, we shrunk the population almost in half. Then, of that group, we qualified recovery for only those who did more menial tasks, such as how much it’s going to cost to repair your car. If you had a small fire at home, how much are you going to fix to clean up the place and repair the davenport and what have you. The Fair Labor Standards Act says that if you have administrative duties with substantial discretion, you don’t get overtime. Theoretically, you get more money. We found that Farmers was working their adjusters around the clock—sixty, seventy hours a week—and a lot of them working out of their homes and just having a tough time. Well, the payout on that, I think, for the winners will run about $53 million. The attorney fee requests, we’re waiting for at the moment, but I think it’s going to be between $25 and $35 million. There’s a lot of work involved, a lot of administration. We did finish the
first segment of it, and we just finished that then we got a whole new batch assigned to us. So we’re back into that case.

CH: Could I ask you a question about the multi-litigation group? I haven’t heard much about that before. How is that group chosen and how do they choose the judges to assign cases to?

RJ: Well, I don’t know the answer to either one of those questions. I can just tell you that the people who are on the original multidistrict level panel are selected by the Chief Justice of the [US] Supreme Court, and he picks out the stars. Judge Hodges is the present chair and they meet, as I say, in West Palm Beach, Florida, for their annual meeting every year and discuss things. They have a whole list of the different class actions that are going on in the country—air crashes, all these disasters that we’re talking about, the breast implants, Fen-Phen, Celebrex, a lot of pharmaceutical stuff. But it seems unlimited as to the numbers. We’re very, very cautious as to make sure that this isn’t a full-time bonanza for attorney fees without relief to the people who are victims, and to sort out those who are really victims from those who are not. So then, how does that panel pick judges? Usually on the recommendation of somebody.

CH: In your case, since you had an insurance background, did they consider that as a reason for you to—

RJ: I don’t think they even knew about it. [laughs] The other cases we’ve had have been so varied. I don’t think I told you about going to Guam, or not.

CH: No.

Marianas and Russia

RJ: We were assigned to go to Guam and to sit on the Marianas Appellate Court. So we spent a week listening to appeals from the Guamanian court. That, believe it or not, was a state court, so we were hearing murder cases, and Guam seems to have its share of those. Also, I remember that in one of the huge estate disputes, we decided the case under 1902 Guamanian law, where Papa San would go out and look at his property and have the children beside him and say, “You, Junior, get this and you, Sister, get this.” And he divided it up by oral bequest [laughs] under Guamanian law. So there’s direct appeal to the Ninth Circuit. That court has since changed on the appellate level. Then, we were on the trial level and we tried a lot of immigration smuggling cases in from the Philippines. The Navy, of course, is very heavy still in Guam. They love the Filipino workers because they’re hard workers, they’re clean people, they’re law abiding, but it was profitable to bring in the illegals.

In 1998, we went to Russia as a State Department mission. We were assigned to travel with the chief justice of Russia, Mr. Lebedev, and Erwin Chemerinsky, who is CBS’s commentator you see on television all the time reviewing Supreme Court decisions or what trials are going
on, a very noted law professor. The other person in our group was Jimmy Voyles, whose famous client was Mike Tyson. Voyles is a very nationally recognized criminal defense lawyer. We took Pearl along, and we flew to Moscow and stayed at the Marriott. It was just like being anywhere—could have been in Portland. But nobody was there because they just lost their currency in 1998, and had ninety-percent devaluation. So people survived by stealing and bartering. In a group of Americans that got off of the airplane in Moscow, a bespeckled man came up—very distinguished looking—and he pulled out a razor and cut through this other gentleman’s Norm Thompson jacket and stole $3,000 in cash, and was gone in seconds, just disappeared. They became very artful and we became very cautious about where we put our money, and we had bodyguards everywhere we went. We did go to the open markets and saw heartbreaking things—people selling their china, their lace, the home treasures just to get by. We were there very briefly then we flew to Ulyanovsk, which is 440 miles east of Moscow, on the Volga River. That’s where Lenin was born. Lenin now is in disgrace and they hardly recognized his home, although we did visit the home where he grew up while we were there. But nobody encouraged us to. We got there in a terrible snowstorm in a unregulated airplane—I mean, no regulation, no flight attendants. We just threw our baggage on the empty seats and they flopped around as we flopped around in the air. Fortunately, we landed safely [laughs] with just the pilots and limited passengers.

We were met in the snow by the local officials and judges. We had a meeting there with 150 Russian judges, federal judges—they call them regional judges. They were from all over Russia. Some were closer to America than they were to where we were. There were several Mongolians, there were people from Siberia, Vladivostok, of course, on their coastline but spitting distance from Alaska, 126 miles, I think. In any event—wonderful group of people. And we put on our program on how to try a jury trial. They’d only tried ninety-six jury trials at that point in all of Russia. All of them were death-penalty murder cases, but the jurors had imposed the death penalty only three times because they were so sick and tired of the three-level system that existed under the Russians—what you call, ready, aim, fire? [laughs] You know, pull you out of your home and bang? So, we put on our display how to try a jury case. Chief Justice Lebedev just became livid. He said, “You can’t do that! You can’t do that in Russia!” [pounding for emphasis]

I said, “Why not, Chief Justice Lebedev?”

He said, “It might persuade the jury.” [both laugh]

We said, “That’s why we’re here.”

Anyway, I don’t want to get into too much detail, but the plight of the prisoners is terrible. They have no marshals, so they bring the prisoners into the courtroom in a cage. So here’s this caged “thing” being tried, and of course the prosecutor has enormous power. Then when they’re sent to prison, Chief Justice Lebedev advised us—not just street talk—there’s no food for the people in the prison. So they want to
get sent to a prison where their family’s near so they can bring food to them. If you don’t, you starve. The only place they could get food would be in the infirmary in a hospital. They had a terrible tuberculosis/pneumonia episode inside the prisons. So the prisoners would infect each other to get sick so that they could get to the hospital to get something to eat. Well, enough for Russia.

CH: Do you think that the judges that you talked to understood the trial system as we know it and the legal system as we know it? Do you think that they were sincerely trying to create that kind of system there?

RJ: Absolutely. They mimicked our Constitution and our rights and they’re doing their very best to adapt to our legal system. They’re having a terrible time adapting to our capitalistic system. The crime is rampant there with big mafia-type things and corruption everywhere.

CH: So your next case, then, was?

**Out of District: Samoan Mafia**

RJ: Well, as far as the out of district case, was the Samoan mafia case in Hawaii. I don’t think we’ve talked about that.

CH: No, we have not. Go right ahead.

RJ: All right. In that case they had a very prolonged case, again, scheduled for about four or five months with hundreds of witnesses. It was to try the kingpin, the drug lord, who was a Samoan. His name was “Pupi” Toelupe—Packward Toelupe. I was especially assigned by Chief Judge Ezra of Hawaii to come over, because he knew I was a former University of Hawaii person, and knew that I liked to handle complex litigation. So it was a natural for both of us. The case involved this gang, and they were distributing methamphetamine. They polluted the Hawaiian Islands with meth. We had a terrible time getting a jury. We had to call in 120 jurors and hope to get twelve that would finally decide the case. Juror after juror after juror said, “Well my daughter’s on this stuff,” or “my son’s on it.” They’ve had one tragedy after another of people being involved, or being involved in law enforcement. So we ended up with jurors from the other islands that we flew back and forth on a daily basis. It was quite an experience. We had a lot of pre-trial motions. We had, I think, seven defendants. These Samoans are huge. Lancelot Barclay weighed 450 pounds. His wife, who was not far behind him in weight, [chuckles] was very concerned that Lancelot wouldn’t get fed enough in jail [CH chuckles] while the process was going on.

The operation was essentially this: they would take couriers, up to twenty-four couriers, and put them in business suits, but with specially sewn pockets inside the suits and the legs of the suits. They’d have no metal on them. They would put in $500,000 in cash in each of the suits. Then they would fly them from Honolulu to Los Angeles. They would walk right through the detectors because there’s nothing to stop them for. Certainly you can’t do it on an ethnic basis. As you
know, in Hawaii it’s a real “melting pot.” So these people would go back and forth and back and forth without detection.

They [airport security] were, by the way, checking out my wife. What you need is a five-foot grandmother as a real threat. Off come the shoes and the whole works every time. In any event, they get to Los Angeles and then they trade the cash in with their Mexican connection for pure meth. They put the pure meth in the same suits, again, no detection, and back they go. They get to Hawaii, then they take the pure meth and melt and cook it down into crystal meth, which is an orange meth, which then makes it even more expensive.

Then they go to their distribution, take Waipahu for instance, then they would have their distribution chain. Here’s Pupi Toelupe with five homes with swimming pools and workout rooms. He was a non-drug user. He was a very strong enforcer. He was the boss. He’d have his lieutenants, then they’d have their sub-lieutenants, then they’d have their street distributors. They would hit the people who were working first to get them, on payday, to sell to them. Then they’d work down to those who were on food stamps. They would be sure that they got as many people as possible. They had operations in Mililani and they had operations on the other side of the island. They had operations on Maui. They had operations on the Big Island, and they had operations in Samoa. They were making pounds and pounds of this stuff. They were under surveillance with video for up to two years. They had undercover agents with body wires. They had informants with body wires. They had every form of secret investigation you can imagine. Of course, all of that brought about a lot of constitutional issues and motions to suppress—five trips to Hawaii to just clean out the pre-trial stuff.

When we got to the trial we worked really hard. The lawyers couldn’t believe how hard we worked because they were used to a more casual way. We just moved it right along and got through the case in, I forget, three or four weeks. Finally, after conviction—Pupi was caught with sixty-seven enforcement weapons—Uzi machine guns, AK-47s—plus I forgot how many pounds of pure meth. Something like thirty-two pounds—we just did his home. Then he had all sorts of storage houses full of other stuff. When it came to sentencing him—he’s in his forties and I was concerned, because he had obviously, I think, eliminated some people along the way, that he’d be a real problem in prison. I could have given him life, but I was concerned that if he was given life with no opportunity for parole he’d be a real problem in an institution. By the way he had no prior criminal record. I sentenced him to forty years with no parole.

CH: He’d be a problem in what way?

RJ: Of becoming a gang boss in prison.

CH: Oh, becoming—himself becoming a boss. He’d be a troublemaker.

RJ: Yes, he was a natural leader and he would be a dangerous convict.

[End of Tape Seven, Side One]
Controversial Cases

RJ:  This is about wound up I think.

CH:  Okay. So you were talking about the B&B fire case and you denied the injunction.

RJ:  And then this week the Ninth Circuit denied an emergency injunction, and so they set a briefing schedule. By then the selective logging will be done. They cannot do the planting until the spring. But essentially the matter’s become moot. We also—the years we’ve had the bull trout. I issued protection for the bull trout. We had the wolves—I allowed the reintroduction of wolves. That was a nationwide case by the way. So that involved deciding whether the government had a rational plan for minimal reintroduction of wolves. I allowed that, and we’ll see what happens with that. That case is also on appeal.

CH:  Was that in another district? Did that originate in another district?

RJ:  No, it came right here.

CH:  It came right here. Mm-hmm.

RJ:  As I said we’ve had the spotted owl. Originally, I had the snub-nosed sucker in the Klamath basin case, and left that to the Eugene judge when I left Eugene.

CH:  When did you have the spotted owl case?

RJ:  Well, I had one up here involving Clatsop County. That was resolved—well, since 1997. It was when we were in this building. Then, of course, we had it down in Eugene, too. We had a lot of environmental cases down there. I find them very interesting in the sense of the enormity of the cases, and they’re almost unsolvable problems. As you know, Judge Redden is our—when somebody gets good press we have a little award called “The Captain America” award. I don’t know if you remember Captain America, but—

CH:  Of course.

RJ:  Well anyway, a lot of people wouldn’t. But it’s a little rubber statue, about like this, and whenever any judge gets good press we then have a ceremony. So now we’re going to have a ceremony for Judge Redden, who just had his picture in the editorial page this week. He’s our Captain America. [laughs] For ordering the government to please solve that long, enduring salmon problem that’s been going on as long as we’ve been alive—dating back to Judge Boldt in Tacoma.

The assisted suicide case originated in my court. I had the hearings on that back, I think, in 1999. Here we are six years later, and it was argued last week in the US Supreme Court before our brand new chief justice, and we’ll see what happens to that. [See earlier note: Oregon won].

CH:  Can you comment any further on that?
RJ: I thought that the arguments did not seem to favor Oregon’s position. If Chief Justice Rehnquist were still on the court—because Sandra Day O’Connor is the one—I followed the Rehnquist/O’Connor approach when they were deciding that there was no constitutional right to assisted suicide, or death with dignity, whichever you want to call it. They said there’s no constitutional right against it and there’s no constitutional right for it. I mean there’s no constitutional prohibition against it. Then, those two wrote that this should be best left to the states to do their own experimentation. The issue comes down to—is this the practice of medicine or the antithesis of the practice of medicine? A lot of people think it’s mercy killing and others think that it’s the practice of medicine, and that doctors do it every day—that they take off life support and move the people out of intensive care into a holding bed until they starve to death. That is happening right now all over the country, day in and day out. So, that’s up to somebody else at this point. I must say that it’s been lively around here, and you never know what’s going to come in the door. We have no way of controlling that except in the numbers we take.

CH: What cases do you feel will have the most significant lasting impact?

RJ: Well, certainly, this death with dignity issue is a major issue, but if Oregon wins I think that Congress could very well pass a law that would usurp the state laws. The argument is that when they passed the Controlled Substance Act they weren’t even thinking about assisted suicide. There’s nothing to stop the Congress from coming in and occupying the field. I think the case that I wrote in the Supreme Court of State v. Henry involving the adult censorship—if you want to call it one thing, or you can say allowing pornography—has had a very substantial effect. I never liked the case in the first place. I just got stuck with it. We had a unanimous court and we found that Oregon pioneers didn’t want adult censorship.

But now we’re talking about the [Oregon] Supreme Court going further and saying there’s no prohibition against live sex acts or masturbation on the stage, you know, all of that to me implies conduct, not free expression. I’d hate to be [laughs] thought that I was the grandfather of any of that sort of stuff. But the court makes some tough decisions, and Mick Gillette who wrote that opinion is a very genius-level fellow and not a wild hair at all. Sometimes you have to write unpopular things, things that you don’t like.

Another one was the Smith and Black v. the Employment Division. It went to the US Supreme Court. In that case the [Oregon] Supreme Court said, I said, the Native American Indians in their exercise of religion could use peyote. The [US] Supreme Court said they could not. What happened then? The Congress met and said, “Yes they can.” So, they can. So there’s something that went clear to the [US] Supreme Court and was immediately trumped by a Congressional Act, which made it legal.
Difficult Decisions

CH: Do you ever feel that you’ve had to decide one way on a case when your own personal beliefs felt another way?

RJ: Many times. Especially when the constable blunders and the guilty go free. I think Oliver Wendell Holmes said that. Many times in motions to suppress, where the police didn’t do the right job, they fouled up and you are stuck. You have to sometimes let somebody walk that should not walk.

CH: What about conflicts of law, where you feel that you have to apply a law that you don’t necessarily agree with?

RJ: Did it all the time. The issues pertaining to low-level meth people required sentences of 262 months without parole. I thought they were Draconian sentences, but the law required it. A lot of mandatory minimum laws can be very unequitable. The immigration laws are particularly unequitable. You have somebody who’s here, with a family, working hard, paying taxes— they get stopped and they’re an alien and they ship them out. I think it’s terrible and unequitable. On the cases involving Social Security, it seems to me that the law has been warped from its original intention. For instance, I don’t think I should be receiving Social Security, nor my wife. We’re not in need. We’re certainly not wealthy. I mean a lot of people who don’t deserve it are taking advantage of early retirement under a claimed disability, where they are overweight, don’t want to work, and they have aches and pains, and they are claiming total disability. I must say I find it very difficult to be sympathetic to a law that would allow them disability. On the other hand, there are very many, very worthy Social Security cases, and we handle them on a daily basis.

CH: You said that you like difficult cases, complicated cases, why is that?

RJ: Because, after forty-two years, who wants to be doing the same thing day in and day out? You’ve had too many a drug addict say, “Oh, Judge, I’ve seen the light. Just give me a program.” Well, we’ve tried the State Hospital. We tried Freedom House. We tried Conquest Center. We tried Alpha House. We have tried group therapy. We’ve tried drug court. We’ve tried methadone. They just keep coming back and they keep coming back. It just seems that I’ve had my belly full of listening to a drug addict tell me, “Judge, I need a program.” They get the program and they just sit around telling about how much junk they used to shoot up in a group therapy. I don’t see much therapy coming out of it.

Punishment and Reform

CH: What relationship do you see between punishment and reform?

RJ: I do not know what the solution is to our drug problem. For in-
stance, in our present meth epidemic, it’s going to take strong enforcement and it’s going to be very costly. But I don’t think you can just let it go totally out of control. On the other hand, there are judges on this court that are very distinguished judges, and they say we’d be better off if we just legalized everything and if people want to kill themselves with this junk, let them do so. Then they wouldn’t be out robbing the banks—ninety-five percent of our bank robberies are induced by drug addiction. They wouldn’t be assaulting people on the street and they wouldn’t be doing a lot of these crimes. They think our criminal caseload would essentially evaporate. Then, you get into messes like they’ve had in other countries. I believe Holland is an example. So, I don’t know what the answer is and I don’t think there’s anybody that knows what the answer is.

They have the experiences that we judges in our cloistered existence don’t have. These people have lots of smarts and lots of mix that you don’t get from a judge.

CH: We hear a lot today about judicial activism, and I’m wondering how you define judicial activism and what your feelings are about it.

RJ: Depends on which politician is using the expression. If they don’t like what you did, you’re a judicial activist. If you did what they like, then you are a stellar scholar. [both laugh] It’s just a phrase. It doesn’t mean anything. I would say that the one person who professes to be a judicial activist is Judge Stephen Reinhardt on the Ninth Circuit. He takes great pride in saying that he does what he thinks is right, irrespective of the law. I would say anybody that takes the law in their own hands shouldn’t be judging and that he’s dead wrong in that attitude. I think that we have to follow the law and not make law.

CH: Do you feel that judges have to deal with the problems of poor legislation in deciding the law? That maybe that’s the reason that they’re called activists, because the law is vague in its meaning?

RJ: Well, there’s no question that bad legislation makes it very difficult on the judges if you’re trying to determine what to do. Where we’re getting a lot of bad legislation is—every time there’s something bad that happens they want to pass a federal law against it. So, we’re

---

**Juries**

CH: With the complexity of the cases that you’ve had to deal with, and in general the complexity of cases in the court—what do you think about the competence of juries to understand these problems?

RJ: They’re amazingly good. They seem to go right to the heart of it. I’ve had some jury verdicts that are very disappointing. They went off on either poor lawyering, which is often the case, and some of them went off on sympathy. But, by and large, I’ve seen a group of judges hack up some cases pretty badly also, not just the Ninth Circuit. [both chuckle] I still like jury trials.
courts of limited jurisdiction here. We’re not a general jurisdiction court. So when we have a car jacking, there’s no reason to have that in federal court. And yet, because somebody might have somehow got Interstate Commerce involved—coming in on an airplane—they dump it off into the federal court. Why bank robberies? Local banks are robbed every day. You know what our jurisdiction’s based on? The FDIC, Federal Deposit Insurance Corporation. It’s only because they are federal funds that are taken that we have jurisdiction. All those bank robberies could be tried in state court and handled in the state institutions. There are an endless number of things that are passed that have no business. What about the suicide assistance law that our Senator Smith had, the tragedy in his own family? You know, I’m very sympathetic—my Lord, you can’t think anything could hurt worse. But does it belong in federal court, or federal jurisdiction?

---

**Difficulties in Federal Court**

CH: When you first came on to the bench, what were the main problems facing the court, and what would you say are the main problems now facing the court?

RJ: Well, the main problems when I first went on the court were too many people trying to get money out of car crashes. It seemed like every other case was a personal injury auto case. I guess I’ve tried two personal injury auto cases in the last fifteen years now, here. But there were an awful lot of whiplashes. Suddenly, when the jurors got sick and tired of people whimpering about a sore neck and not giving any money, they’ve kind of gone away. You don’t hear about them anymore do you?

CH: No.

RJ: But we had a lot of that. We had an awful lot of bad laws that existed early. I thought we may have covered this, but wrongful death—the limit was $5,000, and then it got up to $15,000. Bob Mautz of the Schwabe Williamson firm, or a predecessor, was told by his partner, “When you’re going down to Salem and lobbying to keep that death penalty cap at $10,000, Bob, be sure to drive carefully.” [both laugh] Also, if you were one percent at fault you got nothing on contributory negligence, instead of comparative fault, which now it’s up to the fifty-percent level. If you were a guest passenger in a car, you couldn’t recover unless you could prove that the driver of the car was guilty of wanton misconduct. You know, an “I don’t give a damn what happens” attitude that we used to have to instruct jurors. So there was an awful lot of that litigation. Then the drug problem started just about the time that I started. At that time, possession of any amount of marijuana was a felony. So I sentenced people to prison for having a joint. It was a felony. You got, over one year, so—

CH: Did you feel compelled to do that, or did you feel it was—
RJ: At that time, I thought we’d stamp this out in a hurry—this is pre-Vietnam—and we’d just stop this in its tracks before it gets off the ground. I had big pictures in the *Oregonian*. I was a crusader and pointed out how the marijuana users all went on to heroin and so forth. I didn’t learn fast enough that I shouldn’t be a sociologist. [laughs] So, I think it did no good.

CH: How influential do you think court policies or court decisions are on public policy?

RJ: Well they’re great at the moment. I think the bottom line is all of the major issues that we have in our lifetime come before the courts for resolution and develop policy.

CH: Have other judges that you’ve worked with either—I guess you’re not on any *en banc* cases on district court—that’s only on the court of appeals. Is that right, or not?

RJ: Yes, that’s right.

CH: Yes. But in your discussions on cases and issues with your colleagues and coworkers, and other people in general, have they had an influence on your own beliefs and understanding of problems?

---

**Court Practices**

RJ: Absolutely. I think I have learned to be more moderate about a lot of things, and also more sensitive about a lot of things. I think it also goes with maturing, but yes, I’m influenced every day by the discussions of the other judges. We’re going to be discussing matters in the next hour-and-a-half which will be of great interest.

CH: Is this a formal process, or an informal process?

RJ: We discuss all criminal matters Monday mornings at eight-thirty, for the sentences, and at noon, all civil matters. We select lawyer representatives. We select who’s going to be the magistrate judges. We talk about how we’re going to handle new cases that come down.

CH: What efforts in streamlining the court have you been involved in?

RJ: A lot. We think that an awful lot of the federal rules of civil procedure have been overloaded by the academics and some people that haven’t had some gut-level trial experience. There’s *way* too much paperwork. So, traditionally, here we waive Rule 16 conferences as unnecessary. Good Lord! Gus Solomon used to require all the lawyers who had a case before him report to him in person, even if they had to come all the way from Medford to say, “We’re ready,” or not ready. We don’t do any of that. When the lawyers are ready, that’s fine. Then, we waive the pre-trial order as too much, too soon. It just clutters up things. We let the cases mature. We handle the summary judgments and dispose of the junk cases up to the fifty-percent level. Then, once we’ve done that we handle
discovery matters over the telephone instead of having formal motions filed constantly. We criticize lawyers who constantly file matters. We require the lawyers to meet and confer on all issues before they come to us, and try to work them out. If they haven’t, then they catch hell from us. Then, when we get down to the trial level, once we get to the final pre-trial conference that’s already gone through mediation, or ADR as they call it—alternative dispute resolution—so the case is not going to settle after mediation’s attempt.

Our trial date is rock solid at that point, and no last minute settlers, absent emergencies. Everybody’s expected to be ready with their exhibits and their issues, and we hold our final pre-trial conferences, and we never bother with authenticating any documents before a jury. We don’t hand documents to be handed about amongst the jurors as we used to. We control the jury selection process. The judge does the bulk of the jury selection process with limited follow up by the lawyers of fifteen to twenty minutes. We control how much time they’re going to spend on opening statements, especially in complex litigation. By and large, in normal cases we can pick our jurors and use the challenges and all without embarrassing the jury because the challenges are done outside their presence, instead of the old-fashioned way of excusing jurors in their presence. So we can usually get a jury by coffee break in the morning, [CH laughs] and then get right into opening statements. Then, all the exhibits have been pre-received and so we can flash them up on the screen.

Or, the jurors can have the books if you tell the lawyers, “If you have exhibits you want the jurors to see, you get a three-ring binder and put your exhibits in there so each juror has their own set of exhibits.” It’s amazing how that cuts down on the number of exhibits people are offering. Judge Marsh has made a study and found that of the exhibits they do offer, counsel fails to even mention the exhibits fifty-percent of the time.

CH: What do you think are the main qualities that a good judge should have in this court?

RJ: Be patient, be kind, be quiet. [laughs] No, I think that you have to take control of the case, but not be obnoxious or a martinet. Don’t take yourself seriously. Make the jurors feel special. Don’t put up with any nonsense. Do not admonish people in public. If you have to admonish someone, do it outside the presence of the jury. Don’t embarrass anybody unnecessarily.

CH: Have you been reversed by the Ninth Circuit?

RJ: Who hasn’t? [laughs] You’d wonder if you were sick if you weren’t. No, everyone gets reversed. It’s no shame.

CH: So you don’t have any feelings about that?

RJ: Oh, sure. I think they’re wrong every time they reverse me. [laughs] There’s some reversals that I think are catastrophic and some are well deserved. I just was reversed
on Planned Parenthood, and I think I did that on two reasons. Number one, my nose told me to do something else and I should have followed my nose. The punitive damages were virtually wiped out. They were reduced to several million dollars. That part I brought on myself. I would have been shocked if I’d been affirmed. Another case is—I think, for instance, assisted suicide should not have been appealed. I was very disappointed when it was, and I will be very disappointed if it’s reversed. [It wasn’t]

[End of Tape Seven, Side Two, Interview Ends]
The title of this section probably should be "The Best for the Last." The reason for this title is that above all else the most important thing to me has not been my work or other activities, but my own family has always been the central part of my life.

Pearl and I just celebrated our fifty-eighth wedding anniversary on May 29, 2006, having been married on May 29, 1948, at the Westminster Presbyterian Church in Northeast Portland. We joke that we had a dry reception at The Mallory Hotel because I wasn't old enough to drink, being just twenty at the time.

Pearl will be eighty next month and looks twenty-five years younger, in spite of having survived breast cancer with mastectomy and open-heart surgery replacing her aortic valve with that from a sixteen year-old boy donor.

If I look back, I really did not have much parental contact after age seventeen when I entered the service, no paternal contact since I was fifteen when my father went to war, and yet Pearl and I have essentially been together since our first date on October 30, 1943. Therefore, the focus of my family is with Pearl and of course later the children, Jeff and Julie, their spouses and our three grandchildren—Trent, Anna and Calvin.

Before our time in Hawaii in 1948 and 1949, where Pearl worked as a receptionist for the radio station KULA from 1945 to 1948, she worked as a doctor's assistant for Dr. Max Himmelfarb and Dr. Leo Schautz, where she met most of the Portland Jewish community. When we returned home to Portland, she was lured by a handsome, young dentist and trained and served as his first dental assistant. I am referring to Dr. Milton Lebenzon, who became the oldest practicing dentist in the history of Oregon, retiring at age eighty-six. We attended a party for his ninetieth birthday, when he looked as chipper as always, yet he died within weeks after that celebration.

All the time I was in law school and working as an adjuster, Pearl was working. When I was in town, I would stop by the dental office and Pearl would allocate thirty-five cents to me for my lunch, which I would take across the street to Ben Fenne's Pool Hall and parlay that allotment into multiple games of Snooker and enough for a ham sandwich and a milkshake.

My secretary at the General Adjustment Bureau was a young motorcyclist who took me out for what was a common practice then—“boss’ night,” and Pearl had to pick out just the right flower for my date. Pearl's mother got a bit confused, saying that she thought it was terrible that Bobby was going out playing "Snookie" with his secretary. In any event, we ended up selling our first home in Woodland Park to that secretary, Jeannie. This was a “Leave it to Beaver” neighborhood, made up of small colonial houses with shutters and knotty pine interiors. We called our neighborhood “Exclusive Multnomah County Jail Heights.” The house cost $8,250 with $1,650 down and $55 per month payments on a twenty-year mortgage.
Pearl had a very difficult time getting pregnant and it took almost seven years before Jeff came along. He was born on February 2, 1955, in Wilcox Memorial Hospital, the same hospital in which Pearl and I were born. At that time we had a part-Beagle part-Terrier dog named Peppy who went into depression when we brought Jeff home. Peppy couldn’t sleep or eat for some time. However, he became Jeff’s constant companion and protector, and almost all of our early photographs show Peppy right at Jeff’s side.

After selling our home in Woodland Park (99th and Halsey, since torn down), we purchased our second home in West Slope in Washington County for $22,000. It had an acre of land and I built a nine-hole pitch and putt golf course in the backyard. The property was located on the old Multnomah County Golf Club course. The home, located at 8285 SW Ridgeway Drive, was quite beautiful and has recently been totally remodeled.

After Jeff was born, Pearl became a “stay at home mom,” but I was gone almost all of the time since I worked out of town during the week and spent most of the weekends in the office, while attending four long years at night law school. She ended up doing all of the childcare, all of the yard work, as well as the household chores and all of the constant meetings (Cub Scouts, etc.).

On August 14, 1959, we were vacationing in Hawaii when we were notified by our friend, Dr. John Bubalo, that we were the proud parents of a beautiful little girl, Julie Lynn Jones, who we picked up at St. Vincent Hospital upon our return from Hawaii. She was darling and had huge dimples. We had her baby room totally decorated and furnished, which she treasured until we built our present home in 1964-65 on Skyland Drive in Lake Oswego. Somehow Pearl kept everything together almost single-handedly until I left the law practice and went on the bench in November of 1963, as previously described.

Our long time friend and my present golf partner Jeff Ehlen built our home with a beautiful view in Lake Oswego for the huge sum of $46,000 after we already paid $12,000 for the lot. I could have purchased the acre in front of us for $10,000 with no down payment and six percent interest, but we simply could not afford it since we had taken a seventy percent cut in income to go on the bench and it was a real struggle to make ends meet. For comparison, the property kitty-corner from us with a blocked view just sold for $660,000 for just the lot. In any event, our friends could not believe that we could build a house with a total of 6,400 square feet counting the daylight basement and get so deeply in debt with a $36,000 mortgage, for which Pearl dutifully peeled out $203.40 per month for the next thirty years. It turned out to be the best investment we ever made and was the first home built in Lake Oswego’s Skylands II.

Both Jeff and Julie attended Lakewood Grade School, which is now a performing arts center and Jeff started high school at Lake Oswego, but transferred to Lakeridge after his freshman year, which is located just down the hill from our place.

Jeff has been a natural athlete from day one and excelled in football, basketball and
was All-Star in baseball. He played second base and shortstop and they called him the vacuum cleaner because he could catch virtually anything. After entering high school, the coach said he was not big enough for football, nor tall enough for basketball. By this time Jeff had developed expertise as captain of the cross-country track team, wrestler of the year, and as captain of the golf team, having taken lessons over at Black Butte from PGA Pro Bunny Mason, the same guy I beat for the high school championship in 1945. To this day, Jeff is one of the longest hitters at Oswego Lake Country Club and still has a two handicap.

Whereas Jeff was always busy studying or playing ball and presented no problems, his little sister Julie was a roller coaster but an absolute joy most of the time. Today, as a very strict mother of Calvin, who will be entering high school this fall, she looks back at her youth adventures with amazement and dismay. Her grades were not quite up to snuff in high school, nor at the University of Oregon, so she made a very wise decision and finished her education at Lane Community College, majoring in insurance adjusting. In comparison to her classmates at Oregon, who had a difficult time finding any job with degrees in majors such as Sociology, Julie immediately found a well-paying job as a claims adjuster with a large Northwest insurance company. I believe she remained with the company for thirteen years and was highly regarded for her competency. It was in her training period that she met Ted Bump, and I had the joy of marrying them at the First Presbyterian Church on August 2, 1986, which turned out to be the hottest day in Oregon’s history. A friend lent them Bob Hope’s limousine, which was quite antiquated and had a rough time transporting the newlyweds in the heat. We are blessed that Julie’s home is just one mile from ours and she is a constant companion and helper.

In the meantime, Jeff finished at Lewis & Clark, where he graduated *cum laude* in 1977. The best part of his undergraduate experience was to travel to Iran as a foreign exchange student. He became very gifted in languages and was the interpreter in Farsi for his group of Lewis & Clark College students who joined him. He lived in Iran with a lovely family and traveled to Afghanistan, Pakistan and the Khyber Pass. He later stayed in a kibbutz in Israel and we met him in Athens, Greece in 1976.

Jeff started and completed law school at Willamette University and commenced his practice with the Multnomah County District Attorney’s Office as a prosecutor. He then joined the Cosgrave Kester firm. He found out he did not enjoy defending insurance companies and finally set up his own shingle in Oregon City and then Canby, Oregon, and was a solo practitioner when appointed to the Clackamas County Circuit Bench by Governor Kulongoski in August of 2005.

Jeff has also maintained an active academic life teaching my old classes of Evidence at Lewis & Clark for the last fourteen years. He is also a co-author of The Rutter Group *Federal Civil Trial and Evidence*, which is a three-volume 2,500-page work.

Over the years Pearl has been the mainstay of our social life and has developed hundreds of friends. She sends out over 500 valentines every year, which reach over
1,000 friends. Her social calendar is massive, but always centered on what she can do for someone else. She wakes up daily making out a list of what she can do for someone in need or for encouragement. Pearl does not have a critic or an enemy, nor indeed is there any reason that she ever would. The last person she thinks of is herself, for which she is admired by everyone she knows.

Finally, we have never felt the need to do things on our own and Pearl always travels with me and is there for advice, support and companionship. Whether we are in Guam, Saipan, or on Russian travels, in Hawaii, or virtually every state in the union, we go as a couple, and I suppose that is what marriage is about.

Judge Robert Jones
December 2006
Appendix B: Meetings With The President and The Supremes

One of the perks of being on the faculty of the Federal Judicial Center is that we get to meet with the members of the US Supreme Court every year, and each fourth year with the President of the United States.

For some unknown reason, I was selected from my group of new judges in 1990 to give the dinner address to the US Supreme Court members at the dining room of the US Supreme Court. Rather than give a dry “Howdy Doody” speech, I decided to go table to table to give some homily to some of the members of the court. For instance, Justice Powell’s daughter worked here in Portland, and when I reached Justice Scalia, I commented that I had a sterling record as a state Supreme Court Justice until he reversed my opinion in the Freedom of Religion case where Oregon allowed the Native American Indians to use peyote during their religious services. He fired right back and said, “That’s only because you were dead wrong, Judge Jones.”

To which I countered, “No, Justice, it’s only because you moved the legal goal posts.”

He smiled over his martini and said, “Yes, I guess we did a little.”

Later, I was at the head table at the Supreme Court when Justice Ginsburg was giving a rather long and dry speech and I had to use the restroom. I had no alternative but to conspicuously leave and come back during her presentation, a most embarrassing experience. Since then I have always double-checked the condition of my bladder before any such ceremonies begin.

The first and only meeting with President Clinton took place the day after he got the fancy haircut at the airport in Los Angeles, and his trouble with his travel office kept all of the dinner guests of new judges waiting for over an hour. When I finally had an opportunity to speak to him, I mentioned to him that we in Oregon were rooting for Justice Susan Graber to be appointed to the US Supreme Court. He pushed everyone aside, including famous Judge Jack Weinstein of New York, and commented that Susan was a classmate of his and that when she walked into the room the average IQ went up fifty percent. He elaborated by recalling that she had become sick at the beginning of their tax class at Yale, did not attend a single class, borrowed his class notes, and beat him on the final. Unfortunately, Justice Graber came in second and Justice Ginsburg was appointed.

When we met with our now present President George Bush, he immediately mentioned his attachment to Oregon and how much he and his father, the former president, had enjoyed the friendship and service of Punch Green, an Oregonian who served as ambassador to Romania. Curiously, that was the same reference his father used when he called me to appoint me in 1990.
When we visit the White House, the judges are given the opportunity to stroll almost every place, and some rooms are practically empty. I recall walking into one room where Janet Reno was conversing with a couple of friends, and over in the corner was an old man by himself. I introduced myself as Bob Jones, and he responded that it was nice to meet me and that his name was Bill Brennan. These were pretty heady surroundings for a graduate of an unaccredited night law school and I felt almost overwhelmed when I got up to address that august body.

Judge Robert Jones  
December 2006
Appendix C: Robert E. Jones: Almanac of the Federal Judiciary

Robert E. Jones  Senior Judge;
Oregon
1007 Mark O. Hatfield United States Courthouse
1000 S.W. Third Avenue
Portland, OR 97204-2902
(503) 326-8340
Fax: (503) 326-8349
Born 1927; appointed in 1990 by
President G. Bush

Education  Univ. of Hawaii, B.A., 1949; Northwestern College of Law, LL.B., 1953

Military Service  USNR 1945-47, 1949-87; Retired Captain, U.S. Navy, JAG Corps

Private Practice  Windsor, Jones and Briggs, Portland, Oregon, 1953-56; Solo practitioner, 1956-58;
Anderson, Franklin, Jones, Olsen and Bennett, Portland, Oregon, 1959-63

Previous Judicial Positions  Circuit Judge, Fourth Judicial District, Multnomah County, 1963-82;
Associate Justice, Oregon Supreme Court, 1983-90

Academic Positions  Northwestern School of Law of Lewis & Clark, 1964-90; Willamette Univ. School
of Law, 1988-90; National Judicial College, 1968-present; American Academy of Judicial Education, 1971-
90; Federal Judicial Center (Orientation for New Judges), 2004-05

Professional Associations  Multnomah Bar Assn.; Oregon State Bar; A.B.A.; Fellow, American Bar
Foundation; Master, American Inns of Court; United States District Court of Oregon Historical Society

Other Activities  Board of Overseers, Northwestern School of Law, Lewis and Clark College; Oregon
Historical Society; Oswego Lake Country Club; Former member, Oregon State House of Representatives;
Former Member, Oregon Evidence Revision Commission; Former Chairman, Oregon Commission on
Prison Terms and Parole Standards; Former Chairman, Continuing Legal Education Committee, Oregon
State Bar; Member, Oregon Criminal Justice Council

Judicial Committees & Activities  Education Committee, Ninth Circuit Judicial Conference (Chair,
1996-97)

Honors & Awards  President, Oregon Trial Lawyers Assn., 1959; President, Circuit Judges Assn.,
1967; Award of Merit, Multnomah Bar Assn., 1978, 1979; Honorary Doctorate of Law Degree, City Univ.,
1984; James Madison Award from Society of Professional Journalists, 1985; Distinguished Graduate
Award, Northwestern School of Law of Lewis & Clark College, 1985; Citizen Award, National Conference
of Christians and Jews, for establishing Volunteers in Corrections Service to Mankind Award—Sertoma
Club of Oregon; Legal Citizen of the Year, 1988 (Oregon Law Related Education Program); Honorary
Doctorate of Humane Letters, Lewis & Clark College, 1995; Outstanding Professional Achievement
Noteworthy Rulings  1996: Jones ruled that there was insufficient scientific evidence to prove that silicone gel breast implants caused disease in women. Jones' order prohibited plaintiffs from offering expert testimony to support their argument that implants caused disease. Jones relied on an in-depth review of experts' claims by an independent panel of scientists. The panel included a rheumatologist, an epidemiologist, an immunologist and a chemist. Jones found that the experts' testimony fell short of legal standards for scientific evidence set by the United States Supreme Court. Jones said that expert testimony can be admitted only if it showed implants probably caused disease and that an indication that they possibly cause disease was not enough. In his ruling, Jones distinguished between localized problems such as rupture and chest wall pain and systemic diseases such as rheumatoid arthritis, extreme fatigue and autoimmune problems. His ruling addressed only the latter. In the cases considered by Jones, the defendants included Baxter Healthcare Company, Baxter International Inc., Bristol-Myers Squibb and 3M. Jones wrote, "I am mindful that this opinion goes farther in evaluating and in eliminating plaintiffs' claims than any other opinion in breast implant litigation pending in this country." Oregonian, Dec. 18, 1996; Hall v. Baxter Healthcare Corp., 947 F. Supp. 1387 (D. Or. 1996).

Judge Aner L. Haggerty ruled that Jones was qualified to hear the breast implant suits. Haggerty held that there was no evidence that Jones was prejudiced against the plaintiffs or that he or his family had a financial interest that could be affected by his decisions. Wall Street Journal, Feb. 12, 1997.

1999: Defense counsel in the trial of anti-abortion activists called for a mistrial when Jones rebuked a witness, saying, "Truthful means truthful . . . This is not a Clinton deposition." The witness had responded to a question by asking, "What do you mean by truthful?" Jones denied the request for a mistrial and apologized for the remark, asking that the record showed that "the court is smiling and the witness is smiling." National Law Journal, Feb. 1, 1999.

2001: Jones presided over a case involving two white collar defendants who flooded the country with $3 billion in bogus treasury notes. The defendants are currently awaiting sentencing. United States v. Nolan and Van Dyke, (D. Or. 2001).

2001: Jones presided over the largest white collar criminal case in Oregon history involving 5 million documents. The jury saw 25,000 electronic images. The case was projected to last two months, but was tried in 16 days. The defendant, Walter Hoyt, had a tax-shelter scheme that involved selling imaginary cattle that were used to earn huge refunds by claiming the money-losing ranch operations as a write-off. The people he persuaded to invest in the bogus ranch operations were placed in dozens of partnerships, each consisting of 20 to 30 investors. He appointed himself tax-matters partner of all of them, giving him total control over tax issues. Hoyt was sentenced to 20 years in prison for defrauding about 4,000 investors nationwide, and about 60 in the Augusta, Oregon area, out of more than $100 million. He was convicted on 52 counts of mail fraud and money laundering. United States v. Hoyt, 2002 WL 31098462 , (9th Cir. 2001); The Augusta Chronicle, July 15, 2001.

2002: Jones rejected an effort by the Justice Department to block Oregon's assisted suicide law, citing Attorney General John Ashcroft's lack of authority in determining "the legitimate practice of medicine." The Justice Department attempted to use the Controlled Substances Act to punish doctors who complied with the law. In Nov. 2001, Ashcroft issued a directive which essentially reversed a 1998 determination by former Attorney General Janet Reno that said the federal government would not pursue Oregon doctors who complied with the assisted suicide law. The law, in effect since 1997, allows mentally competent patients who are terminally ill to ask their doctors for lethal drugs. Jones enjoined the defendants from enforcing the Ashcroft directive at issue. A divided panel of the Ninth Circuit Court of Appeals upheld the ruling. New York Times, Apr. 18, 2002; Oregon v. Ashcroft, 192 F. Supp. 2d 1077 (D. Or. 2002).

2004: Jones oversaw a complex multi-district level case involving most of the Farmers Insurance adjusters in the country seeking overtime under the Fair Labor Standards Act. Jones appointed a Special Master to determine the individual damages of thousands of claimants. The parties waived a jury and tried the liability issues before the court. In re Farmers Exchange.

2004: A lawyer who was arrested as a material witness with respect to a federal grand jury investigation into a Madrid, Spain bombing was later cleared of all wrong-doing after the FBI determined it had misidentified a fingerprint on a bag of detonators. Jones threw out the case against Brandon Mayfield and the FBI issued him a public apology. Seattle Times (May 25, 2004); Los Angeles Times (May 25, 2004).

2004: Jones upheld nearly $109 million in punitive damages imposed against a group of anti-abortion protesters. Jones found that the protesters' actions were sufficiently threatening to justify the award and that the punitive damages were not unconstitutionally excessive. In 1999 a federal jury had found that the defendants used posters and a website containing photos, home addresses and other information about abortion providers to threaten several doctors and clinics in violation of the federal Freedom of Access to Clinic Entrances Act. The Ninth Circuit Court of Appeals reversed the verdict, saying it violated the defendants' free speech rights. An 11-member Ninth Circuit panel reinstated the judgment but remanded the punitive award to Jones to reconsider. Oregon Live (January 30, 2004).

2004: Jones presided over the so-called "Portland Seven" alleged terrorist cases, with all parties pleading guilty and waiving appeals. The defendants were part of a post-September 11 plot to fight U.S. troops attempting to dismantle the Taliban in Afghanistan. The three defendants who cooperated with the government received seven, eight, and 10-years in federal prison. Four other defendants received 18 years each. Oregon Live (February 10, 2004).

1997: Jones was featured as an honored alumni of Northwestern School of Law of Lewis and Clark College in the Spring 1997 edition of The Advocate. Jones was praised for his dedication to public service and education in the state of Oregon.


2003-04: The “Portland Seven” trial received a great deal of media coverage, including an article in The Oregonian. The article quoted Jones as saying, “not one constitutional violation took place” in the handling of the case, contrary to some early media reporting. New York Times (November 24, 2003); The Oregonian (February 10, 2004).

2004: The case of Brandon Mayfield, an attorney wrongly accused of being a material witness in a Madrid, Spain bombing was the subject of an article in the National Association of Criminal Defense Lawyers Champion (September/October 2004).

Lawyer’s Evaluation  Lawyers said Jones is smart, and an expert on evidentiary issues. “His legal knowledge is without compare.” “I was extremely impressed with Judge Jones in all aspects of his work. His legal knowledge was top rate.” “I found his legal ability to be very high in the matter I was there on. He is the best in the country on evidentiary law. He wrote a book on the subject.” “He is most well known for his expertise in evidentiary law. He is published in that area and has taught many courses also. He also is a whiz in all other areas of the law.” “He has one of the finest legal minds I have ever encountered. He is one of the foremost experts in the entire country on evidentiary law.” “He is still one of the smartest men I have ever met. His knowledge of evidentiary law is legendary.”

Jones is courteous, according to lawyers interviewed. “His courtroom attitude and temperament were the best I have seen in all of my travels.” “He has a perfect judicial temperament.” “His courtroom temperament is the best. He is courteous to everyone. He respects lawyers.” “He is a no-nonsense kind of guy. He is generally courteous, though he can be gruff.” “Lawyers should walk a fine line as the judge can be short, and there should be no hint of any behavior that he perceives negatively. He is a little brusque, and he does not like lawyers to be long winded.” “He is a bit of a control freak, who is also courteous.”

Lawyers said if you follow the rules, you will be fine in Jones’ courtroom. “He is one of the foremost people in the entire country on evidentiary law. He hates repetition and wasting time. I think he is one of the most respected judges in the district.” “He runs a very tight courtroom. If you follow the rules you will be O.K., provided you know what you are doing. He hears evidentiary issues in sidebars, never in front of the jury. If you cross him, he will let you know. He is one of my favorite judges.” “He is quick to get annoyed, and is not receptive to challenges of his power.” “He talks to lawyers in chambers prior to trial to go over ground rules. I wish every case I had in federal court could be tried in front of him.” “He rules quickly, timely, and efficiently. You had better brush up, if you need to, on rules of evidence.” “He gets to the heart of the matter quickly, and can always back up his opinion with the law. He truly enjoys trying cases, and rules timely and keeps his docket flying. Be on time, have your witnesses lined up and ready to go. You will be sorry if you delay things. Do not mess with him when it comes to the rules of evidence.” “Know his rules. Stand when addressing the court.” “Do not fight with or challenge opposing
counsel. He almost always gets it right. He is one of the most brilliant judges I have ever encountered.” “Produce things in advance in writing. He is a judges' judge, and I am a big fan of his. He is pragmatic.”

Jones encourages settlement, lawyers interviewed said. “If he feels the case should be settled, he will be very hands on looking for another judge or magistrate to mediate.”

Lawyers who represent both plaintiffs and defendants in civil matters said Jones is fair-to-defense-oriented. “He is defense-oriented, especially in employment cases.” “I saw no leanings evident.”

Civil defense lawyers said Jones is neutral. “From the beginning, he did not appear to have any leanings. He takes a case on its merits.” “He never has any leanings.”

Jones began taking criminal cases again in 2005.

**Miscellany**  Attorneys attending Federal Judicial Center seminars offered by Jones submitted anonymous evaluations of him containing the following comments: “A brilliant jurist.” “I was struck again by the Judge's courtesy to counsel and all the parties in a recent trial.” “He gets better every year.”
1. Referring to the comedy duo, famous for their verbal sparring in the 1960s *Odd Couple*. In the 1990s, they filmed *Grumpy Old Men*, *Grumpier Old Men* and the *Odd Couple II* in addition to a legacy that includes many other movies.

2. *State v. Brown* (297 Or 404, 687 P.2d 751, Or.,1984. Jul 10, 1984). Defendant was convicted in the Circuit Court, Multnomah County, Richard L. Unis, J., of rape and sodomy, and he appealed. The Court of Appeals, 64 OrApp 747, 669 P.2d 1190, affirmed, and defendant appealed. The Supreme Court, Jones, J., held that upon proper objection, polygraph evidence is not admissible in any civil or criminal trial or any other legal proceeding which is subject to rules of evidence. Court of Appeals affirmed. [Westlaw, accessed December 18, 2006]


5. Referring to popular contemporary court television shows.


7. Brandon Mayfield case—settled; appeal dismissed.


15. Narrator’s note: Luttig resigned in May 2006 to join Boeing as counsel purportedly because President Bush picked [Roberts] and Alito and passed him over.


20. B & B fire case—case is pending.