

John Cooney: An Oral History

John Cooney

An Oral History



FOREWORD BY JUDGE OWEN PANNER

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

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PROJECT STAFF

Donna Sinclair, Project Manager & Transcriber

Clark Hansen, Interviewer

Janice Dilg, Auditor & Designer

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FOREWORD

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 it is 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

INTRODUCTION

John Patrick Cooney, Federal Magistrate for the U.S. District Court of Oregon, was born in Sedalia, Missouri on January 21, 1932. Both of Judge Cooney's great-grandfather's came to the United States from Ireland; the paternal side settled first in Kentucky and then in Missouri, while his mother's family made its way west via New York. His parents, Harry James Cooney and Marcelline Grady, married in 1923 and lived in Sedalia, Missouri where Harry Cooney worked as a railroad claim agent. There, John Cooney, the sixth of ten children, attended Sacred Heart Catholic School through his junior year of high school. When Harry Cooney became the claims attorney for the Missouri Pacific Railroad in 1948, the family moved to St. Louis where John attended a public high school his senior year.

Sports played a significant role in John Cooney's youth. He played baseball, and was on the American Legion team from Sedalia that went to state finals in St. Louis the year his family moved there. During his senior year at Webster Groves High School, Cooney played basketball and then attended Westminster College on a basketball scholarship. Little did Cooney know in 1950, when he signed up for spring training with the New York Giants, that baseball would bring him to Oregon and ultimately to a position as Magistrate Judge for the U.S. District Court of Oregon. When Cooney first arrived in Medford, Oregon as part of the Class D Far West League, he aspired to a professional baseball career. However, by the end of his third year on the team, he decided to leave baseball. That same year Cooney and Eleanor McCabe married.

John Cooney loved Oregon, but he did not yet know what his profession would be. After stints in various jobs, Cooney returned to school, graduated from Southern Oregon College in the spring of 1959, and enrolled in law school at Willamette University that fall. While attending school, he and Eleanor began their family, ultimately rearing four children, Catherine, Martha, Stephen and Emily. During the 1960s, Cooney began practicing law in Medford, Oregon. He didn't specialize in any particular area of law, but had "people clients" rather than business clients, did domestic relations work, some personal injury work, and, as Cooney recalls, "at that time all of us did criminal work."

John Cooney remained in private practice, but in 1989 he applied for a part-time federal magistrate judge position that became open. He was chosen for the job and worked in the part-time role for four years, while continuing his law practice in Medford. In 1993, the District Court created a full-time magistrate position in Southern Oregon and selected Judge Cooney. He was still in that position when Clark Hansen interviewed him in 2005.

Judge Cooney begins this interview by discussing his family history and his early years in Missouri. He explains the organization of professional baseball in the late '40s and early '50s and fondly recalls his time with the New York Giants. While he talks about law school and raising a family while achieving a career, the majority of this four-and-a-half hour interview focuses on Judge Cooney's time with the District Court.

He discusses the unique role of the magistrate judge in Oregon, as well as the distinctions of Southern Oregon. Cooney explains the operation of the federal system, discusses the District Court's jurisdiction in issues involving federal lands, and clarifies the kinds of cases tried by magistrate judges. He also talks about the roles of his two experienced law clerks, describing their duties and abilities and crediting them with an important place in court operations. In addition, Judge Cooney discusses relations between magistrates and Article III judges, the relationships between various agencies, and being a judge in a small town.

The impact of technological advances in the court's operation is evident as Judge Cooney describes maintaining judicial collegiality in Southern Oregon through television appearances at the judges' Monday lunches, teleconferences, and regular phone calls. The focus of the interview is on the types of cases tried, the court's operations, and Judge Cooney's experiences within that operation, rather than on specific cases. He describes the remodeling of the courtroom in Medford and the complexity and wonder of computers and monitors that provide new ways to present visual evidence. The interview closes with Judge Cooney's perspective on family life, his travels with Eleanor-whom he also credits for his success-and his future retirement.

Donna Sinclair
November 25, 2006

Family History

CH: This is an interview with Judge John Cooney in his chambers at the US District Courthouse in Medford, Oregon. The interviewer for the US District Court of Oregon Historical Society is Clark Hansen. The date is May 12, 2005, and this is tape one side one. Could you give me your full name and date of birth, please?

JC: Yes, my full name is, John Patrick Cooney. Date of birth is January 21, 1932.

CH: Going back into your family background, how far back have you been able to trace your family roots?

JC: It's interesting; several members of the family are looking into that and I've been receiving information concerning that. Our own family is quite large. I'm one of ten children, so several of us are very interested. Our end received the information, not terribly far back. I'd say three or four generations perhaps.

CH: Do you know how your family came to this country?

JC: Both my mother's father and her mother were born in this country, as were both of my father's parents. My great-

grandfather, on my mother's side, came over from Ireland. The same was true on my father's side. Both of his grandparents, their families, came from Ireland and my maternal grandmother was German. Her name was Clara Freedomberg. She married Owen Patrick Grady, G-R-A-D-Y. They were my mother's parents. My mother grew up in Atchison, Kansas, right across the river from St. Joe. My father grew up in St. Joseph, Missouri. They were married in 1923 and proceeded to have ten children. I was the sixth of ten, and one of three boys and seven girls.

CH: Do you know how your family made its course across the country?

JC: It appears that my father's family settled in Kentucky, and then came into Missouri from Kentucky. I think my maternal grandmother's people settled in New York, and then she met and married my grandfather and they came to Kansas. So it was through Kansas and Kentucky and the settlement of their families in Missouri and Kansas.

CH: Your mother's maiden name is?

JC: Is Grady.

CH: And her first name?

JC: Marcelline, we call her Marcy, and she is still with us. We enjoyed her 104th birthday in January.

CH: Boy! So she is in Missouri?

JC: She lives with two of my sisters in St. Louis, Missouri.

CH: Your father's full name?

JC: Harry James Cooney.

CH: He was born when?

JC: He was born August the 15, 1898. My mother was born January 29 in 1901.

CH: Now, you were where in the line of your siblings?

JC: I was number six, second boy and I had four older sisters.

CH: How was that experience, having four older sisters?

JC: Wonderful, I never had to do the dishes. We were, and have remained, a very close family. We stay in touch constantly. Nine of the ten children are still living. One sister died in 1948. She was an RN and contracted TB treating tuberculars, and died at 23, I think she was. All of the rest are still alive; some of them have large families. Mother had ten children, thirty-eight grandchildren, and at the present time we have seventy-seven great-grandchildren. Three, I believe, or four are great-great-grandchildren. So it's quite an extended family.

CH: Is there ever an occasion where everyone gets together?

JC: Not everyone, I try to go back once

a year to visit her and the brothers and sisters that live in the St. Louis area. Most of the children try to get together on those occasions. I have one sister in Sacramento, California, one sister in Chicago, and the rest are all in Missouri. So when I go back the two from out of state usually try to be there and so we have a nice get together. Of course there are many, many nieces and nephews in the St. Louis area and so there is always a big potluck get together. People whom I don't even know are there and they're closely related, but it's quite a large group.

CH: What was your father's profession?

JC: My father was a lawyer, and initially when I was born and growing up we lived in Sedalia, Missouri, which was in the central part of the state. He was called the claim agent, I think it'd be the corollary of an adjuster with the railroad. He settled claims that the railroad was responsible for. Then, in 1948, he was appointed the Claims Attorney for the Missouri Pacific Railroad, and that caused us to move to the St. Louis area where the family has remained and where he worked until his death in 1960.

CH: Where did he go to law school?

JC: He went to Kansas City and actually didn't practice law in the normal sense. As far as I knew he always worked for the railroad and wasn't in private practice to my knowledge.

CH: His father had been what?

JC: His father worked for the railroad also, for the same railroad, and had a desk job in St. Joe, Missouri. I think it was very commonplace for the Irish to either work for the railroad or be a policeman at that time. *[laughs]*

CH: So were there other members of your family that also worked on the railroad as well?

JC: My older brother for a while. He went to work in St. Louis and worked for the railroad for a while. He's the only one that I know of in the immediate family.

CH: So what was your house like? I imagine it was large.

Childhood

JC: Well, it was large and it was a very happy home. We had a very nice childhood. I really treasure growing up in a large family, and have always felt that people that weren't fortunate enough to have that experience missed a great deal. And as I say, we remain close. It's certainly one of the best things that ever happened to me, and we remain very close. I'm in touch with them regularly, either by email or by phone, and visit all of them once in a while.

CH: I presume your mother doesn't do email.

JC: No. She's finally starting to fail now, I mean her eyesight and her hearing,

but up until two years ago she could beat me at gin rummy with no problem at all. She's quite an unusual person.

CH: How would you describe the neighborhood and the town that you were living in—Sedalia?

JC: I would think that Sedalia, at that time, was probably 20,000 people. I was recently there in the last four or five years, and I don't think anybody has purchased a paintbrush since I grew up there. It was upsetting to me to see the downtown area and to find that it looked almost identical to my recollection of it as a child. No real industry has settled there. It appears about the same size town that it was. The homes that we lived in show the ravages of age, rather than being kept up.

CH: What was its reason for being at the time?

JC: I think initially, historically, it was a cattle kind of town. The railroads, both the Missouri Pacific and the MKT Railroad, [Missouri-Kansas and Texas Railroad] had shops there. It was on the main line, and it was a railroad town and many of the people that lived there worked for one or the other of the railroads. Other than that, as far as industry was concerned when we were growing up, I can't recall any big businesses that came. After the war, several glass companies—I think Corning put in a plant there.

But when I was back recently it looked just like it had. Outside of town they have nice residential areas. They

weren't in existence when we grew up there. But the core part of the town looks just like it did seventy years ago. So it was kind of upsetting to me, actually, to see it in that state. I said nothing to my brother that lives there, because he's enjoyed living there and I didn't want to deflate his balloon.

CH: Did you have chores as a child that you had to perform?

JC: Oh, I think, yes, everybody worked. Most of us got little jobs, and you know, at twelve or thirteen years old I started working in ice cream shops and mowed lawns. You know, the typical thing. Everybody seemed to contribute, either earning their own spending money, or what-have-you. But I think that was fairly typical of the time. Early on, times were pretty bad, in the late '30s. But we always had enough to eat and we always had a roof over our head and we were all clothed. I don't remember deprivation in the sense that many people have experienced. So it was a very happy childhood.

CH: Was your family religious?

JC: We're Roman Catholic. Yes, I would say basically that it was a typical Catholic family that attended Catholic schools. My older sisters went away to boarding school in the Chicago area, to the Madams of the Sacred Heart. Two of my father's three sisters were nuns in the Sacred Heart Order. I think through them the girls were able to go away to boarding

school, and so they went to high school up there.

CH: How would you describe that experience of going through a religious-oriented school, growing up?

JC: It was my only experience. I enjoyed it. I loved the regimentation. It was a highly disciplined environment. I enjoyed it. It was what we were accustomed to, and it was orderly. *[laughs]*

CH: So you went to grade school and high school in—

JC: In Sedalia. Sacred Heart was the name of the school. I went through my junior year in high school there. Then between my junior year and senior year in high school, my family moved to St. Louis, and then I went my senior year in high school to Webster Groves High School, which is a suburb in St. Louis.

CH: Was that a Catholic school as well?

JC: No, it was a public school.

CH: So what was that transition like?

JC: Well, I think the transition was pretty great. I went from a school with a hundred total students to one with, I don't remember, it was in excess of 1,500, I know. *[laughs]* I enjoyed it. I thought it was a tremendous amount of fun, but it was an eye-opener for me. I enjoyed it very much.

CH: How well prepared do you feel that you were for that change, having spent the previous years in a small town Catholic school?

JC: I didn't feel that the fact that it was a public as opposed to a parochial school really made that much of a change. St. Louis is a very Catholic community, as you know, and so we were in a parish there in Webster Groves. Other than going to school in a public school, I didn't notice any great transition. It was very interesting to attend a big school and it was a lot of fun. I enjoyed it very much. It was very pleasurable.

CH: What kind of activities were you involved in as you grew up?

JC: I think sports always interested me tremendously, and I'd say that, physically, it was sports. Fishing. I liked to fish. I didn't play golf as a young person, but with the change of seasons you did whatever. In our schools, in Sedalia, we didn't have football. We had basketball and American Legion baseball. So I became very involved in baseball and basketball and then the year that we moved to St. Louis, I was on the American Legion team from Sedalia and we went to the state finals in St. Louis and played against a St. Louis team, at Sportsmen's Park, which was a thrill for those of us from a small town.

After the season was over, after we didn't beat them—we lost to them in the state finals—I just remained then in St. Louis, because my family had moved

up there. I had remained in Sedalia that summer with the coach and his wife, and had lived with them and worked in an ice cream plant, and played baseball. Then I just stayed in St. Louis, and the rest of my team went back to Sedalia. [CH laughs] That was the way that worked.

CH: So you ended up living with your coach's family then?

JC: The one summer, the last summer after my family moved to St. Louis I remained there, so I could play ball that summer. It turned out well.

CH: How about scholastically, how did you fare there and did you have any subjects that you particularly liked?

JC: Oh, of course in the parochial school you took Latin and I always liked that. I enjoyed Latin very much and enjoyed English. I was never good at math, still am not. And then also choir was very big in the parochial school. I loved that part of school too.

CH: Did you have any formative experiences during this whole period of time that you feel changed your life or the direction of your life?

JC: I think moving to St. Louis certainly changed the direction of my life. I think that was a very broadening experience to observe. And I only went one year there. I played basketball that year, in high school, on the varsity team. Same way with baseball. I played

varsity baseball, and then through that, the basketball coach at Webster was an alumni of Westminster College, which was a boy's school in Fulton, Missouri, where Churchill gave the Iron Curtain speech, in '46, I think.

Anyway, he succeeded in getting me a basketball ride to Westminster. So that fall, which was in 1949, I went to Westminster to play basketball and enjoyed that very much. I loved the atmosphere there. It was a small boy's school, probably 600 boys going there. Then I played basketball that winter. Then after the basketball season I signed with the New York Giants and went to spring training in Florida, which I had always wanted to do. That was always my big aspiration, to play professional baseball, so that was a thrill.

CH: So the Westminster school, that was a—

JC: It was a Presbyterian—

CH: Prep school?

Minor League Baseball

JC: No, it was a regular college, it was a regular four-year college. So I went there in '49 and then I played my first year, professional baseball brought me to Medford, Oregon. I belonged to the New York Giants and they had a farm team here in Medford, in what was called the Far West League, and it was Class D, which was the lowest professional

baseball league. And at that time, as contrasted with today, there were fifty-two leagues of organized baseball. Each league had eight teams in it. It was just spread all over the country. Now I think they only have three, I think, three different classifications of professional minor league baseball and then it was six different classifications, D, C, B, A, AA, AAA, and now I think it's just A, AA, AAA.

CH: How do you account for the change in that?

JC: Well I think what's happened with professional baseball is that the colleges and universities now serve as the minor leagues. They play very extended schedules and they are the training ground, really, for the major league. I think it's not unusual at all anymore to have kids come out of the good baseball schools, SC [University of Southern California] and Arizona and schools like that, maybe one year, and then jump right up to the big leagues and take off. But back then the pyramid was huge and the attrition was something else. I only played three years. I enjoyed it very much. It gave me a chance to move around the country and see the country and I made some good friends, and enjoyed the experience thoroughly.

CH: And the pay scale?

JC: Terrible! [CH laughs] It was servitude! It was incredibly poor paying. But everyone was in the same boat. You

were aware of it, but you didn't complain because everybody was making the same small salary you were. Toward the end, right when I was finishing up, that was the start of the bonus era. They started giving large bonuses to promising people, and then from that point, you know, on forward, it became more and more remunerative. And now of course it's obscene.

CH: So what position did you?

JC: Played first base.

CH: First base, Mm-hmm.

JC: Mm-hmm, batted left through left.

CH: Really?

JC: Mm-hmm, and did well. I did pretty well. I think the first year I played here in Medford I hit .318, and that was certainly acceptable. Then the second year I played in what was called the Western Association, which was in Missouri and Kansas and Arkansas and Oklahoma.

CH: Did they still have the Negro Leagues when you began?

JC: Yes, the Kansas City Monarchs and yes, when I was a child growing up, of course the Negro Leagues were prolific.

CH: What was your experience of that?

JC: We never played against them. When I started playing in 1950, that

was only three, four years after [Jackie] Robinson broke in with Brooklyn, and so I had, I think the last year I played there were three Blacks on our team. And they were the first teammates I had that were Colored; one was Cuban and one was from New York and one was a Seaton Hall grad from Philadelphia. But the first two years I played, I played against some Black kids that were really good ball players, but wasn't teammates with any of them. Willie Mays, of course, belonged to the Giants at that time and we were the same age, so in spring training I would get to watch him play and he was truly a thoroughly gifted athlete.

CH: Did you have any contact with him?

JC: No, other than watching him. You know, you'd go to spring training with maybe 500 kids. This was in Sanford, Florida and Melbourne, Florida. One year he was with Trenton, which was Class B, and then the next year he was with Minneapolis, which was AAA in the American Association, and by then they knew he was just a phenomenon, and so it was fun to watch him play because he could do it all. And that year, he was brought up in mid-June and I think he was hitting .477 with Minneapolis and Leo Durocher pulled him up to the big leagues and deemed he was ready, which indeed he was.

CH: Did you imagine yourself a professional then for the rest of your life, or did you have other dreams?

JC: No, I think that initially I thought I would have a shot. After the third year I realized that it wasn't going to happen. And the worst thing that could possibly happen to an aspiring baseball player is to delude himself that, you know, if you just hang in there and do it, it will happen, because you either have it or you don't. If you realize that you aren't going to make it, then you better get out. So I did after the third year. I did that.

I had a wonderful second year. I led the league in hitting in the Western Association, I hit .344 and [Mickey] Mantle had led it the year before, so I thought I was on the way and then, then they didn't reward me with what I thought was a good contract, so I didn't go to spring training my third year. I was sulking. I wouldn't sign the contract that they sent. Finally they talked me into coming to Florida and, "We'll talk about it."

I got down there and things didn't work out well. I really didn't have a good year that last year. But also, I think in fairness to candor, I was up another league and the quality of play was much superior to what it had been the year before and the year before that, so, and you could see the really gifted ones still perform very well and those of us who were less gifted didn't perform as well as we had.

CH: How did you feel about being sent out to Oregon, to Medford?

JC: I loved it.

CH: Really?

JC: I loved Oregon, and still do.

CH: When you got the assignment, did you even know where Medford was?

JC: No, I had never been here, and I flew in from Minneapolis to Seattle, to Portland, to Medford, and played that night. It was the first professional game I had ever played. Medford was a very supportive town. It had a good core of loyal fans and it was a very pleasant place to play and people were good to us, and kind to us, and it was a very positive experience. I met a lot of nice kids. I mean we were all about the same age, very young. One of the car dealers here at that time donated three new station wagons to the club, so we didn't have a bus that we went from town to town. We drove in new station wagons, so we felt very fortunate. But it was a good experience.

CH: Did military service play a role?

JC: None. I never was called.

CH: Even during the Korean War?

JC: The Korean War—I was married and my wife became pregnant in the summer of '52 following our January wedding. The fact that she was expecting kept me deferred, so I didn't have to serve. Which at the time pleased me. and I've never regretted not having served in that sense.

Marriage

CH: Maybe you could tell me how you met your wife.

JC: On a blind date here in Medford. She was home from college and met on a blind date, and then after the season she went back to college, Rosary College in River Forest, Illinois, and I went back to Westminster. We kept dating and then in January of '52 we were married.

CH: And her maiden name?

JC: Her maiden name is McCabe, M-C-C-A-B-E.

CH: And her first name?

JC: Eleanor.

CH: Eleanor.

JC: Mm-hmm.

CH: And she was born when?

HC: She was born in North Dakota in 1930, September 7.

CH: And you were married in 1952, on what date?

JC: January, the fifth.

CH: And what was her family like?

JC: Her family, she had a brother and a sister. And her parents came to Oregon from North Dakota in 1940 and settled here in Medford.

CH: And they were in what field? What business?

JC: He had several businesses, he had a laundry business, and he had a brewery business here. *[pause]*

CH: An Irish family as well.

JC: Yes, McCabe, so another Irish family. *[chuckles]*

CH: At that time what was the situation in terms of Catholics marrying outside of their faith?

JC: Well, I'm sure at that time, I'm sure there were many that married outside of their faith, but neither of us did, so that worked out well.

CH: Was it a factor, or was it something that just happened to be the right combination?

JC: I can't really say. I think I would have preferred to marry a Catholic girl, because I was brought up Catholic and I think unless you are Catholic it would be difficult to be married to a Catholic, for a non-Catholic I would think. A portion of them you wouldn't fully understand, I don't think.

CH: So you left the baseball field then, in what year?

JC: Nineteen fifty-two, at the end of the 1952 season was the last year I played baseball.

Willamette Law School

CH: And from there you went into what?

JC: I did various things until 1955. I worked for a car dealer; I worked for two car dealers. I worked for a wholesale plumbing concern. I worked for a men's clothing store. Then I went back to Southern Oregon College in about 1955 and completed my pre-law, went there until 1959 and then finished my pre-law over at Southern Oregon. Then in the fall of 1959, started Willamette Law School in Salem.

CH: What was it that drew you to the legal field?

JC: Of course, my father was a lawyer. I don't think that had a tremendous influence on me as far as that's concerned. My sister-in-law was married to a local lawyer, and he was just starting and enjoyed his work and so he encouraged me to consider getting my pre-law completed and to go to law school. That influenced me quite a bit.

CH: What was the political orientation of your family?

JC: You mean party-wise?

CH: Party-wise and—

JC: I'd say my father and mother were registered Democrats, and I think all of us children started out the same way. I don't remember politics being so terribly important growing up. My parents were big fans of FDR and all of the social programs that he was implementing in the '30s were helpful and attractive and he seemed to be turning the country around. So I think they gravitated to that.

CH: The railroads being so heavily unionized—how did your father feel about that?

JC: I don't know that we ever had discussions concerning that, basically. I don't remember that being a subject that was discussed at great length.

CH: And you, did you remain a Democrat?

JC: For a long time, I did. And later on ran for district attorney here in Medford, oh in 1968, as a Democrat and was unsuccessful. I ran against a law school classmate from Medford, Justin Smith, who had been assistant district attorney for some years before that. He has since commented that he wishes I had won [*both laugh*] and he had lost!

CH: So what was your class like at Willamette Law School?

JC: We had a very interesting class. We started in the fall of 1959. We had the largest class at that time that Willamette ever entertained as incoming first-year students. I think we started with seventy-two students. We were housed in the building directly across the street from the Supreme Court building, and that was used until they built the new school.

So we started with seventy-two students, and a very interesting group of people that I went to law school with, and have remained very close to. We were a very close-knit group of people, and one of the people that I started with was Don Denman, with whom I later spent almost my entire lawyer career as a partner of, here in Medford. Justin Smith from Medford. Bill McAllister from Medford. Then met Wally Carson. Wally and I were seated right next to each other all the way through law school and studied together for exams and became very close and have remained very close.

When we finished, I think approximately half of us finished. I think, thirty-six as I recall, finished. And many of them left for various reasons. I'm not suggesting that half of them didn't make it; just the normal attrition that exists. Some of them didn't like law school or had other opportunities and left for those reasons. But as I recall thirty-six of us finished and a lot of us took the bar review course that was given and survived that, then took the bar, which was held I think at South Salem High School. That was an intimidating two-and-a-half days.

CH: What did you imagine your professional career to look like as you were going into law school and learning to be a lawyer? What did you think you would be doing?

JC: I had hoped and looked forward to going into a general practice. I had fully intended, which I did, to return to Medford, to go into practice with Bernie Kelly, who was my sister-in-law's husband. And I went into practice with him and Bob Grant and felt very, very fortunate to be invited to join them. I stayed with them for six years, until 1969 and then Bernie had an opportunity to move to Anchorage, Alaska and wanted Bob and me to join him. Neither of us wanted to. So I decided to run for district attorney, and did, and wasn't successful in that. Don Denman, during the campaign was—

[End of Tape One, Side One]

Willamette Law School

JC: We were at one of those rubber chicken circuits where you're talking to the Grange or something, out in the Applegate, and Don was there on behalf of Justin Smith. He told me after the meeting that after the election he wanted me to come into practice with him. And I said, "Well I wish you would have asked me before I was running."

[*laughing*] He said, "Well you aren't going to win, so when you don't win I want you to come into practice with me." And I didn't win and I did go into practice with him and that was in February of '69.

CH: Why did you run for DA?

JC: I thought it would be interesting to gain the trial experience and learn that area of the law. So that was the motivation.

CH: When you were in law school did you have anything to do with the law review?

JC: No, didn't have law review. We all participated in the other things that were available, in trial practice. I didn't write for law review. The moot court was big at Willamette at that time, and we had a lot of fun in trial practice, and it was fun to participate in the mock trials that were presented. And I thought they did a good job in instructing those. We had a lot of good profs. John Paulus was a Real Property instructor and was a wonderful

instructor, wonderful man. He also had the bar review course that he conducted, without which I think many of us would have foundered. He had it very well organized, and did a very good job in preparing them for the bar exam.

CH: How did Willamette stand up against the U of O?

JC: As far as?

CH: In terms of reputation and competition, the rigor or the difficulty of the courses. How would you compare the two schools?

JC: I think, one way I compare them is the fact that first I applied to the U of O, and the dean—

CH: Orlando Hollis?

JC: Oh yes. Who I was going to say will remain nameless. He interviewed me, learned that I was married and that I had three children and that I would have to work while attending law school. And very abruptly he said, "I don't think you would fit in at our school."

And I said, "Fine, thank you," and went to Willamette. It was just the anti-thesis of that at Willamette. Their attitude seemed to be that anything we can do to help you we will do. I was immediately attracted to the whole operation, and was allowed to work, which I had to do. So it worked out very well. So, philosophically, I mean I'm not critical of them for sending

me elsewhere, but I think that the attitude of the faculty certainly was a different situation. Size wise, I don't know how they compared. I think that performance on the bar was about comparable. I think about the same percentage was passed from both schools. I think in some areas they were stronger than Willamette and in some areas Willamette was stronger than they. I've always felt that they were probably about the same as far as the education that you received.

CH: I was talking to Judge Malcolm Marsh on Tuesday and he was talking about how different law school is today and all the courses that students have to take now compared to the courses that he took back then. I would imagine it was the same for you.

JC: I don't remember when Malcolm got out of law school, probably in the early 1950s, mid-50s, I would think.

CH: It was pretty much around the same era.

JC: Right. I think that there were very few electives in law school. There was a core curriculum. Since that time schools have taken different tacks, I think. Many of them are into environmental studies now. That didn't even exist when we were going to school. And a lot of different areas now that have generated new courses of study that we weren't exposed to. I think then everybody pretty much took the same thing. There were a few

electives as I remember. Insurance Law was one, but very few electives. Now, as you pointed out there are any number of ways that you can go. I'm sure Intellectual Properties now is a big solid course, and a lot of different areas would require a lot of different coursework to become proficient, I'm sure.

CH: Did you have any inclination to specialize in any field?

JC: Not particularly. I thought that trial work would appeal to me. And I had hoped that I would get to do that.

CH: What was it about trial work that appealed to you most?

JC: I just thought courtroom work would be appealing, being in front of a jury, or arguing things in front of the court would be appealing.

CH: How was it raising a family as you were going through law school and beginning your career?

JC: There are portions of my youth that I don't remember. My thirties lack clarity. My wife is to be commended to the Nth degree, because we had the three children—we had our fourth child in law school. John came when we were in law school. We were living in a 10-foot by 45-foot mobile home, and I got to go to school every day. But guess who didn't? It was a very tough, tough time for my wife to go through, and yet she handled

it so well, and was supportive of me all the way in going to school. It was a tough time, but she made it all possible.

CH: You didn't want to defer your children until after law school?

JC: I hadn't thought of law school when the family started coming, so it was hardly a choice as far as that's concerned. It worked out well and our oldest daughter and I started our first grade—my first grade of law school and her first grade of first grade—together. I put her on the bus and watched her go to school then I went to my first day of school too. It was different than many people and yet there were other families in law school that had small children, whom we became very close to and have remained very close with. It was a wonderful experience. I thought law school was a wonderful time in my life, and made lasting friends and friendships that I really treasure.

Practicing Law in Medford

CH: Was the practice of law different at all than what you had expected it to be?

JC: No, I think not. I think coming to a small community was a different experience than other people enjoyed. Medford at that time, I don't remember how many lawyers there were, but you trusted all of the lawyers with whom you were dealing. If you said to someone, you know, "I need some time to get an answer in," that was

golden. I mean nobody's going to default you or give you a hard time. I learned that wasn't true in metropolitan areas, that it was very cutthroat. I never felt that Medford was a very cutthroat legal community. I thought the quality of the practitioners was generally good. I think it has remained that way.

I think we have good lawyers here. But it was a fun place to work, because even though you were opposed to someone and they were trying to win their case against you. You trusted them and they trusted you. It always amazes me to observe lawyers that are litigious to the point where it becomes personal. I have said to many lawyers before me, that, "You know, you're making your work much more difficult than it need be; if you just were cooperative and handled things professionally it wouldn't be such a difficult job for you." So I felt Medford was a wonderful place to practice.

CH: Has it changed much?

JC: I don't believe so. I think there are a lot more lawyers here, many of whom I don't know, so I can't comment on the business that it was when we were growing up as lawyers, because there were very few lawyers here comparatively and you knew them all well. The bar was active here, the local bar. You'd go to lunch and meet and visit with your lawyer friends and discuss things and settle cases and enjoy each other.

CH: You would settle cases in a casual informal setting?

JC: Well, I think so. If you had things that were capable of settling you'd draw somebody aside and say, "Let's talk about X case," and then you'd work together and then take it by your respective clients and put it together. I miss that in that sense, and I think many older people probably do. I think part of it is not knowing your opponent personally and everything is very impersonal. It bothers me when I am confronted with lawyers that are bickering constantly. I really don't think there's any need for it, and remind them of that on occasion.

CH: Did you miss anything being in a small community, having come from St. Louis? Was there anything about being in a small community that you missed?

JC: Well I think, certainly, there are things that aren't available. There's no theater in Medford, like there. But Medford was close, even then, if you could afford it you could fly to San Francisco or wherever and take advantage of things that you didn't have personally here. But I think at that time, when you're just starting out you can't afford to take trips anywhere, you have a large family, so things are pretty circumscribed. So you're not in the habit of [saying], "We don't have this here," and "I miss this." You're so busy with rearing a family and working that you aren't terribly concerned with the deficiencies.

CH: Were there Catholic schools here for the kids to go to?

JC: Mm-hmm, there were and we

enrolled ours in the parochial school. They went, I think until—yes, they went both to the parochial and to the public school.

CH: Did you end up representing any specific interests in the Medford area?

JC: No, I had people clients as opposed to business clients. I didn't really have a business practice. I did a lot of domestic relations work, did some personal injury work. At that time all of us did criminal work. We were appointed on a lot of criminal work when we were young lawyers.

CH: And what was the bench like, the local bench?

JC: Well, small. We had Judge Kelly. Ernie's father was a circuit judge, so we couldn't appear before him. So Judge Main was our other judge. And then the district court was active, and as you know that's now merged. But at that time there were just the two circuit judges and two district judges. Now, I think they have six circuit judges. No district judges, they're all circuit judges. So it's changed quite a bit.

CH: But within the state, county, and the state court system, did you operate mostly within that system or did you actually take cases to the federal court as well?

JC: No, it was in the state system. And you would go to different counties, of course, to try cases, but it was within the state system.

Appointment as Magistrate Judge

CH: And at what point did you begin thinking about a judicial career?

JC: I think most lawyers, probably at one time or another, think, "I think that might interest me." The interest was really sparked when the position of part-time federal magistrate judge opened. And that was in late 1989, and they advertised that they were thinking of putting a part-time magistrate judge in Southern Oregon. That interested me. And I applied for it. At that time it was more time consuming than remunerative. *[laughs]* I don't think at that time, as I recall, it didn't attract a whole lot of applicants, because it was just part-time and you were working out of your law office and then you were to come over here when necessary to attend to business over here.

CH: So you had your law practice at the same time?

JC: Yes.

CH: Was that a common practice?

JC: Well there was only one job in the county. *[both laugh]*

CH: But in other places where they were?

JC: They did the same thing. Steve Bloom, in Pendleton, he's the longest serving federal magistrate judge in the

district. Steve came on the bench, I think, in 1988, as a part-time magistrate judge.¹ And he has his law practice in Pendleton, and he has done, for all of those years, what I did for only four years.

CH: What is it like to go back and forth between being a lawyer and a judge?

JC: Well, interesting, really interesting. But as I say, that kept up for four years. And it became increasingly busy. They made it more worthwhile as time progressed. But then they got to the point where they advertised, I think it was, in the fall of '93, that they were contemplating making it a full-time position, so I applied. And at that time many, many, many other people were attracted to it because it was then going to be a full-time position. So then those of us that applied went through the process and they had a—as they always do—they had a committee appointed by the court to interview the applicants. And then the committee picked five names, and those five were interviewed by the court in Portland, and then I was fortunate enough to be picked.

CH: But you had already been doing part-time work.

JC: Yes.

CH: So you had your foot in the door, so to speak.

JC: Oh very much so. Quite candidly, I think that weighed heavily. And it

was a sacrifice and I think that the court understood that and I think that it influenced their decision certainly.

CH: Did you have to argue cases in court as a lawyer against other lawyers who then came before you as you sat on the bench?

JC: Oh, I've done that a lot. *[laughs]* Oh yes, inevitably. It's worked out well. There again, I think that the lawyers that appear before you as a judge, they are respectful of your position. They might not care for you personally, but they're respectful of the position that you hold and that's all you want, is for that to occur. I've never encountered any problems with having people before me that I used to practice against.

CH: What about maintaining friendships with other lawyers?

JC: It's difficult. I think that it alters your life considerably in the sense that socially I don't associate with lawyers as much as I used to. In fact, really not at all socially. Not on purpose, it's just that way. I see lawyers a lot, I see them on the golf course, I run into them at lunch. I've remained friends with everybody that I was a friend with before, but it's just a different setting and so, you know you avoid the appearance of impropriety and everybody knows that you're not going to be attending a lot of the same social functions, or not going to one another's house the way you might have in the past. But there's no real conscious effort of, "Oh I can't go here because he or she

is going to be there." It's just a separation that I think everybody recognizes has to occur.

CH: Do you think it's different than other places?

JC: I shouldn't think so. I think the one unique thing about this position is that I'm the only federal judge in southern Oregon. We service the bottom six counties of the state, and I am all alone. It's a very different situation than any other place. I won't say, because I don't know, I won't say that the judges in Portland socialize together, I don't know that they do or they don't. *[chuckles]* But here there's no opportunity to even think about it because nobody's here. And most of our friends are non-lawyers. That's been true forever, really. Our closest friends here, other than my former law partner, whom I've remained very close to and always will, and he doesn't ever come to federal court, so we can go fishing together and have a good time and never worry about the appearance of anything.

CH: What about other judges in the state court system?

JC: Oh, I see them and play golf with them, but really don't socialize and didn't before. Never did, of course, as a lawyer and I've remained friendly with them. They're wonderful, in the sense that there are certain things that they can cover for you, even though they are state judges, they can do certain things in the criminal law side. If I'm out of town or on a trip or

something, they're good enough to stand in for me.

CH: How does that system work? First of all, how are the cases decided as to whether a case is going to end up in a federal court or in a state court?

JC: Well, there are a lot of cases that are heard in state court and are then removable to federal court. And it can be on the basis of jurisdiction, diversity, a California person versus an Oregon person. So a lot of cases that are filed in Jackson County are removed to this court. Criminal-wise, a lot of things are crimes both committed against the state and against the federal government, i.e., a lot of drug crimes.

So there it's a case of who files first and whether they coordinate, I don't know. I don't really know. I know that a lot of the investigations are joint, between the state and the federal drug people, and quite possibly the penalties in federal court are so draconian. It's amazing the disparity in the sentences, state vis-à-vis federal. It's just incredible.

CH: Well you have uniform sentencing guidelines, don't you?

JC: In federal court, yes. Fortunately, as a magistrate judge I don't have to try, nor sentence, felons. That makes our job, to me, a much better job than the Article III judges have; because we don't have felony trials. But you're right, they have mandatory sentencing guidelines that they have to follow, irrespective of whether they necessarily want to.

Oregon's Use of Magistrate Judges

CH: Do you feel that you have different responsibilities than other judges in your position, being sort of all by yourself? Do you think that you take on certain roles that maybe judges, a magistrate in Portland might not?

JC: I don't know about the difference in the types of things that we're confronted with. I think that Oregon is very unique in its utilization of magistrate judges. It's a real commendation to the district judges that they have always utilized the magistrate judges to the extent that they are able to under the law, the result of which is, they have changed the complexion of the judiciary throughout the country by utilizing us fully, by allowing us and enabling us to do all of the things that we are able to do. I'll never forget, as long as I live, attending a magistrate judges' convention. I don't even remember where it was, but I was a part-time magistrate judge at that time and was asked to speak for ten minutes about how magistrate judges in Oregon worked. I mentioned that the parties, I live in a small community and the parties had consented to my hearing their trial, and here I was a part-time magistrate judge. And after I was through, three full-time magistrate judges, came up to me and said, "Were you serious about trying a case?"

And I said, "Well, yes." I didn't know any differently because I was new to the system anyway.

And they all three said, "None of us have ever had a jury trial." And they had

been on the bench for years, each of them, as magistrate judges, full-time magistrate judges. And here Oregon was leading the way. I think it's always been remarkable that our district judges implemented that early on. Now we're finding that throughout the country it's starting to happen. Many districts are like our district. But some of them aren't. I mean I've had many magistrate judges tell me, "We don't ever have lunch with our judges and we never see them." It's amazing.

CH: Yes, Judge Leavy had mentioned to me that I think he was at a judicial conference or convention in San Diego, and he got onto a judges elevator and one of the district court judges got off the elevator because he would not ride on the same elevator as a magistrate.

JC: Well I've heard that, in their own building they couldn't ride on the same elevator as the Article III judges. And some of them have said, "You know, I'm nothing but a glorified law clerk to my Article III judge." I was so appalled, because early on, when I would go to Portland for a meeting, when I was a part-time magistrate, even before I was full-time, I would go to their lunch and observe them. And if you didn't know who the players were you wouldn't know who the magistrates were and who the [Article III judges were]. And that's still true, at our weekly luncheons, that there's this equality that permeates the whole thing. I've often thought, how unfortunate that people don't experience this elsewhere, or everywhere. I'm sure some places it's changing.

There again, Oregon is in the forefront in many, many fields and that's just another one that's quite remarkable.

CH: What cases do you hear then? What kind of cases?

JC: The civil cases. First of all, I should preface it by saying, with consent of the parties magistrate judges can hear any civil case, with or without a jury. And it can run the gamut of any filed case. So the civil cases that come to us include, but aren't limited to contract cases, automobile accident cases, medical malpractice claims, patent cases, civil rights cases, excessive force actions brought against police officers, bloom983 cases, employment cases, wrongful discharge, things of that nature. It can just run the gamut of any kind of civil case. And criminal-wise, down here, I do first appearances on felony work, do arraignments, do detention hearings, and then misdemeanors, you handle all of those, trials or pleas and sentencing.

Then magistrate judges also have civil violation and that can include activities in federal enclaves like Crater Lake, wrongs committed up there, driving under the influence up there, excessive speeding, reckless driving.

CH: Anything on federal property.

JC: Anything. Illegal mushroom harvest. Anything on the national forest or national land. Here, out at the Domiciliary, that's a federal enclave, so if something happens out there they bring it in here.² So all of those types of things. I haven't looked

lately, but I would presume and estimate that I probably have 155 civil cases open.

CH: Really?

JC: Mm-hmm. I have two law clerks, Win Thivel-Kellerman and Karen Gilbert, both of whom have been with me since I've been full-time. I hired them shortly after I started and unlike many federal judges, I'm very selfish and I don't consider myself an educator, [chuckles] so I love the fact that they're both skillful and keep getting better and better at what they do.

Many judges, as you know, and I admire them for it, but they'll hire a clerk for a year or two years and then hire somebody else. I've never chosen to do that.

CH: The whole clerk profession has been changing in that regard, hasn't it? I mean more of them are spending part or all of their careers as clerks.

JC: I would hope so. It's a good job and it's a wonderful position. I mean they have wonderful working opportunities and become experts in some areas. My two clerks, I divide responsibilities a lot. One of them does all of my environment cases and so she develops needed expertise in that area and so I divide responsibilities for them. They get along well and always have, and we're very happy working together, so it works out very well.

CH: What would you say is the public's perception of you and your role in this community?

JC: I think many people have a very heightened perception of a federal magistrate judge, and I think are conscious of—the fact that I'm the only one here is of some, not importance, but certainly uniqueness. I think, as it was for me before I became one, I think it's a very big honor to have the job and try to carry it off well.

CH: Do you think aside from people in the legal community, do people appreciate or understand the difference between a magistrate and a regular federal district court judge, an Article III judge?

JC: I don't think many non-lawyers pay much attention to it. I think they consider me a federal judge and I don't think they think too much, and very often the paper, when my name is mentioned they'll call me, "District Judge John P. Cooney," did this or that. So very often it's mishandled there and I'm referred to as an Article III. But I think most people that are not in the profession don't really think, well he's *only* a US Magistrate judge. As we say among ourselves, "the real judges," when we're referring to Article III's. But I don't think most people differentiate between the designations with magistrate judges and Article III judges.

Quite frankly, I think we have the best job. I say that not in any way of sour grapes. I think our responsibilities are less onerous than those of Article III judges, i.e., hearing felony cases and sentencing felons.

[End of Tape One, Side Two]

mandatory minimums that they have to dole out are just amazing.

CH: Did you have an occasion to know any of the older district court judges or go before any of them?

Relationships with Article III Judges

CH: This is an interview with Judge John Cooney in his chambers at the US District Courthouse in Medford, Oregon. The interviewer for the US District Court of Oregon Historical Society is Clark Hansen. The date is May 12, 2005, and this is tape two, side one.

We were talking about that you felt that you had the best part of the deal in being a magistrate instead of an Article III judge. I know, having spoken to some of the Article III judges that sentencing weighs very heavily on some of them.

JC: I should think it'd be very, extremely difficult and upsetting. You just can't generalize totally. I mean there has to be individual considerations in each and every case, and when that's stripped from you, I can certainly commiserate with them on having to sentence people to sentences that you personally don't consider just or proper. So I think it's very unfortunate.

CH: And capitol cases in particular. Especially before the death penalty, that must be a very difficult position to be in.

JC: Well, and some of the drug cases, as I said some of the sentences, the

JC: I'd known Judge Redden of course. I knew him as a practicing lawyer here in Medford. He came to Medford I think in about 1953 or '54, from Massachusetts and I met him then, and have known him ever since. Like everyone else I've enjoyed him immensely. He's the only one that I knew before I went on the bench. Since then, of course all of them have been friendly. We're just blessed in the Oregon District, in having such a cohesive group of people. So I've enjoyed the experience tremendously.

CH: Do you feel you have a close relationship with any particular judge?

JC: I work more with Judge Aiken, I work with her a lot. She and Judge Coffin in Eugene do so much of the settlement work. They both have developed a great deal of expertise in settlement work, as has Judge Hogan. Both Judge Aiken and Judge Hogan come down here for criminal calendars on a monthly basis. So I see more of them than I do of the other judges. I don't go to Portland very often. I appear on the TV screen for lunch every Monday at their monthly luncheons. I get to observe that from the room downstairs, as do the Eugene judges. They are hooked up to the television set as well. The

magistrate judges, we stay in touch by a bi-weekly telephone conference that we conduct every other Friday morning.

CH: Why is that?

JC: Just to stay in touch and to go over new things that might be occurring to any of us. It's a wonderful thing, and I look forward to it, because of course they're all in Portland and I'm down here on the phone. And very often Tom Coffin is on the phone from Eugene. It just gives us an opportunity to go over new things that are happening, or questions that—because I'm all alone I don't have anybody to bounce things off of. So I have had to kind of learn a lot of [*laughs*] what I'm doing by trial and error. So if I have something that I haven't been confronted with before, or want to ask them, "What do you do in a situation like this?" It gives me a good opportunity to draw on all of their collective experience.

CH: Do you feel any loss of collegiality in being separated?

JC: I think that it's both ways. I feel very fortunate. In some respects I feel that I'm very fortunate to be all alone. But by the same token, they're only as far away as the telephone, and that's true of all of the district judges. I've had occasion to call many of them on different matters. And the same way with the magistrate judges. I have no reluctance at all in just picking up the phone and calling any one of them and they're all giving as far as their time is concerned. No discomfort at all in that.

CH: Do you feel that there is more of a fraternal sense between the magistrates in the uniqueness of their position?

JC: Well, unique being what?

CH: Unique in that, one, they are not Article III judges and yet they have sort of this ground-breaking role that they have been performing in Oregon that is unique compared to other districts around the country.

JC: I think they are all cognizant of that. I know they are. I think the interesting part of it is that where it got going is with people like Judge Leavy, who was a trial judge in the state court and then became a magistrate judge. Judge Ashmanskas is a former circuit judge. John Jelderks was a circuit judge for many, many years. They've come to the bench as very experienced judges in the state system. And I think that it was because of people like them that the district court judges surmised, "Well this is a group of people that are quite experienced and we should have no reticence in utilizing them fully."

I think that was the genesis of the situation, that they felt comfortable with the expertise that these people had to thrust them into the front line. I think that's where it started and I think they've been comfortable with it. I think the performance that the magistrate judges have made has vindicated their decision as far as that's concerned.

CH: How is it for the lawyers? How comfortable do they feel, especially as you

prepare a case that say then Judge Hogan comes down and sits on, how comfortable are the lawyers in the changing role of a particular trial?

JC: Are you referring to the criminal trials?

CH: In that case, I guess it would have to be, wouldn't it?

Consent for Magistrate Trials

JC: Yes, those invariably go to an Article III judge. Civil cases we keep. In other words in Portland, all of the judges are on what we call a "wheel" that they spew cases out and wherever you are, the one that drops on you is the one you get. With consent of the parties, the magistrate judges keep their case. If the parties do not agree to keep the magistrate judge, then it becomes necessary for it to be assigned to an Article III judge.

CH: So is that similar to the role that an arbitrator or a mediator would have?

JC: No, because in our system, when they consent to a magistrate judge for trial, then the appeal is the same. It's not to a district court judge. The appeal goes to the Ninth Circuit Court of Appeals. So when they consent for me to hear a trial, they know that any appeal that's generated following the trial, will be with the Ninth Circuit Court of Appeals. So, it entitles you as the judge to dispose of the entire case. You can either grant a motion

for summary judgment and dispose of the case. Or, motion to dismiss. Or, go to trial and enter the verdict after the trial. And with reference to consents, I would estimate without knowing, that probably ninety-five percent of the people down here consent to me to handle the case to conclusion.

And I say that without a trace of vanity, in that I think that decision is made, in part, because it doesn't necessitate them traveling to Eugene or Portland and the attendant expense of that to try their case up there. They have a courthouse here in Medford, it's close to their office, their client lives here. It behooves them to handle it in the most expeditious way possible, and that might include having me hear the case. And if it's a jury trial, they probably feel the judge isn't going to influence the case that much anyway. It's going to be a jury's decision, certainly on the fact situation, so I get a lot of consents. Where I don't get consents are some Portland counsel that don't know me. They've never been down here before, they don't want to be "hometowned", if they think they're going to be. Or they would prefer to have it heard in Portland, which makes sense. So they know that if they don't consent I'm not going to hear it and it's going to be heard by some district judge, probably in Portland. If not Portland, then Eugene. And out of state people that are not used to the magistrate system quite often don't agree. Big corporations for instance, and they might not choose to consent.

CH: Didn't you say in the last tape

that as far as the criminal cases go, that you could handle first appearances and arraignments, detention, misdemeanor, things like that, federal property cases. In those cases, then you're handling a situation to a certain point and then an Article III judge is stepping in.

JC: That's right. And they must.

CH: They must step in.

JC: Yes, because I cannot by law try a felony case. I cannot by law sentence a person to prison for more than one year. That's the extent of my authority.

CH: And do the parties involved have any choice as to whether you handle the arraignment or not?

JC: No.

CH: They don't.

JC: And how do lawyers, then, feel about the change that takes place when say, for instance, you handle the arraignment (and maybe this is common anyway), but you're handling the arraignment or some portion of the case and then all of the sudden it switches to another judge.

CH: I think that they're so acclimated to that it doesn't really matter. It doesn't matter who, for instance on a first appearance, advises their client that, "You're in federal court, you're charged with this, you're entitled to a preliminary hearing. Do you want one?"

"Yes."

"I conduct the preliminary hearing." Then I set the matter for trial and I say, "It's going to be heard in this courtroom, July the 16th, starts at 9:00 a.m." And then give them their time for filing motions and the government's response time to any motions filed. Set a pre-trial or a status hearing conference down the line. And then I'm pretty well through with it.

Then the next time, the day of the trial, Judge Aiken or Judge Hogan are sitting up there on the bench and they bring the prisoner in and away they go. So, it isn't a question or comfort zone for the lawyers. The lawyers all know what's going to happen. The people charged with the crimes probably don't care or pay any attention or know there's a difference.

CH: In the management of the court, of this district, then you're dealing directly with the chief judge in any case; whoever the chief judge of this district is at the time?

JC: Oh, you mean as far as marching orders?

CH: Yes.

JC: Oh sure. He's the one that you answer to. But any of them can call me and say, "Would you do this?" And you're happy to do it. Or, they'll send a case down to you: "I'm assigning this case to you because one of the parties is from Medford," or so forth. And sometimes you're sending them cases, because if you have a conflict or whatever, you have to send it up to the

case management committee in Portland and then they'll channel it out to some other lawyer. They'll put it on the "wheel" and somebody else takes over on your case.

CH: Was becoming a judge any different than you thought it would be?

JC: I think it's less stressful, personally. I say that in the sense that you commit yourself to do the best job you can. You try to do that. And having done that, you sleep well. You don't wake up in the middle of the night and say, "Why didn't I ask that question?" Or, "Did I file that document that had to be filed yesterday?" And get out of bed and go down to your office to check out and make sure you did or didn't.

There are stresses that—I think it's less stressful. I think you enjoy—you're well protected physically. You have wonderful security in the building, you feel very comfortable being on the bench, that you're safe physically. You enjoy what you're doing or you wouldn't be there. And some elements of it are totally moving to me. I think conducting naturalization ceremonies, I find are very moving, to think of the extent to which people have committed themselves and have taken an oath wherein they forsake all of their former ties and countries and princes and potentates, or however it reads. And then to see their family members out there. It just gives you a wonderful proud feeling that you're a part of the system and there are times like that when you're so grateful to be connected to the system.

I don't know and when you hear

a jury that's served, and I often go in and talk to them and ask them questions about, "How were you treated?" And, "How can we improve our situation?" To have them express positively that it's a great system and you in turn tell them how grateful you are that they make it such a great system.

Judicial Approach

CH: How would you describe your approach towards hearing cases?

JC: Well, in what context?

CH: It's a broad question, but do you have any particular routine or philosophy?

JC: I think the one comfortable thing about being on the bench is that all you want is for fairness and to have the jury decide—they do all the factual decisions. Early on you have to discipline yourself that you're not a litigator anymore. You're up there to see that fairness permeates the situation. You don't take sides and you don't really care, in the legal sense, who wins. You want to see it fairly administered and you want the jury to make the decision. In that sense jury trials are more fun, you know. I enjoy jury trials.

CH: How do you feel about the competence of juries, in their ability to understand complex issues and problems?

JC: I think they're surprisingly good

at what they do. I think that if you have a situation that the complexities are compound, that it behooves you to make it happen that the complexities are dissolved by explaining them to the jury, and requiring the lawyers, through their experts, to make it simplified so that they get the handle. But I have great respect for juries. I think they work hard, I think they are able to make good judgments on what they have heard from the witness stand. I think they do an excellent job.

CH: Do they need much in the way of instruction?

JC: Oh yes. I always, and there again, I don't know what all the other judges do. I just do it my way and I don't know whether that's the way everybody else does it. I give the jury not only oral instruction, but I give them a written copy of the instructions to take back to the jury room. And in doing that, I mean there are certain caveats. You have to stress that they shouldn't stress one over the other. They're all of equal importance. I think it helps them in their deliberation. It keeps them from coming back, for instance, and saying, "Would you read the instructions to us again?" You don't have to do that. But I think basically they surprise you with how perceptive they are and what they can figure out. I mean sometimes they argue like crazy. And that's part of the system too. They all don't walk in there feeling the same way.

CH: How much do you sense juries

reflecting the mores of their own community? In terms of how they're handling issues before them?

JC: Well, I think they're—I mean Lord, you get a real cross-section. Medford is somewhat of an anomaly in the sense that many, many retirees come here. We have the Rogue Valley Manor up on the hill and that contains a disproportionate number of older, well-educated and sophisticated people, and yet we have a lot of blue collar. We get a great cross-section. I think that's important make-up for a jury.

CH: Have you had an opportunity to visit other courts, or sit in other courts?

JC: Well, I've sat in different towns. I've sat in Eugene and over on the coast, and here. I haven't tried any cases in Portland. I've observed portions of cases up there. [pause]

CH: I'm wondering whether your observing other courts or traveling to other communities in any way influences or affects what you do here because of your relative isolation in this community?

JC: No, I conduct my cases the same way there as I do here. More from habit than anything else. I don't think that the experience of travel has impressed me with the difference in any of the communities in which I've tried cases.

CH: What would you say have been your most significant cases?

JC: I can't really say one over the other. None has been of any singular importance to anyone except the participants, and certainly the parties and the lawyers involved and me as a judge. Some are more interesting than others, certainly.

One comes to mind, of a case, an inter-pleader case, where an insurance company tendered into court the proceeds of an insurance policy on the life of a decedent, and claims to that money were made by the surviving husband and the surviving sister of the decedent. The claim was that the husband had caused the death of the decedent, and thereby was not entitled to the proceeds that would then go to the surviving sister. So in essence what it was a murder trial in a civil case, and the jury decided that the husband had killed the wife, and the sister succeeded to the insurance proceeds. And thereafter the district attorney and the county where the man and his wife lived, indicted, tried, and convicted the husband for murder.

CH: Was that appealed?

JC: Which case?

CH: That case. Was the conviction appealed?

JC: I don't know. I know he was convicted, but I did never hear that it was appealed. But that was a very interesting different case. All of them are interesting for different reasons, either the people involved are interesting, or the lawyers, their presentations are varied and interesting.

CH: In Portland, we hear a lot about the environmental cases that take place down here. Have you been involved in any of those?

JC: We're very much involved in a lot of environmental cases.

CH: Which cases have you been most actively involved in?

JC: Well a lot of them are the lumber cases. Many of them are the water cases in Klamath Falls. So we're very much involved in them because they generate from this area.

CH: Are those cases you can talk about, or not?

JC: I think not, because almost all of them are still pending.

CH: Alright. Nothing that has already gone through the courts that you could [discuss]?

JC: No, I don't think I should comment on any of them. It's certainly, as we discussed earlier, an area of the law that you weren't aware of when you were in law school if you went as long ago as I did. An area which now, law schools are very active. I think Lewis & Clark is at the forefront of environmental law. University of Oregon, also, I think stresses it. So it's a very topical matter.

CH: I bet it is. I bet being in a small

community, you're not in the ivory tower that sometimes people refer to judges as being in. You're in a small community, you must hear a lot on the street and in the paper and everywhere else.

JC: Oh sure.

CH: About how people feel about the spotted owl, or the timber, or the Klamath Reservoir, or salmon and everything.

JC: You hear an awful lot. That's true. And I suppose the corollary is the same in Portland. I'm sure Judge Redden hears a lot on the street about the salmon and the Columbia. Yeah, you're working in an area about which there's a lot of publicity. And a lot of people will ask you questions that you decline to answer for the same reason that I gave you. "I'm sorry I can't comment," and they respect that.

Components of Trial Work

CH: How do you feel about oral arguments? In general, what is your feeling about oral arguments and their place in the court?

JC: I think there's a place for them. I think that where parties file motions, accompany the motions with affidavits and with the legal standards that they're asking you to apply, I always read all of the submitted material, advise them at the time of the oral argument, that the court has in fact read all of the submitted materials, and then I invite any further comments that

they choose to place on the record. So that way, I think most lawyers don't go back to point number one and start, if you were re-reading the thing you could follow along with them. They will highlight certain areas. It depends on their experience and I suppose how they size you up, what they choose to stress. But I think most people respect the fact that you don't have to hear again everything that you've just read in preparation of their being before you. I always try to read everything that's before me, because it's taken a lot of effort for them to prepare it, prepared for my benefit to educate me. So why not read it?

CH: Do you place limits on how much?

JC: Yes.

CH: What are your limits? Do you have page limits?

JC: Oh yes, there are page limits in the local rules for different things. Nobody abuses that. I welcome oral argument. If it's requested I grant it. I don't ever say, "Tell them I don't need oral argument." I feel if they want to, it's their case, they worked hard, that's why I'm here. So let them argue and then I'll decide. And I think very often a lot of this is telephonic. Very often I hear many, many motions on the telephone, and on a conference call. We're recording all of it in our system downstairs, but they're not present and so I hear a lot of those, a lot of summary judgment. And summary judgments, incidentally, are things that are different in a federal court than in state court.

Federal court they're granted much more readily than in a state court. I've never known the reason for it. I think many circuit judges are very reluctant to grant them and I don't know whether it's because they stand for election and don't want any reversals on their record, or whether that's even a factor, but I know in federal court that they're utilized a lot more and granted a lot more.

CH: When you became a magistrate did you go to what's referred to as the "Baby Judge's College"?

JC: You go, it's very brief and very, of necessity, very compressed, and does not suffice for educating you totally. That's one of the things about being down here as opposed to being with a whole bunch of other judges, was, it was a lot of seat-of-the-pants and a lot of just get with it and do it. So I did. You have to. And it worked out fine. I'm comfortable. I've been comfortable from the get-go, of doing it. I think the main thing is, I think, conduct and the way people comport themselves is very, very important. I have no patience with people in court that get personal or are sarcastic to one another and I won't put up with it and don't put up with it. I don't think it furthers anything. As I said before, I think it just makes life more difficult for everybody involved and life is much too short to be abbreviated by that.

CH: What is pre-trial preparation like for you?

JC: I think it's very helpful. The pre-trial conference is a time I enjoy, because it's a time when you really get down to the nuts and bolts of a case and the parties finally see what's going to be part of the case. Many, many cases come all the way to pre-trial and then settle. They have their motions in limine and you go over the instructions. The one nice thing about trials in federal court is that once the trial starts, you're on your way. There are no surprises, there are no witnesses that are going to jump out of the closet. Everybody knows who's going to say, what they're going to say, by and large. You know what the experts are here for and what their theories are. They know what instructions they have submitted and they're hopeful that I am going to give on their behalf, and the flip side of that.

So pre-trial is just the final synthesizing of all the pleadings and you have your pre-trial order and then you're ready to go to war. It's a good time. I enjoy pre-trial work and I'm always looking forward to the trial when we're there. I'm ready to have it start.

CH: Do you try to broker agreements before going to trial?

JC: Oh, absolutely, absolutely. I don't force people. Settlement work is—I never order, I don't feel you can order someone to attend a settlement conference. I know it's been done, I've never done it. I think it has to be voluntary, I think you have to have both sides wanting to come to the

table. They may be poles apart, but both of them want to come to the table and see if they can put it together. So if it's my case and I have consents and I'm going to try the case, I refer them to another judge. I'll call Judge Aiken or Judge Hogan or Judge Coffin and ask them if they would consider handling a settlement conference on my case. And always they say yes, and then the parties trundle up to Eugene and see if they can settle it. Very often they do. Those three judges are just gifted in their ability to do this kind of work.

CH: When you get to that point is it easy to convince the litigants that it's in their interest to go to a judge for settlement?

JC: The lawyers always know it. Sometimes their clients are the ones. I think quite often their clients are the ones that either have some misplaced conception of the value of their case, or an ignorance or ignoring the deficiencies in their particular case. As a settlement judge, quite often you're confronted with that, looking at a client and saying, "I'm sorry but I just don't see the value that you're talking about here." If they hear it from you as opposed to their own attorney, sometimes it works.

CH: Have you had any post-trial relationships with litigants at all?

JC: No.

CH: Have you ever had the opportunity

or the inclination to follow someone's, say the course of their life after they've—I know it would be a little bit different if someone were sentenced to prison for a felony. Sometimes judges have pursued those cases, if it was an interesting person and they wanted to know a little bit more about what happened to them.

JC: No, I haven't observed that. I haven't had occasion to do that. I was impressed once when I went to Sheridan Prison, in the company of some of our district court judges, and observed many sentenced prisoners coming over to greet the judges, and saying, "Hi, Judge Redden." "Hi, Judge Panner." "Hi, Judge Jones." In a friendly way, and I thought, what a commendation that is to those judges to have people they have had to sentence to federal prison to come over and say hello to them. I thought that was kind of interesting.

CH: I've heard about cases like that.

JC: Huh. I had never observed it before, nor had I ever heard anything about it. I was just there because I had an opportunity to go through the prison and wanted to. I was taken by that.

CH: What about your approach toward writing opinions. How would you describe that?

JC: I take notes on the bench. Then, the clerk whom I am working with,

always when we come off the bench, I immediately get together with her and sit down and talk about it. Then, perhaps, sometimes I will say, "I want you to rough out an approach wherein I'm agreeing with this side because of A, B, C, and D, and rough something up." She will do it and bring it in the next day maybe. And we'll go over that, and then I'll fine tune that. I don't sit down and longhand out things. I indicate the direction that I'm going. I indicate the ruling that I'm going to make and the reasons for it, and as far as the citations to the law, I leave that up to the clerk. We're blessed with the ability to retrieve current law now, in a way that wasn't even dreamed up when we started.

Our library, I mean now, except for treatises, the immediacy with which they can pull up Supreme Court cases that were decided this morning just blows me away. They're both very adept at that. So I never have to worry about the currency of staying with the law and the shepardization of those cases, the same way, they can just do it that quickly and they're both very proficient. I would say that in the formulation of those cases it's a joint effort. They both write well. I feel that I write well. I'm comfortable with what is being said and before I sign it I proofread everything several times and if there are any grammatical corrections I'll make those and then say—

[End of Tape Two, Side One]

Law Clerks

CH: So, what then is the role of your clerks in writing opinions?

JC: I'd say they rough draft. Yes, then we just work from there. I'll give them direction into what I want in the opinion. I don't sit down at the computer and write every word of my opinions. I don't know what the other judges do. I've never asked. I don't care what they do [*laughing*]. And I'm sure some of them do just that, but I have never done that.

CH: Do you do any of your on-line research? Do you ever go to FindLaw or any of the other sites?

JC: Oh yes, I'll do that. And the girls are good about bringing cases in. I'll say, "I want all of the current cases on this subject." Then they'll bring them in and then I read those and they just pull them off the computer and print them out and bring them in. Oh yeah, constantly doing that. So it's a collaborative process.

CH: How did you find your clerks?

JC: Interviewed and just liked the way they wrote and the impression they made on me. They've been like my girls, you know, they've been very loyal and are hard-working. I mean they work a lot of weekends, they work a lot of hours and never complain.

CH: What is the appeal for them, do you think, of doing this kind of work and not going into private practice where they may have the opportunity to earn a lot more money?

JC: I think they like the process. I think they enjoy what they're doing. I think they're probably, like I, they enjoy not having any overhead, and know that they're making a good living. I think they're well compensated. They have many federal benefits. And after this many years I think are very proud of their work and the contribution that they're making.

CH: Do you feel that federal judges and magistrates are adequately compensated?

JC: Not in the context of private practitioners certainly. I don't feel that they are well compensated, as opposed to lawyers. I don't know many lawyers in this community that aren't doing as well as, or better than I, financially. But you know, notwithstanding that, I prefer what I'm doing to what they're doing. *[laughs]*

I think that Congress has certainly not rewarded the judiciary, certainly not in any meaningful manner for years. I don't look for it to happen in the foreseeable future with the temper of things the way it presently is situated.

CH: Going back to your opinions that you write, do you ever circulate your opinions to other judges or magistrates before issuing them?

JC: No, and I don't know whether they

do or not, I really don't. There's so many things about isolation. I always say I'm out in the provinces, and I certainly am. But I think there are so many things that I either do, or don't do, that are different from what my counterparts do, that is never discussed, that I would probably be appalled and so would they if we each knew what the other one did.

Review of Judicial Decisions

CH: Is there any kind of a review of your work?

JC: Oh! There's constant review. Magistrate judges write what are called "F&R's," Findings and Recommendations. Those are in cases where you do not have consents. And instead of an order, which would bear your signature if you have consents, you direct these Findings and Recommendations to district court judges, and then they review them. If there are objections to your Findings and Recommendations, then it's a *de novo* review by the District Court judges, and then they either agree with you or disagree with you, or agree with you in part and disagree with you in part. So in that sense, yes, there's a lot of review of what you do. Very often, on all dispositive cases, summary judgment motions, motions to dismiss, anything that gets rid of the case or cause of action, that's automatically reviewed. So in that sense, yes, you have consent.

CH: So, in essence is their action a kind

of, well is it sort of like a district court judge's case going to an appeals court and being reversed? Is it in essence a kind of reversal if they take the case and say, this is going to be *de novo*?

JC: No, that's their job. I mean if they think I've erred, boom, they'll just send it back.

CH: Does it happen very often?

JC: No, it doesn't happen often at all, which is a compliment to you. You think, that they have agreed that you have analyzed it correctly. I'd say in ninety-eight percent of the cases they concur with your findings and maybe in two percent they might find part of it that they don't agree, or something. But, basically, most times they've agreed. I presume that's true of my counterparts. I don't have any idea, because I don't talk about it. That's one of the interesting things about being alone is that you don't know, probably don't know a lot that's going on.

CH: What about cases going to the court of appeals? How many of your cases have then gone to the Ninth Circuit?

JC: Gosh, numerically I don't know. In a lot of different cases, we decide appeals from Social Security and their administration law judges make a decision and it's affirmed by the department, and then the claimant comes to federal court and asks that you review the decision of the ALJ and reverse it. Those decisions sometimes are appealed to the court of

appeals. *Habeas corpus* cases are sometimes appealed to the Ninth Circuit. Civil cases are sometimes appealed in the Ninth Circuit. Portions of civil cases. Summary judgment motions sometimes are appealed before the case is over. So I would say you get quite a few appeals.

CH: Do you resent being reversed at all by the Ninth Circuit?

JC: No! And very often you don't agree with the reversal. But no, that's one comforting thing about being a judge, I think, is that you do the best you can and by the time you sign your name to it, you wouldn't change your mind. You know you've done the best you can. Then you forget about it. I don't really worry about what somebody else is going to do with it. I don't worry that I'm going to be reversed on appeal. We all have been. We all will be again. You hope that most of the time you're affirmed, and most of the time you are.

But no, I never worry about the numbers or things like that. With as many groups as there are, as many three-judge panels as there are in the Ninth Circuit, you know, everybody's going to be reversed once in a while. That just happens.

CH: How would you describe your relationship with the court of appeals?

JC: I don't really have one. I mean they're there to take the appeals from my decisions and they handle them. I mean except when you attend a Ninth Circuit Court of Appeals Summer Conference, I

don't have any contact with them. They always advise you when one of your cases has been appealed. They always honor you with a copy of the decision once it's made. As far as any relationship I don't have any. I know the judges, the Oregon judges on the court of appeals personally, to say hello to. But as far as any of the others I don't know them, other than by sight I don't know them at all.

CH: Are there judges that you, in this court, or in the court of appeals that you have particular admiration for?

JC: Our local judges, I can't tell you how impressed I am with all of them. I really mean it. As people and as judges, I think they're just the finest group of people. It's just been a privilege to be part of the District Court of Oregon. I've told a lot of people that are non-lawyers the same thing, that they're just a wonderful group of individuals, and they are. But I don't know, as I say, I know the Oregon contingency on the Ninth Circuit and I believe that about them as well, and all of them. I don't know any of the other Ninth Circuit judges.

Dividing the Ninth Circuit

CH: As you know, there's a movement to split the Ninth Circuit because of its size. Do you have a feeling about that?

JC: Mm-hmm.

CH: Do you care to express that?

JC: Sure, I think it should be.

CH: For what reason then?

JC: I think it's just too cumbersome and too huge, and too much of a percentage of the cases emanating from one area, which is inevitable. I don't think that decisions coming from the Ninth Circuit are, as some people charge, are failing to respect the regional desires and attitudes and what-have-you. I don't give any credence to that. I just think it's too big, and I think that some of the proposed plans are close to the mark. I think that for us to be divorced from California would be good. I think if we had Alaska, Washington, Oregon, Montana, Idaho, that would be a nice district. Maybe Hawaii, I don't know.

CH: Even being as close as you are to Northern California.

JC: Mm-hmm. I think it would be healthy to keep all of California and perhaps Nevada and Arizona, and maybe Hawaii and the Marianas in that group. It would be good. I think you do reach a point where size makes a difference and I think it would be a good move.

CH: How do you feel about efforts in streamlining the courts? Either the efforts that have already been made, or efforts that should be made.

JC: Well, what are you referring to that have been made?

Changing Federal Court Rules

CH: Well, over the years there have been changes. A long time ago there were the federal rules and civil procedures and I think that was in the 1960s, and then there's the Speedy Trial Act. There have been, with AWOPS³ and footnotes and page limits, and of course Judge Panner has a reputation for keeping things on track.

JC: I know he does, and that's fine. I think that a lot of those changes have been good. I think that limitations, reasonable limitations, on presentations to the court are certainly reasonable. I think limiting pagination, the number of pages, is great. When there's a local rule I abide by it and make everybody abide by it as well. One of the biggest concerns that I have is that people really exhibit professionalism in their attitudes and their presentation in court. And I think that we're blessed in the fact that we have no problem with that locally, but you hear about situations where some lawyers are disrespectful of the system, and it just makes things work more smoothly when there's cooperation, politeness. It works very well. I think it affects juries. They don't fail to observe when things are running roughly, so I think most of us try to step in and see that happens.

CH: When Judge Solomon came on, he instituted certain rules to speed things up. For instance, scheduled time for certain appointments for lawyers and reduced discovery time before trials,

and that lawyers had to prepare all of the direct testimony of eyewitnesses in writing, which went to the opposing lawyers. Wasn't there a phrase of "trial by ambush," for people that were surprised by certain evidence that was brought up in a case? Those are some of the things that have been done in this district.

JC: I think very often the way you conduct a trial is more individual than anything else we do. I think we're all different. We all approach things differently. Judge Panner is extremely well organized and has no truck with people that are dilly-dallying along and will cut them off, as is required. And it works well for him. I mean he was a very experienced trial lawyer and is a very experienced judge, of course, with twenty-five years on the federal bench. Lawyers that appear before him know exactly what to expect, because he now has that reputation. But I think that all of us can't adopt the methodology of others, even though we admire it. I think that if it runs counter to who you are as a person, then leave it alone and do it your own way and hopefully you'll get good results. [*chuckling*] Do you know what I mean?

CH: Yes, yes.

JC: And that's kind of the way I approach it. I may give them a little longer rope, but I insist that they comport themselves properly.

CH: It sounds like you have a little

more relaxed court than perhaps might exist in Portland or Seattle, or—

JC: I think I probably do. And yet, I don't think it's one that has lent itself to poor comportment. But there again, I think you're just yourself and you do it the way you think it works best, and that's the result. Whatever the result is what you get.

CH: You mentioned earlier that you had 155 civil cases that are open, and I have no idea what that number represents compared to any other judge, but is there any pressure on you for productivity that you feel? I mean is there a coming down from above to resolve?

JC: No, I think that all throughout the system there is a feeling that you can't allow cases to get old. We have to move cases constantly, and the government, I think every element of the government is so statistically oriented that, you know, that's just the way it is. I mean the FBI is paper happy and every other agency is too, and the courts are no different. They keep score on things that you wouldn't believe and I'm sure they know more about me and my cases than I do myself. But you are reminded when things have been under advisement for X number of months or weeks or years, or whatever. And that's made known to you so that you keep things churning.

Lawyers, as a profession, are professional procrastinators as you well know. And if you don't know, believe

me they are. And we are lawyers also, so I think it's good that there's this constant reminder, because people—and I observe it every week at my work—that if they can put off for a day or two, they're not going to do it today. So you constantly have schedules, you have deadlines and you aren't always receptive to hearing, "Well I'm sorry but I can't get it done then."

You know, you can be fair, but you can say, "I'm sorry you have to get it in by then, or else." Then they do. I mean, it's amazing. When you have to do it, it gets done. [CH laughs] So I think all of us are conscious of that and work toward that end, and in answer to your question, yes we do receive critiques on—not only you, but everybody else, you find out who else has old cases, if you have one and how many old cases there are. And then the inquiry is, why don't they go away? Why don't you get rid of them? You're aware of that certainly.

Courtroom Personnel

CH: How does the court personnel work? Is it the same here as it is in Portland, or do you have a different set of court personnel. I'm thinking of, well obviously you've got law clerks. You have courtroom deputies?

JC: No. See that's the difference, I don't have a courtroom deputy, I don't have a secretary. I opted to have two law clerks. I type myself, so any letter that I need I can do it myself. I don't have a courtroom

deputy. We have a criminal court clerk. We have a civil court clerk. We have my two law clerks and myself, and that's our court down here. So it's very different than it is in Eugene and it's very different than it is in Portland. There are multi-faceted responsibilities of the court clerks.

CH: No bankruptcy.

JC: We have bankruptcy visits from Eugene, and Judge Alley comes down from Eugene, brings his own courtroom deputy and secretary.

CH: And what about US Attorneys?

JC: We have the full complement. We have US Attorneys, we have public defenders, we have probation, and we have pre-trial services. We have a full complement of federal agencies, FBI, US Marshals, courtroom security officials, FBI, DEA, Immigration, Homeland Security. We have everybody down here.

CH: Who do you have in the way of Homeland Security?

JC: Well, that now is merged with, kind of Immigration and Naturalization, it used to be. Now they have a different name they use that kind of blends the two together.

CH: Do you think the system the way it's set up here functions then pretty well?

JC: Oh, I think it functions very well,

yes. We're understaffed in the sense of the US Attorneys Office. They have three people, I think they could use five. So some of their cases, some of the criminal cases have to go up to Eugene, where I think at last count they had seven US Attorneys up there.

CH: Who manages them and how are all the court personnel managed?

JC: By their individual agencies. In other words, Portland is headquarters for the US Attorneys' Office and she picks who is down here.

CH: So the civil clerk or the criminal clerk.

JC: And they're run from Portland. Probably once a month, Craig Meyer or his deputy come down and just kind of make sure everything's going smoothly. We're served by Portland as far as computer service and things like that. Sometimes that's a day late, but that happens.

CH: What has the relationship been with the head clerk, well Don Cinnamond, or?

JC: Oh, very great. Oh yes.

CH: Do you have sort of a constant rapport with the clerk's office?

JC: Yes, everything that we need, I mean every concern is always addressed. We have a very good relationship with the

clerk's office and we are served well by them.

CH: What has your relationship been like with the US Attorneys?

JC: They're good, there are three of them and very often when there's a federal case where there's a US Attorney on it, Jim Sutherland from Eugene comes down and does those. The civil cases. The three that are here are just on the criminal cases, and I do, as I told you, the preliminary work on felony work. So they're involved in that.

CH: So then, are they in a way a liaison between you and the district court judges handling the criminal cases?

JC: No, because they'll appear before me and then when one of the district court judges come down, the same attorney will present his or her case to that judge that I was working on before. So there's no transition really in the preliminary work and prosecution and the actual trial work.

CH: Did you have an opportunity to know either Sid Lezak or Charles Turner?

JC: I knew both of them nominally and to say hello to them. That's the only relationship that I had. Sid's been around forever. [*chuckles*]

CH: An institution.

JC: He's an institution, he really is. For years and years and years.

CH: In all the histories I've worked on, I've only heard about the US Attorneys in Portland, so I know absolutely nothing about any of the attorneys out here.

JC: They hire extremely competent people. They're extremely competent, they're extremely hardworking.

CH: Who are they?

JC: Well, one of them is Doug Fong. Doug's a former deputy district attorney from Grants Pass, and then we have a new, well actually Bob Thompson, who was the first one here, took a sabbatical and he's working back in Washington this year, for the department.

CH: Washington D.C.

Federal Court Drug Cases

JC: Yes, he'll be back there a year doing that, and I don't know whether he'll be allowed to return here or where he'll continue working for the department. Then we have two other deputy US Attorneys here. A brand new one that came to replace Bob. Then a woman that shares time with the district attorney of Jackson County and the US Attorney. She's kind of on loan. Then we have two full-time public defenders, locally. The criminal practice here is huge.

CH: Hmm, why?

JC: We're right on the corridor. We're

on I-5. It's just appalling the number of cases, drugs particularly, that are handled through this court. It's not unusual at all for the eight to ten to twelve indictments when the grand jury meets. They met last Friday, I think they had seven this time, but just a tremendous number of new cases all the time. So it really causes the Article III judges to have to come down here often.

CH: I bet. That's had a huge impact on the courts overall, hasn't it?

JC: Oh!

CH: All the drug cases and—

JC: Oh, it's been dramatic.

CH: What would you say has been the biggest change in the courts over the years that you've been involved with the court?

JC: I think the burgeoning criminal case load has certainly been one of the most remarkable things. I think when I came on the court DEA had two agents here. Now they have probably eight. It's just been a tremendous development of case load for them.

CH: So the demands on the court have been increased because of the drug cases.

JC: And illegal re-entries, illegal aliens, a tremendous number. And now, you know, I mean some of whom are coming before me again after they've been deported some years ago and now they're back again.

CH: How do you handle those kinds of situations?

JC: There again, they are felony cases, so I just do the preliminary part of them and an Article III judge handles the penalty phase of it. Some of the penalties are very severe. Illegal re-entry after being deported, after having a conviction of a dangerous felony here, you're looking at twenty years in prison. So there are some very stringent penalties.

CH: That must be very hard on the prison system to be able to accommodate all this too.

JC: I would think so. I don't know where they send them all, because certainly our local federal prison couldn't accommodate all the prisoners that are being sentenced.

CH: In Sheridan.

JC: Sheridan.

CH: In terms of visiting judges, are there visiting judges that come here from other districts as well?

JC: No, no. Judge Redden comes down once in a while. Of course I always think it's very interesting when he does and walks into a courthouse bearing his name. *[both laugh]* That must be quite appealing.

But he comes down once in a while. Then Judge Hogan and Judge Aiken are the main ones that come down here.

Professional Development

CH: Do you feel that judges should have special training in specific areas of the law? I mean they have to deal with so many different types of cases, admiralty and patent, securities, anti-trust and all these different?

JC: I think that the CLE conventions and conferences that we go to are extremely helpful and I think the federal judicial system is good about conducting those “how-to” sessions, if you will. And I think most of us really enjoy listening to the programs. I try to go as often as they’re offered that I can do it. Usually annually, the magistrate judge’s convention is interesting in that sense, that they cover things that are kind of the state of the art situation. I don’t know academically whether there could be preparation for—I think Baby Judge School is a good idea, but I think that the duration of it could be extended considerably and meaningfully in the sense of really preparing someone for the role. But basically I think they prepare you and keep you apprised in what’s going on. Of course you get a lot of mail concerning educational things and so I think that they do a good job.

CH: How would you describe the amount of material that you have to read?

JC: Well, it’s considerable. I mean you’re never through. I’d say it’s always there. There are always cases that you

have to read, decisions that you have to make after reading the cases, appeals from Social Security, habeas corpus cases and decisions you have to make on those, preparation for, attendance at, motion hearings. Reading all the filings of the attorneys on motions is enough to keep you occupied.

CH: Yeah, I bet. [*laughs*] The magistrate’s convention that you mentioned, is that within this Ninth Circuit or the district or is it national?

JC: It’s a national thing. They also have different sessions. They have an annual convention, but I just went to a convention in Santa Fe, which wasn’t a national convention, but it was put on by the Magistrate Judges Association. Two-and-a-half days; it was wonderful.

CH: What kinds of things did they cover?

JC: Oh, they have various things. They had things and break-out sessions on, they’ll do evidentiary things. There’s a professor at Boston University. She’s at Suffolk University Law School, Karen Blum, who is brilliant. She’s just devastating. She’s an authority on excessive force cases, and she gave her annual update on that. She’s just a treasure because she just knows it so thoroughly. Then the professor that left Southern California—Erwin Chemerinsky, now he’s at Duke—that gives the update on Supreme Court cases, an hour-and-a-

half straight through, not a note. He remembers. And this year he argued two cases that they decided and gave who wrote the majority, who was joined in the majority opinion, who wrote the dissent, who joined in the dissent or concurring opinion, and the case citations, page and volume number. It just blows you away. But he gave his annual update, so that was interesting.

CH: How effective do you think the court is on public policy?

JC: [pause] In what context?

CH: I mean do you feel that the decisions coming out of your court for instance, do they find their way back to, oh either to the legislature in any way, through the bureaucracies in a way that either locally or federally, that somehow the court system has an effect on public policy? Certainly legislation has an effect on the courts. Does it work the other way as well?

JC: I don't really know how to address that. I would think that it did in the sense that jury determination on a given set of facts sometimes finds its way into the community and what they decided and what the case was about. But, you know by and large I don't really think about things like that, what effect our case is going to have, I think a lot has to do with the reporting, if it's reported at all, and the prejudices and the likes of the reporter. Our court is not followed locally, closely,

by the press. Nor by television. Which is fine with me. I've never conducted an interview and never will. I just don't feel it's appropriate. I've never chosen to. They're free to come and observe the trials and what's going on. But I don't think too much of it gets handled in our local press.

[End of Tape Two, Side Two]

Article III and Magistrate Judges

CH: This is an interview with Judge John Cooney at the US District Courthouse in Medford, Oregon. The interviewer for the US District Court of Oregon Historical Society is Clark Hansen. The date is June 17, 2005 and this is audio tape three and video tape one.

Just to back up, since we're on video tape, and I know we talked about this a little bit before. Maybe you could explain for me what the differences are between an Article III District Court judge and a magistrate.

JC: I think the first thing to say is that the Article III judges are appointed by the president and confirmed by the [U.S.] Senate. Our appointment arises following a committee appointed by the court to interview the applicants for an available magistrate judge position. And then that committee interviews a certain portion of the applicants. In the case of Oregon, they have reduced the number of applicants to five, and those five people are interviewed by the court in Portland. Then the court selects one of those five for the position, which enjoys a term of eight years. It's capable of renewal. So that basically is how each of the positions occur.

The duties are different in the sense that the Article III judges handle every-

thing in the federal court system. The magistrate judges do the preliminary work in felony criminal cases, and then the trials and the sentencing procedures can only be done by an Article III judge. With the consent of the parties, a magistrate judge can handle all civil cases. So if the parties concur, then the magistrate judge handles everything about a civil case, including dispositive motions, the trial, enters judgment. Then the appeal from those decisions is taken with the Ninth Circuit Court of Appeals in San Francisco.

CH: So it never goes from here to another part of the District Court?

JC: No, if they agree to have a magistrate judge handle their case, then they contemporaneously agree to the appeal that I've just described.

CH: What are the factors in determining, for either party, as to whether it's an advantage to go before the magistrate or go before a judge?

JC: I'm the only federal judge in Medford, so I think that in my case, people generally agree to allow me to handle their cases. I say it not because of my qualifications, or anything personal having to do with me. But practically it is advantageous for them to agree to have me hear their case, because then they don't have to go to Eugene or to Portland to have an Article III judge handle their trial.

I think that many of the consents that I receive, and I would say like all of

the magistrate judges in Oregon, I think ninety-five percent of the people in civil cases down here agree to a magistrate judge to conduct their trial and handle their matter to conclusion. But I think that geography comes into play in my case, because it's more practical, more economical for them to try their case in Medford than it is to go to Eugene or Portland and have to live in a motel and all of the other expenses that would be involved.

CH: What are the range of issues that you tend to deal with? You were talking about the civil cases, for instance, that you handle. What kinds of issues?

JC: A civil case in federal court, of course, can run the gamut. We have medical malpractice claims; we have automobile claims, matters of copyright. We have Jones Act cases, matters involving Merchant Marine cases, injuries on ships. We have contract cases. So that you have all of the types of cases that you would have in state court, with the additional component that the federal court has jurisdiction for one reason or another; either diversity of citizenship—a California resident suing an Oregon resident, or vice-versa on an automobile case. So we would have jurisdiction in those cases. Interestingly enough, they involve most everything.

CH: Relationships between state and federal government—are there issues that come up regarding that?

JC: There can be, mm-hmm.

CH: With the federal lands.

JC: Federal lands. We have water right cases; we have environmental cases. A lot of those involving protestation of logging and the environmentalists upset because of proposed logging in the areas and their claim that the entities have not carefully assessed the impacts on the environment prior to letting a contract for logging. So we have many of those types of cases, yes.

CH: With a case, similar to, say, dealing with the Klamath River, because it starts in Oregon and then runs down to California, who decides where a case like that is going to end up?

JC: Wherever there is jurisdiction, whoever files wherever, then that determines where the case is going to be heard.

CH: What have been your most difficult cases, would you say?

JC: I think cases of complexity—patent cases are difficult because they're highly technical and you need the expertise of people familiar with the products to explain them to the jury. I think that they are very interesting cases, but each side will produce experts supportive of their contentions. Most of the cases that we hear, I find are extremely interesting. And our courtroom is uniquely equipped now with all of the bells and whistles to make it possible for the jury to see much of the evidence by way of flat screen television screens that each two jurors in

our courtroom share. I think they are very appreciative of the high tech approach that many of the practitioners are very conversant with, and try a great portion of their cases through that media.

CH: You gave me a nice tour of the remodeled courtroom downstairs and showed me some of the innovations. What else has happened in that courtroom? What other kinds of innovations have there been? It's just beautiful.

Role of Technology in Trials

JC: The remodel of the courtroom was very extensive. It was a beautiful courtroom before. And as I told you, the building was originally built in 1916. About ten years ago, in 1995, I think, they started the remodel of the building and included in that was the remodeling of the courtroom, which took place about five years ago, and at which time they tore up the floor. They installed all of the conduits for all of the television equipment. I'm certainly not conversant with the complex equipment that we have. I am the recipient of it in that I have a monitor on my bench and can appreciate it through that.

The actual machine accommodates the lawyers hooking up there—laptop computers. We can have a day in the life of whoever presented on the monitors through that media. We can have exhibits shown that are on the computer. Pre-trial, of course, we've addressed all of that, but all of the admitted exhibits can be shown on the televisions screens. A doctor can

sit in the witness stand and take a device and write on the picture of the x-ray of the back, exactly where the *nucleus pulposus* is and where it's extruding and impinging on the nerve and so forth. Then with the press of a button either he or the lawyer examining him can eliminate the writings that have been placed on the screen. The jurors just are totally appreciative of that. Of course, like most people, they have been reared in the era of television and I think that it's a very meaningful way to present evidence to them.

CH: Is it more difficult for you as a judge to determine what material to allow, since there's so much more that can be shown because of all this technology?

JC: I think the question of relevance is addressed pre-trial. When we start a trial, all of the evidence, all of the exhibits have been marked and either agreed to or any differences resolved before the trial starts. So the presentation of them in an orderly fashion is accommodated by their being placed on tape or another device for presentation through this equipment down there.

CH: There's a quote in the book *First Duty*, which is the history of this court.⁴ And it said a lawyer can select cases and limit them to a certain area of expertise. A judge must accept and decide a wide range of legal issues, many of which are complex and technical. How difficult is it for you to get up to speed on this vast variety of issues and technical things that come before you?

JC: I think very often the experts that they select, supportive of their respective positions, are the ones that really have to break it down to an understandable quality for the jury to understand. The main thing that we have to determine is whether the experts are qualified in their field, whether their expert testimony is going to be helpful in allowing the trier of fact, be it the court or the jury, in determining whether it's helpful to them in understanding the complex problem. So very often, trials—I think one of the reasons judges find them so intriguing and interesting, is how much you learn about things with which you have very little understanding before a trial starts. But through the course of handling a case from its inception through trial, necessarily you become, if not conversant, at least introduced to the complexities. And they break it down well for you so that it is understandable.

CH: What would you say that your most significant case has been, that would have the longest standing impact?

JC: I don't really think back on any particular case as being the most significant. All of them have different degrees of interest. Sometimes there's a repetitive quality to certain types that you have. Each in its own way is individually very interesting. A lot of cases with trials that we've had have to do with excessive force claims against different police organizations, and claims that the police officers involved have used excessive force against a prisoner or an accused or

something. Those are very interesting cases and yet they're very different. The individuals are very different and the witnesses are all very different. So I think trials are a very interesting format.

Oregon Magistrates

CH: How would you contrast your role as a magistrate in this community compared to a magistrate in Portland or somewhere else?

JC: Well, I think one stark contrast would be the fact that I'm alone. All of the magistrate judges in the district, in fact this morning being a Friday, every other Friday we enjoy a telephone conference call among each other. That affords me an opportunity, being alone, to kind of catch up and hear what's going on in Portland or Eugene. But I think being alone is the greatest difference. All of the other judges in the District of Oregon have other judges in the same building with them. I am alone and have been through all the years that I've been on the bench. Twice a month an Article III judge [comes here], like this morning Judge Aiken is down here from Eugene. She has a criminal calendar, receiving sentences, administering sentences, and changes of plea and felony criminal matters. So I have an opportunity to visit with her briefly when she comes, or Judge Hogan when he comes down also, every month. Occasionally I have the opportunity to go to Portland and when I'm there I have the opportunity to visit with the other judges.

The Oregon court is a very unusual group of people, in the sense that magistrate judges are treated very evenly. A stranger to the system, if he or she happened to be in an environment where the Article III judges and the magistrate judges are mixing, would be hard pressed to tell to which organization a particular judge belonged; because we're treated very, very well. They give us as much responsibility as they can and I think are certainly to be complimented on that. The Article III judges in Oregon have led the nation in the utilization of magistrate judges. I notice that certain other districts throughout the country have adopted the same reasoning, that they too are using magistrate judges more and more. Although some places, I'm told— and I'm told by the magistrate judges—that they have never had a trial, they have never had any courtroom experience. It's a tragedy, I think.

CH: A waste of talent.

JC: It really is, I think so.

CH: Do you feel handicapped at all by your isolation and not being able to casually talk to some of the judges?

JC: They are as far away as the phone. Quite often I have availed myself of the telephone. There again, each and everyone to whom I have placed a call has been more than happy to confer with me, whether they're a magistrate judge or an Article III judge. I think in many respects it's been a wonderful experience, although a different experience than other judges in the state.

CH: Is there anything that you would change in the system, either with the magistrate system, or with the court as it run now, from having had all these years to operate within the system?

JC: I can think of nothing offhand. I think that we're blessed with very capable people. The people in our courthouse are all high quality people. They're well trained in their particular positions, and serve the court very, very well. We have a very compatible group of people here and I feel honored to be part of the team down here. I think the professionalism is outstanding in the federal court system, at least my limited experience with it. It's just outstanding and I feel honored to be part of it—

CH: We had talked a little bit before about efforts that had been made in regards to working with lawyers and with their footnotes and AWOPS, various ways of making the trials more efficient perhaps. Have there been?

JC: I think that we have a good rapport with the lawyers in our area. They have what's called the Southern Oregon Federal Bar Association. We often have brown bag lunch sessions and get together and hash over things. We're very blessed to have the high quality of practicing lawyers down here, and professionalism has never been a real problem in our court. Everybody comports themselves very, very well. They have been encouraged to, and are prompt, and by and large very well prepared for either a hearing or a trial. I think their degree of competency stands right up

there with any group of lawyers.

CH: Is it different operating in a small community, because you know more of the people? You worked here as a lawyer prior to this position?

JC: That's true, there's a certain isolation that attends going on the bench. Interestingly enough, even while a lawyer, I'd say socially our closest friends were non-lawyers. So going on the bench has not resulted in not socializing with a given person that you had before. I still run into people playing golf or having lunch, or any other context that are lawyers, and we still remain good friends. But when we're in court they comport themselves appropriately and refer to me as "Your Honor," and what-have-you. People have been very supportive of my becoming a judge. It's worked very well. It is different in the sense that you are acquainted perhaps with more lawyers than maybe a judge in Portland would know, socially, before you go on the bench. It's worked out extremely well, I think.

Southern Oregon Bar

CH: And what about your positions with the ABA? What kind of involvement have you had with the ABA over the years?

JC: None. *[laughs]* That I can recall. The Oregon State Bar, of course I was active in, but the ABA I have not been and really have no contact with it.

CH: And the local bar association that you were referring to here, are there committees or projects or anything that they do that you are involved with, or help with in any way?

JC: Well the Southern Oregon Bar, I am active in, yes. In fact, next year we are having another Continuing Legal Education conference, which we have done in the past, and the other judges, federal judges and some of the state judges even, throughout the state, have attended that. We're going back, I think, to Running Y [Ranch] over by Klamath Falls in 2006, to have another one. And to which some great speakers have been invited. We had Professor Chemerinsky come up from—he was with University of Southern California then. Now I think he's at Duke Law School, and gave the annual critique that he gives on the US Supreme Court. So we have good speakers at that. It affords a wonderful opportunity for young lawyers, newly admitted to the Bar, to meet and spend time with the judges. The evening meal, they sit with an Article III judge and find out they're real people. *[CH laughs]* I've had young people express to me how meaningful it was to them to attend that conference and to meet judges whom they had heard their names before, but had never laid eyes on before, let alone spoke to them, and sit next to them and have dinner and a conversation. Plus, attending a very highly instructive session of legal education. So, we cooperate in the presentation of those things and are thrilled to do so.

CH: Going back to some of the more general philosophical issues that maybe you've come across in your career, what do you see as the relationship between punishment and reform?

JC: Well, we handle misdemeanors. As magistrate judges, we are, if you will, spared from the responsibility of sentencing people to incarceration for periods of longer than a year. I mean that's a limitation on the dispensation of punishment because ours are all misdemeanors. As far as, I think, many, many times incarceration is indicated as a punishment. So I don't have a problem with the dispensation of "doing time" if I find that it's appropriate. I think that if it's dispensed in the sense of fairness and bears a relationship to the gravity of the matter for which you're imposing time, it's clearly warranted. I never look back when I'm called upon to do it. If it's necessary, and I think it would be helpful, if you will, to the recipient, I have no hesitancy in doing it. I think sometimes it's a good thing for them to have time to reflect on the gravement of what they have been found guilty for, and as a deterrent to future conduct.

CH: Do you follow the rates of recidivism at all?

JC: I think you're constantly reading things about that, certainly. It comes across your desk almost daily, you know. In many—

[End of Tape Three, Side One]

Law Versus Personal Beliefs

JC: People whom I would meet in court on criminal matters, felony criminal matters, or people that have been before me before on the same charges. Whether it's illegal re-entry into this country, or selling drugs or whatever. I've been on the bench long enough now that I've had a lot of repeaters come back. It's one of the tragedies of life, I think, that some people get in a rut and succumb to the temptation of indulging in that kind of conduct.

CH: Have you ever felt compelled to decide in one direction, but because of the law or because of the sentencing guidelines—you're not affected by that, are you?

JC: Not with any felony, no.

CH: You felt that you would like to judge in one way, but because of the law, the way it was written—

JC: Oh, certainly!

CH: Do you come across that?

JC: Oh, not often, but there are times when you don't agree with the ruling that you have to make [*chuckles*] necessarily. You follow the law and you may not agree with it 100%, but that's what you're there for, is to follow it and not make it. That's somebody else's job. The legislature is vested with that responsibility, but you have to apply it. So you do.

CH: Do you have some leeway within that, as to how you apply the law or the punishment, so that if it's a law that you feel perhaps is outdated, or for whatever reason is not as relevant, that maybe you can give a more lenient punishment?

JC: I think that very often you're called upon on a plea agreement, for instance. The parties, the prosecutor, the US Attorney and the defense lawyer suggest to the court, or they agree on what a sentence should be. But when it comes to you, you're not bound by it. That would be one instance where you use your own judgment on the severity of a given punishment. They have agreed that this is reasonable. You may or may not agree that it is reasonable. In that instance, you do use your own judgment.

Settlement and Mediation

CH: How often would you say out of court settlements are made?

JC: Oh, civil cases, I have probably 150-160 civil cases at any given time. And of those an extremely small percentage will go to trial. I don't know what the statistic is, but I would hazard a guess that ninety-five percent of those cases will not be tried. One reason that I've always felt that more federal cases do not come to trial is that dispositive motions are granted by us pretty often in federal court, as opposed to the Oregon State courts. The discovery process in the federal system is such that there are really no secrets. By the time you are called upon to go to trial, you know

pretty much what the other side has, they know what you have, and common sense would indicate that a careful appraisal of that leads to settlement as opposed to trial. I'd say that the wide-open discovery in federal court is responsible for the resolution of many cases.

Oregon has a unique situation in my judgment, in that so many, or quite a few of the federal judges are very adept at settlement. Judge Hogan, Judge Aiken, and Judge Coffin, to name three close by. Undoubtedly, there are more in Portland with which I enjoy less familiarity, but many of my cases that I am on, and have consents on, where the parties indicate a desire for a settlement conference, I call one of those three judges and see if they have time. Almost invariably they accommodate my request right away. Then the parties go up to them. They're very skilled at resolving cases through the settlement process. It results in tremendous savings of time and money to everybody that's involved in the case. I've been really surprised and amazed at the fact of settlement of some of the cases, because when I sent them up there I didn't think there would be any hope of their settling. And then I will receive a call saying that it's settled.

CH: Do you think that there are ever cases that an out-of-court settlement actually denies the judicial system an opportunity to clear up a complex issue?

JC: It has been my experience that it will resurface someplace else very quickly. [*both laugh*] Other than answering

it in that fashion, I've never felt in any settlement in which I have participated, that I was relinquishing anything that I would rather have brought to conclusion through a trial.

CH: Because I did hear the sentiment expressed at one point.

JC: Well, it might well be. I can't think of any situation that would, unless it was a unique area of the law, that hadn't been reduced to a judgment.

Courthouse Security

CH: One of the big changes that have come along in recent years has been in the area of security, security of courthouses for the judges. How has that affected you?

JC: Well I think you're always aware. It has caused me personally to be more circumspect about what's going on around me than happened before. Years ago and shortly after I was on the bench full-time, a threat had been made to several of us, the result of which was the Marshals Service lived with my wife and me in very close proximity for most of a summer, or part of a summer. That makes you extremely aware of your fragile position. They were wonderful about it and very skilled in what they did, and were quite helpful to us through that process. Yes, I think it's a very real problem. This year has been a graphic demonstration of the situation with the judge's family in Chicago, the judge in the South being killed. I think it's

a constant ongoing situation.

The courthouse, I cannot tell you how comfortable I am with all of the people in the building. The courtroom security officers are tremendous. The Marshal's office is very good. Congress now has enabled the Marshals Service to implement upgrading of security in judge's residences, and I think that's a good thing. I think the problem is being addressed. It's just something that you're always aware of, and try to be careful.

CH: You don't feel encumbered by it at all?

JC: No. I think it's a comfort to have the courtroom people, to know that anybody that comes in the building has been screened. And as you notice when you come, you go through a process and it's like you're boarding an airplane. It's handled very politely and expeditiously and, yet, very thoroughly. So you feel comfortable and every time I'm in court, there are people in court with me that are there for the reason to protect me, and others. So, you just go about your business knowing that you're being well looked after.

Uniform Sentencing Guidelines

CH: Even though you may not be involved in criminal sentencing, how do you feel about the Uniform Sentencing Guidelines and does that affect you at all?

JC: No. I have great confidence in the judgment of our Article III judges

and I think that to mandate that they *must*, I mean of course the recent cases now have tempered that somewhat, but I think that at a time when they had to sentence people in a manner that they did not subscribe to, was an invasion of their principles. And I didn't agree with it and I don't agree with anything that inhibits them from sentencing people in the manner that they feel they should, up to whatever maximum penalty has been determined for that particular offense. But I think to have forced them to impose sentences, which they felt were totally out of line, was ridiculous. It caused the retirement of some judges that just said, "I'm not going to do it."

CH: You're using the past tense on that. Has there been a resolution at all on that case? Have they decided, and I'm sorry, I've forgotten the name of the case now that went before the high court. Was it before the Ninth Circuit or before the Supreme Court that decided that?

JC: Oh, it's only the Supreme Court that could decide that the mandated portions were advisory. I haven't sat through a sentencing since that case *Blakely v. Washington*⁵ was decided, so I can't relate how presently the Article III judges are handling the matter. But I think that, formerly the sentencing guidelines were the law and they had to do whatever they said they had to do. And in many cases, I know personally, they didn't necessarily agree with what they had to do.

CH: Is there a sense of relief now that there's a little more [flexibility]?

JC: Well, I'm sure to the extent that they are relieved of what they formerly had to do [*laughs*], there's relief.

CH: What about the movement towards victim's rights, and that issue?

JC: As far as what? Financial compensation?

CH: Well, in constitutionally balancing the rights of criminals with the rights of victims. Of course in a lot of courtrooms now they allow the victims to make statements at the end, to be able to address.

JC: I see no harm in that; I think it's cathartic. If it's helpful to them to stand up and face someone who has inflicted harm on them or their families, I have no objection to that. That's part of the punishment end of it, to hear someone whom you have caused a great deal of grief for, to make you aware of it. I have no objection to it at all.

CH: Have you seen very many cases of innovation, in terms of say, punishment through certain types of service, or somehow compensation to the community by some kind of service, or?

JC: Well our participation is very limited, because we do misdemeanor cases and civil violation cases and some-

times in those you order someone to do public service, or to help pick up trash or whatever, in the national parks, when a different form of punishment would not be meaningful or appropriate. But nothing of any great magnitude in my personal experience.

CH: Are you familiar with the attempts to, say some of the labor camps that they've set up, like out in the national forests, to try to get people who have committed crimes to maybe have a little more self respect?

JC: I'm all in favor of things like that. To put on a trash pick-up patrol on the highways, I think that's very appropriate and I have no quarrel with that at all.

Judicial Philosophy

CH: How would you say your judicial philosophy has evolved over the years?

JC: Well, you know you're always after the fair treatment of everybody. That's part of my philosophy, that the laws should be applied in that manner. Everybody should have the opportunity to seek redress for any wrongs that they think have been visited on them, and I think fair treatment as a judicial officer is of primary importance. So the people who come before you, whether they're civil litigants or whether they're people convicted of crimes, or charged with crimes, they should garner a sense that you are fair, that you are treating them with dignity and

treating them as an individual, and make them feel that the process itself is one of fairness. Perhaps firmness, but fairness. I've always felt strongly about that and I think that it's not a bad philosophy.

CH: Do you feel that your approach toward that has changed over the years on issues of fairness?

JC: No, I think at times you have to remind yourself. Even though you may not care for an individual personally, or the way he or she is comporting themselves in front of you, you still have to respect the fact that some of them are fearful, that the actions that they are manifesting might be that way for different reasons. They might be very frightened. So you're constantly reminding yourself that they are looking up at you and wondering what you're going to do and what-have-you. I've always felt that way. I felt that way as a practitioner, as a lawyer. I always wanted to be before judges that I thought were fair. I didn't care how firm they were, but just that they were fair, that they let people speak their speech and just so they were treated properly. I've made that my philosophy. I've always tried to treat people politely in court, whether they are other lawyers appearing before me, or the litigants themselves. That doesn't mean I don't remind them when they cross the threshold. And I've had occasion to do that. But I think if you do that, your trials or your hearings will go much more smoothly and have more of a positive result.

CH: From the time when you first came on the bench, did you feel that you changed any of your procedures? Any of the ways you did anything?

JC: I don't think so. I've tried not to and I hope I haven't. I don't think that I have. I think I'm probably perceived—I don't know, I've never asked anybody—but I think I'm probably perceived as someone that treats people fairly.

Selection of Judges

CH: How do you feel about the way judges are selected? Do you have any opinions on how judges are selected or ways you would change that system?

JC: I think the selection process is very fair, particularly with magistrate judges. You have a very eclectic committee selected that interviews the applicants and there are non-lawyers on the committee. I think that it's a very fair process. Then the ultimate selection by the Article III judges under whom they serve, I think, is a very fair process also. I can think of no better way to do it. I think it's a well-thought-out selection process.

CH: Do you think that having a term yourself—did you say it's an eight-year term?

JC: Mm-hmm, eight-year term.

CH: Is that something that you feel is

appropriate for a magistrate?

JC: Unlike the Article IIIs who enjoy a lifetime appointment, they are called upon at the end of your [magistrates] eight-year term, to see whether or not your performance has been such that they [Article III judges] would like to have it continued. So you reapply, and then there's an opportunity for those in the community to either object to you continuing in your position, or support the continuation of your career as a judge. I think that process is good also.

CH: Some people would like to see that applied to Title III judges as well.

JC: I think they would. I like the way it is with Article III judges. I think that a lifetime appointment is appropriate.

CH: And direct elections would not be appropriate?

JC: No. I think one wonderful thing about our system is that you're not looking at your record; that is not an influence. I do not look at the number of times that I have been affirmed or overruled by the circuit court as influencing the way I'm going to decide my cases. I think that subliminally there's a possibility in state court—where they have to run every six years, I believe it is—the decision-making process might be influenced. Subliminally. Certainly not consciously, but it could be because of that factor. I don't think any federal judge pays particular attention to what their record

on appeal is. I've been reversed and I've been affirmed and I think that's true of all of us.

CH: Do you ever have any resentment about being reversed?

JC: Oh, absolutely not. You do the best job you can. You decide it the way you think is correct and then you let somebody else pass judgment on whether they agree with you or disagree with you, and that's the way it should be.

CH: How do you feel about Congress's attempts to change the judicial system, especially regarding issues like product liability?

JC: That's their job. Their job is to pass the laws. The laws should be reflective of what the constituents want, and then the courts should address any problem that comes before them in the context of what the law says.

CH: Looking back over your career, what events do you remember most vividly? What really stands out?

JC: My appointment. *[both laugh]* The fact that you were appointed and the appreciation you have for the opportunity to be part of the system. Every day, the gratitude that you feel for it. I don't mean that facetiously. I look forward everyday to coming to work. I enjoy my work, but you are grateful for the opportunity to be here.

Retirement and Senior Status

CH: Do you feel that judges should retire at a certain point?

JC: I think in the case of magistrate judges—once you're seventy years of age—then each year, irrespective of the fact that you've been reappointed to another eight-year term, you must apply to the district judges for the opportunity to serve an additional year.

CH: Over seventy?

JC: Yes. They have governance in that sense. If it's perceived that you aren't doing your job well, or are no longer capable of performing your duties well, then they are afforded an opportunity to decline to reappoint you. It's an annual reappointment after age seventy, as it should be. I think that's a good rule.

CH: Could you describe the process? I think you had mentioned this off tape, about—it's not senior status—but the status that magistrates can go into?

JC: There is an opportunity, for those interested in applying, to serve in a recall capacity once you are no longer a full-time, active magistrate judge. If the district you are serving has need for your services, then you can be recalled for a given period of time, or a particular case that you could be helpful in handling for the court. It's called a recall position in the magistrate system.

CH: And does that operate pretty much the same way? It's just a reduced schedule or they?

JC: It could be for the handling of a particular case, it could be for a particular period of time. Let's just hypothesize and say one of the active magistrate judges was going to be absent from the office for medical reasons, for say a period of two months, then a retired magistrate judge, subject to this recall program, could be called upon to fill his or her position during that time. So it is available. It's unlike a senior status that Article III judges take. Oregon's a good example of that, with all of our senior Article III judges that are serving now and handling tremendous case loads and they have agreed to do that, and are of great help to the system.

[End of Tape Three, Side Two]

Travel

CH: This is an interview with Judge John Cooney in his chambers at the US District Courthouse in Medford, Oregon. The interviewer for the US District Court of Oregon Historical Society is Clark Hansen. The date is June 17, 2005 and this is tape four, side one. Just a few follow-up questions here. You had mentioned off-tape that you're going to China here pretty soon.

JC: Oh we're taking a trip, yes.

CH: Have you traveled much, or?

JC: We try to. We both enjoy it very much.

CH: What has your wife been doing over the years?

JC: She has been the mother of five wonderful children,⁶ and now we have eight grandchildren. So she's active in that as well. So she stays very busy.

CH: But the children are all out and on their own?

JC: Yes, they are.

CH: So your trip to China, are you studying the history or the places, or—?

JC: Well, one of the books that was recommended, interestingly enough, is called *Wild Swan*.⁷ I just finished it. It's a story of a young Chinese woman whose parents embrace Communism approximately at the end of World War II, and then came under the rule of Mao and it's a very depressing, but wonderful book, as far as what was going on in China from about the turn of the century through Mao's life.

CH: So, Sun Yat-sen?

JC: Yes, Sun Yat-sen and Chiang Kai-shek and the differences that existed between his approach to things and the Communists. I would heartily re-commend the book. But I think it will give us an appreciation of what some of the older people whom we'll come into contact with, have had to live with during the early parts of their life, at least.

CH: Is it an organized tour?

JC: Yes, it is, and we're flying to Beijing and then fly home from Hong Kong and it sounds like a very interesting trip.

CH: Have you traveled elsewhere?

JC: Oh yes, we've been through the Far East and we've been to Europe quite a few times and taken some interesting cruises. We both enjoy travel a great deal.

CH: Any favorite places?

JC: Well, I think Greece, Turkey, Spain was a good trip. The trip across the North Atlantic was interesting, going to Iceland and Greenland and Scotland and the Shetland Islands. That was very interesting. Every place we have been has proved to be interesting.

CH: You haven't mentioned Ireland!

JC: Haven't been to Ireland.

CH: You haven't been to Ireland!

JC: No, I'm saving that.

CH: Oh, your family, I'm surprised. Let's see, you still have a lot of family back in Missouri, right?

JC: Oh yes.

CH: And they haven't?

JC: I haven't been to Ireland yet. We've talked about it. We're going to go, but we're trying to get the hard things done while we're still able to do them and I think China will be a lot harder to do than Ireland. [CH laughs] Looking forward to Ireland, of course. We both love travel.

CH: Have you done any writing at all?

JC: None. None whatsoever. Never felt inclined, nor gifted. A couple of our children are adept at writing and are

doing that, but I have never personally done any.

Societal Problems

CH: Just in your general philosophy, what do you think the main problems facing our society today, are?

JC: I think family life has gone down the tubes. I think that the whole structure of our society has failed in part because of the poor family life that, it seems to me and I don't know whether it's true or not, but I think that in many cases the fact that both parents are working has contributed to the deterioration of the family unit. And I think economically, sometimes it's not even a positive trade off. By the time people get two cars so that each can drive to his and her job and buy clothes to wear into the marketplace, and hiring babysitters if necessary or whatever, isn't really paying for itself. I'm really disappointed in the fact that so many parents do not seem to be involved in the lives of their children to the extent that I think they should, in the areas where they should.

My wife had no job outside the home, yet I think the fact that she was there for the children, took them to the library three times a week, resulting in all of them being voracious readers to this day, it not only helped them educationally, but it was such a supportive thing for them to come home and find their mother there. I would hope that all families would have

that opportunity and I think had they had that opportunity, many of the problems that we're experiencing wouldn't exist.

CH: Is it the economic situation in general that has resulted in this?

JC: I think it's manifested itself in many ways. Children being involved in drugs, the experimentation was made possible in many cases by the absenteeism of the parents, as far as being with their children, knowing with whom they were spending time. Being away from home. I think that it has allowed too much freedom for children. In many cases the lack of direction that they've had, I feel has contributed to many of their problems.

Retirement

CH: And in this stage of life for you, do you feel like you have a lot of years left as a judge, or do you plan on retiring any time in the near future?

JC: Oh, probably a couple of years. I'll be seventy-five in two years and I think I'll probably hold a pen at that time. But I've been extremely grateful for the opportunity to serve. It's altered our lives completely. It's changed so much. So we're both very grateful for the opportunity that it's presented to us. It would make retirement possible. I think I will avail myself of it, because we both like to travel, we're both still healthy and both enjoy that. It will give us a chance to

visit the children and grandchildren more regularly. We're a close family, so that will be one thing that we'll certainly attend to. But it's been a wonderful, wonderful life. We've both had a wonderful life and we're grateful for it. We're both looking forward to retirement, I think.

CH: Well, do you have any other contributions? Any other thoughts, anything you would like to say regarding your personal history or the legal system or?

JC: I think you've been quite thorough. I've never been interviewed before. I hope it has made a contribution to your efforts. No, I think that you've covered things quite well and thoroughly. I hope you have been satisfied with the result.

CH: Oh, I have. I hope it hasn't been too painful for you. *[laughs]*

JC: No, not at all, not at all.

CH: Okay, well thank you very much.

JC: You're more than welcome.

[End of Interview]

1. Steve Bloom served as part-time magistrate in Pendleton from 1988 to his retirement in 2005. He was in private practice, specializing in Water Law during this time. His oral history can be found in the Oregon Historical Research Library as part of the USDC Historical Society oral history project.
2. The Veteran's Association Domiciliary in White City, Oregon.
3. Affirmances Without Opinions.
4. Carolyn M. Buan, Ed. *The First Duty: A History of the US District Court for Oregon*. Portland, Oregon: US District Court of Oregon Historical Society, 1993.
5. *Blakely v. Washington*, 542 U.S. 296 (2004) was based on the case of Ralph Blakely, Jr. that ultimately overturned the federal sentencing guidelines, which granted a judge the power to increase sentences based on facts not confessed to nor found by a jury.
6. The Cooney children are: Catherine Cophehaver (1 March 1953), Martha Woods (9 April 1954), Stephen Cooney (5 October 1956), John Cooney (7 September 1960), Emily Redinbo (13 March 1966).
7. Jung Chang. *Wild Swan: Three Daughters of China*. New York: Simon & Schuster, 1991.

