

ORAL HISTORY OF JUDGE CHARLES RICHEY

On behalf of the Oral History Project of the District of Columbia Circuit, the interviewee is District Judge Charles Richey, the interviewer is Daniel Singer. This interview took place in the chambers of Judge Richey in the United States Courthouse on February 19, 1996. This is the seventh interview.

Mr. Singer: This morning we're going to go through the famous scrapbook volumes or at least some of them and I'm going to read now from a memorandum I wrote back in September of '95 in anticipation that you would ultimately get to these volumes. And I wrote then, "These are a genuine treasure trove for any historian wishing to catalogue the public record of Charles Richey. But it is collection without redaction save by Judge Richey's choices of what to put in the scrapbooks. It contains nothing of Judge Richey's reactions to events. Hence, only from Charles Richey can we get his reactions to the events catalogued. Are those reactions by Judge Richey to such events the same now as they were contemporaneously? What are the differences, if any? What accounts for the differences? Mature reflection? Assessment of consequences intended or unintended giving some thought to the famous law of unintended consequences? So with that, I'm going to turn the tape off for a moment while we physically move to one of the volumes. Any one that pleases you to start with.

Judge Richey All right.

Mr. Singer: This is the remarks of Senator Mac Mathias before the Senate Judiciary Committee defending Charles Richey's nomination. This is all public record.

Judge Richey:: Yeah.

Mr. Singer: This volume deals with your nomination.

Judge Richey:: Yes. You'd have to live with this until you determine what you think is most important.

Mr. Singer: No. What I want is your reaction to these things and I think that with the nomination stuff, in a way it's not going to be as interesting or as challenging as looking at reports of cases which will bring back your recollections of litigants, of courtroom process, in some instances you will figure out what it is that were the sequelae in your own mind to this case, whether it really had an impact on the public or an impact beyond the immediate litigants in ways that you anticipated and expected and what it was that you really wanted and in other instances you are somehow surprised by the way things worked out, pleasantly or unpleasantly surprised.

Judge Richey:: One, the first surprise occurred on April 29, 1971 when the minority leader, Hugh Scott of Pennsylvania, said the following: "Mr. President, I have known Mr. Richey very well for quite a period of years; he is an extremely able lawyer, very well qualified, and will be an adornment to this court. The President Pro Tem. Without objection the nomination is considered and confirmed Mr. Mansfield."

Mr. Singer: He was the Majority Leader at that point. Mike Mansfield from Montana.

Judge Richey:: Yeah. "Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination. Without objection so ordered."

Mr. Singer: Probably not the last time but one of the very few times when a nomination

has, in recent history, a nomination has been approved so swiftly.

Judge Richey:: There was no particular problem.

Mr. Singer: What do you think about that process now?

Judge Richey:: Well. I think the process now is way out of whack. It's gotten to the point where the latest smudge -- s-m-u-d-g-e -- in a person's background is going to be in the nation's headline when somebody chooses to engage in public service. And, I think the President ought to be given much more authority and leeway in nominating whomever he or she chooses for public life whether it be in the judiciary or in the cabinet or high presidential appointments. I thought the Thomas hearings were an absolute disgrace and that had absolutely nothing to do with ideology.

Mr. Singer: Preemptive strikes also. Peter Edelman, Felix Rohatyn...

Judge Richey:: Oh, exactly. Why shouldn't Peter Edelman have been nominated and confirmed. Just because he wrote some law review article for the *Hofstra Law Journal* or whatever it was. I don't know. I'll tell you something else that I think is significant. I've seen judges come and go over the last quarter of a century, and even before that as a lawyer practicing in this court. And when it comes right down to it, particularly at the United States District Court level, the judges appointed to this kind of a court, a trial court, in my experience, have really not let ideology play a major role. The only place where it does is in cases of first impression involving far ranging questions of, what I will call for the want of a better word, public law where it's an open question. There it might have some effect. But other than that, in

the routine day to day work of a judge, even on the Court of Appeals, it's just whether the application of the law fits. And my observation is that most 99 and 9/10ths of the judges have done that.

Mr. Singer: Certainly almost all cases are affirmed once they get up to the Court of Appeals, overwhelmingly the cases are affirmed, which suggests that there's a large body of coherence in the judging process.

Judge Richey:: That's exactly right. That's exactly what I think. I think important.

Mr. Singer: Even with the jokes about Judge Holtzoff and his lack of success in the Court of Appeals. The fact of the matter is overwhelmingly, the overwhelming majority his cases were affirmed.

Judge Richey:: Well absolutely. And, people don't know it, but a judge like myself makes thousands of decisions. Thousands, literally, every year that are never touched by a Court of Appeals or any other court. And, in one case, he may make three hundred decisions, only two of which are appealed.

Mr. Singer: Right.

Judge Richey:: So. Again I suppose that emphasizes the importance of the appointing process, but a judge's record on appeal is not necessarily the sole guiding post. And as you say, Judge Holtzoff was reversed many times, and...

Mr. Singer: In the criminal field. Right.

Judge Richey:: Yes. And towards the end, he even got more difficult. But, Holtzoff, in my judgment, was one of the greatest judges ever to sit on this court along with Weinfeld, in the Southern District of New York; Weinstein of the Eastern District of New York, Learned Hand, Henry Friendly.

Mr. Singer: Can you think of instances where you thought it was appropriate for the Senate to, essentially, interrupt the President's appointment process and to say "no" to the President?

Judge Richey:: Yes. For example, the man John F. Kennedy nominated, who had been a chauffeur or something, to the Federal District Court in Boston.

Mr. Singer: Right.

Judge Richey:: He was absolutely and fully and wholly not qualified. I don't know who the name was...

Mr. Singer: I don't remember either.

Judge Richey:: But, he was described in the press that way. That's not the kind of person that ought to be on the government bench in an Article III judgeship. But, with varying exceptions

Mr. Singer: How about any of the Supreme Court appointees? Haynesworth, Carswell. Those were the...

Judge Richey:: Carswell was not qualified. But, Haynesworth was. I think my liberal friends would... I've never heard dissent after the fact that he was not a superior leader; qualified.

Mr. Singer: One of my early colleagues was a former clerk of his. He was just a good liberal. You may know him, Matt Watson.

Judge Richey:: No, I don't

Mr. Singer: Who was the first City Auditor here.

Judge Richey:: Here in a...

Mr. Singer: Here in Washington. In the first home rule administration. He was the

City Auditor; he had been with our law firm before he went to the government and thought Haynesworth really had a bum rap.

Judge Richey:: He did.

Mr. Singer: Most people agreed, I think that... Not most people, but relevant people agreed that Carswell was just totally unqualified.

Judge Richey:: Well, there's a history of that. I don't know how you explain it, but John J. Parker was Chief Judge of the Fourth Circuit and... And the... Hiram Johnson, I think his name was, from California opposed his nomination successfully.

Mr. Singer: To the Supreme Court.

Judge Richey:: To the Supreme Court.

Mr. Singer: The issue was the labor issue, I think. He had...

Judge Richey:: I don't remember the issue, but I do re...

Mr. Singer: He had said, "the Yellow Dog Contracts" were OK. Then he became known to the labor movement as Yellow Dog Parker. The end of him.

Judge Richey:: Well, I've always heard that he was eminently qualified as a jurist. I don't know anything. I don't even remember the "Yellow Dog Contract" business. But, there again, what is the Senate's role?

Mr. Singer: Well, that's what I was hoping to probe a little bit.

Judge Richey:: And, it's to give advice and consent and listen, and technically, for some reason, is for a woman, pardon me, totally unqualified, I think they ought to defer to the President, whomever that may be. As I say, I thought the Clarence Thomas hearings were a disgrace and the way they handled that, I

thought was awful. That's not to say that everybody would have chosen him to be a Supreme Court Justice, and that's not to say that I agree with all of his views. But I think he was qualified in the broad sense of the word.

Mr. Singer: Had you known him when he sat on....

Judge Richey:: Yes. His first case as an appellate judge was one of my criminal cases.

He wrote the opinion. As I say it was his first case. I waited until the time expired for a Petition for Rehearing, rehearing en banc and petition for cert.

After all that was over, I called him. I'll never forget. I said, "Clarence, I just wanted to thank you for what I thought was a very learned opinion."

Interesting, his remark was. "Well, Chuck, that was a very difficult assignment. I'll never forget as long as I live," Thomas said, "watching that young man's parents in the courtroom."

Mr. Singer: The defendant was in the court room

Judge Richey:: Parents

Mr. Singer: His parents.

Judge Richey:: And of course, that was the end of the quote. But my reaction was, privately I never said it to Clarence Thomas. "Well, how would you have liked to have had those parents sitting in the front row of your courtroom for a whole week, rather than a half hour?" Much greater impact on the trial court than it was on any appellate panel.

Mr. Singer: Sure.

Judge Richey:: Ahhh. It was a wrenching case

Mr. Singer: You remember the case?

Judge Richey:: No, I don't. The name of it. It was a criminal case, I don't remember any of the issues; I felt very sorry for the young man, but he was guilty. And he was fairly convicted. But, that was his reaction and it shows me at least that appellate judges don't get all the contact with human nature that they ought to have.

Mr. Singer: You've made that point several times..

Judge Richey:: Have I?

Mr. Singer: ...in the course of our discussions. You told the story at one point, it may have been in a recent interview, and after it was made to get appellate judges early in their careers to spend a few moments sitting as district judges or even sitting with district judges. Including the story that your friend, Pat Wald has never, despite promises that have not shown up in courts by invitations to do so and to sit and the same with Harold Leventhal in the...

Judge Richey:: Well, don't know. Harold Leventhal did it.

Mr. Singer: Did it?

Judge Richey:: For a few days.

Mr. Singer: Right

Judge Richey:: Burger was the only one who lasted the four months.

Mr. Singer: Right

Judge Richey:: Or three months. Whatever it was.

Mr. Singer: That's what you're saying.

Judge Richey:: Yeah. Even Harold. As great as he was, he just couldn't... didn't like it, couldn't handle it I guess.

Mr. Singer: Well, it's a very intimate form of contact. Notwithstanding the robes and the elevated bench and all of the paraphernalia of the court room. It's... you can't be aloof in the process or it's much more difficult...

Judge Richey:: Well, that brings to mind something that I want to say 'cuz I think it's important. What is the most important qualification of anybody to be a judge? Whether it be at the trial or at the appellate level? I'm talking about the U.S. District Courts and the U.S. Courts of Appeals. The most important qualification is management ability. If he or she does not have that, then they are going to be less effective and maybe even a failure. There was a judge in the '60s who was nominated to this court. He lasted about a year and one-half and then was appointed or elevated, as they say, I think that's a misnomer, but, to the Court of Appeals. But he had the same problem there. He couldn't make decisions. Didn't have the management ability to do the work. He worked, as I was telling Mrs. Richey just this weekend, to at least 3:00 every morning here in this building. He had no family life, no life whatsoever.

Mr. Singer: UhUh.

Judge Richey:: When he finally got done after two to five years, it was a masterpiece. But, what about the litigants?

Mr. Singer: Yeah. Great operation and the patient died.

Judge Richey:: Oh, terrible. I remember one time I was down here in the days when they had long and short motions. You may have experienced that yourself.

Mr. Singer: Right.

Judge Richey:: You started at 10:00 and it was a quarter to twelve before he could decide who was to go first. And it was 3:00 in the afternoon and it was some procedural motion that I filed and I finally got so upset that I went to my opponent and the clerk with the praecipe withdrawing my motion, even though I was entitled to it. But, I couldn't afford the time to waste to get a hearing with the judge. He just couldn't make a decision. He's a great, great man. Still alive. But...

Mr. Singer: Just couldn't hack it.

Judge Richey:: Couldn't hack it because he didn't have management ability. Now you talk about judicial temperament, legal scholarship, integrity and all of that. Those are all important. But they are not as important as management ability. Nobody says that in the literature.

Mr. Singer: And you look at management ability as the ability to make the decisions. People describe you as a superb judicial manager but usually, I think, it's... and this may be the same thing or an aspect of it, is in the ability to move work through your office.

Judge Richey:: Absolutely. Absolutely.

Mr. Singer: And that's... I guess in my own mind I found I had not connected the decisional ability, or the willingness to decide if you want to take the rap, and hear the noises coming back, as somehow different than just from mere processing a way to stay current on your docket.

Judge Richey:: Well, it's not just mere processing. First of all, you've got to know something in order to be able to "process the work," which means you've got

to study, you've got to read, you've got to know about the trends and changes in the rules and the case law. But, you could be the biggest scholar in the world and know all of those things, but if you're not going to apply it in accordance with the mandate of Rule 1 or the Civil Rules or the Rule 2 of the Criminal Rules, namely the highest quality of justice and least amount of time at the lowest possible cost, you're not going to do the litigants any favor and you ought not to be a judge. And, so many judges... it's amazing. You go look at the five new appointees and look at their calendars. I could tell you right now, or you could tell from that alone, who's going to be a good judge and who's not.

Mr. Singer: UhUh.

Judge Richey:: So.....

Mr. Singer: Would you name on the record the name of the judge you're describing? It's twenty-five years, it's going to...

Judge Richey:: I'd rather not.

Mr. Singer: OK.

Judge Richey:: I'd rather not.

Mr. Singer: OK. It would be easy enough for an historian at least.

Judge Richey:: Oh. All you'd have to do is look at the cases and they've been here since 1994.

Mr. Singer: Well, I was thinking of terms of the judge who was spent a brief time on the District Court before he went to the Court of Appeals.

Judge Richey:: Oh. That's easily discernible.

Mr. Singer: OK.

Judge Richey:: I know when Chief Judge Wald was a Chief Judge, they used to call on this judge and they would go over the list of cases which were in arrears.

Mr. Singer: Right.

Judge Richey:: And the answer would be: "in the typewriter.... In the typewriter.... In the typewriter."

Mr. Singer: The check is in the mail.

Judge Richey:: Yeah. The same thing. And, there wasn't anything anybody could do about it, legally. If they wanted to, I suppose they could take his chambers or something like that, but he was such a nice guy and such a scholar, when he finally got it done, heavily footnoted with every case that had any remote connection to it, he really had a masterpiece. But, justice can't wait that long. It really can't. I had an experience a couple of weeks ago with one of my clerks here involving a pending case. And they wanted to go into this esoteric element under the First Amendment; viewpoint discrimination. And I said to them, "Ya know, gentlemen, we're not running a law review here. We're not making policy. It's clear to me that this isn't the case to be discussing that."

Mr. Singer: Right. But it's not that you're not making policy. It's that you don't... you choose not to make it in this particular case.

Judge Richey:: Exactly. Exactly. And, ya know, you talk about the three-part inquiry that you'd make and to determine whether a moving party has standing under Article III and so on and then you go on to the First Amendment and whether

there was, in fact, discrimination, viewpoint discrimination here. At least an academic sort of thing that really had no relevance when you soak [?] to the bottom, but they wanted to get me to agree to discuss that and I wasn't going to do it.

Mr. Singer: Well, you're the judge.

Judge Richey:: Yeah. Yeah. Here is something that, it'd come back. Tuesday, August 3, 1971, that I think is very interesting... involving a case on behalf of Palmolive, Colgate Palmolive

Mr. Singer: Colgate Palmolive Peet.

Judge Richey:: Whatever that company is. They make soap.

Mr. Singer: Toothpaste.

Judge Richey:: And, a big, major Wall Street law firm came in to me and wanted a restraining order, and here's a picture of the glass. I'll never forget it as long as I live. He had about eleven lawyers behind him. And every time I'd ask him a question, he'd turn to one of the youngsters who had done all the work. I got very upset and even told him, "Why don't you let that young man answer my questions." Which wasn't appropriate but I did it anyhow.

Mr. Singer: [Laughter]

Judge Richey:: In 1971. And I asked him, "Would you drink this stuff out of this container? This... it looked like orange or some kind of a drink that you would get and you put it into the refrigerator. Which just became patently obvious to me that the government, FDA was right in seizing all these detergents.

Mr. Singer: This was a soap, or detergent used in a...

Judge Richey:: Well, it's kin to a... Yes.

Mr. Singer: In a dishwasher of some kind...

Judge Richey:: Yeah. In a container. Like your milk comes in.

Mr. Singer: Right

Judge Richey:: And I said, "You know, a child, a mother could reach into her refrigerator quickly and give it to a child and injure him." That was affirmed in the Court of Appeals.

Mr. Singer: The claim was that there should be some special packaging.

Judge Richey:: Yeah. The guy admitted, the lawyer for Colgate, admitted that he wouldn't drink it. Then when he got to the Court of Appeals, he offered to drink it.

Mr. Singer: [Laughter] It was irrelevant both times?

Judge Richey:: Yes. Oh, my goodness. Here's another one, August 7, 1991.

Mr. Singer: 1971.

Judge Richey:: 1971. Well, whatever. The Air Force apparently wanted to discharge a woman, unmarried, who gave birth to a girl on July 3, 1971, who was stationed in Germany.

Mr. Singer: She was a member of the Armed Forces.

Judge Richey:: Right. In Germany. And, I apparently granted a preliminary injunction barring the discharge and ordering that she remain based in Germany until a final adjudication on the merits

Mr. Singer: No independent recollection of it at all, I gather.

Judge Richey:: No. Not until I see it here. It is by Jack Nelson in the *Los Angeles Times*.

He must have come from Los Angeles... I had no recollection of that.

Mr. Singer: He must have been a reporter in Germany. He got a good story.

Judge Richey:: And here it says, in the old *Evening Star*, of August 12th, "Sparks Flying Over Policies of New District Court Judge".

Mr. Singer: That's you.

Judge Richey:: Me. Apparently I cited a legal aid attorney in absentia for contempt. Fined him \$50. Sentenced him to five hours in the custody of the U.S. Marshal.

Mr. Singer: And what was this young man's sin?

Judge Richey:: I think of being late. I'm quoted as saying "So the scales of justice will be evenly balanced, I'm telling the U.S. Attorney's office from this day forward that there will be no excuses for being in another court for tardiness, delay and discourtesies because I intend to start invoking sanctions against lawyers for their discourtesies and tardiness. This goes for all members of the Bar." And so that was the latest in a series of actions that caused attorneys to be muttering to themselves. Well. But then there were editorials praising me on the radio and everything else. The lawyers used to... the U.S. Attorney's office used to park on the Mall and they couldn't get a parking space to get into the courthouse and in court by 8:30 or 9:00. And, of course, we never... I was the first judge to ever sit before 10:00 in this courthouse. Or beyond 4:00. And I used to try cases at night

Mr. Singer: UhUh. Why?

Mr. KAPP: Why? Because I had no... I was so inundated with criminal cases during the day, I had no choice but to try those first. When I came here there were eight

motions to dismiss for lack of a speedy trial. That was the docket I inherited.

Some people were languishing in the jail for over two years. It was terrible. And then, there were a lot of people that had civil cases that were important. And so I decided that I was going to break... do anything and everything that I possibly could in order to give those people their day in court. I caused a lot of furor around here by sitting early, sitting late, and some of the lawyers liked it and some didn't

Mr. Singer: How about your colleagues?

Judge Richey:: Oh, they thought I was crazy. And I was upsetting the apple cart. And you're not supposed to do that. But I did. I couldn't care less. I just made up my mind that I was not here to run a popularity contest. I was here to do justice as I saw it. And to make as many changes so as to enhance the quality of justice. And that was just one of them.

Mr. Singer: Yeah.

Judge Richey:: It was a sacrifice for me. Easy. If you're dedicated and so on. Well, let's see. Apparently I denied somebody a free lawyer. Namely Mr. Colson. I have no idea. There is some case I wrote in favor of the Zambian government, I guess.

Mr. Singer: A zoning case?

Judge Richey:: Yeah. Local zoning case. Then the old *Washington Daily News* on December 11, 1971 wrote an article about the split in the judges, mainly myself on the one hand and Judge Gesell on the other.

Mr. Singer: On what issue?

Judge Richey:: Youth Corrections Act. And I refused to.... The court, apparently on November 30 of 1971, approved it. And I wrote an article.

Mr. Singer: Approved your view.

Judge Richey:: No. Gesell's view.

Mr. Singer: Gesell's view.

Judge Richey:: I dissented. And wrote a long opinion.

Mr. Singer: What would have been...

Judge Richey:: ... saying that they raised the procedure of Gerry Gesell, raised serious questions. Constitutional questions.

Mr. Singer: Was that a three-judge court?

Judge Richey:: No. What he... he developed a plan... for how to sentence.

Mr. Singer: What did he need?

Judge Richey:: Well, because Gesell was a politician and he got all fourteen of the other judges to go along with him in terms of a policy of how we were going to deal with these offenders under the YCA and I didn't agree with him. It meant that many of them would be sent way off all over the country and I didn't think that was....

Mr. Singer: I don't understand the form that elicited...

Judge Richey:: What?

Mr. Singer: ... the opinion of the court...

Judge Richey:: He got the court to agree to follow his procedure in sentencing these people.

Mr. Singer: I see. This would have been a public...

Judge Richey:: Yeah. It was made public.

Mr. Singer: This is the way we're going to sentence people.

Judge Richey:: Yeah. And he even got the Superior Court to do it.

Mr. Singer: I see.

Judge Richey:: Not unanimously like he... with one exception. But the majority.

Mr. Singer: Right.

Judge Richey:: And, I just dissented and so when I had a youngster to sentence under the YCA, I wrote an opinion saying the court was wrong

Mr. Singer: I see.

Judge Richey:: This is what I think is appropriate.

Mr. Singer: So you took the occasion of the sentencing in a particular case basically to write a dissent to the...

Judge Richey:: Exactly.

Mr. Singer: OK.

Judge Richey:: Whew.... Oh, my gosh!

Mr. Singer: What is it that elicited that comment, "My Gosh!"?

Judge Richey:: Well I haven't... I don't know what Mark Childs has written. I didn't know that he was talking....in the article entitled "The Pressure on the Judge". I don't know what he was talking about.

Mr. Singer: This is Watergate related?

Judge Richey:: Yes. Yeah. Apparently I set a \$179,500 bond for Tony Boyle who was President of the United Mine Workers.

Mr. Singer: I think you had described that in an earlier date previously where you believed with considerable evidence that he had transferred his assets to his

wife.

Judge Richey:: Oh, yes. And I got the FBI to confirm it.

Mr. Singer: Right.

Judge Richey:: A lot of stuff in here about Watergate and the ruling I made in December of 1991.

Mr. Singer: '71.

Judge Richey:: '71.

Mr. Singer: You said '91.

Judge Richey:: That's twice I've done that. Thank you.

Mr. Singer: I do it all time. In '71, December '71 or 70.

Judge Richey:: December of '71. December 22, 1971.

Mr. Singer: Watergate had already...

Judge Richey:: Yeah. That was going on and this was an oil and gas case where the Interior Department leased 298 leases for 300 acres of outer continental shelf oil and gas leases to various oil and gas companies. And they didn't discuss the alternatives to these leases..

Mr. Singer: Right. But that's '72 or...

Judge Richey:: No. '71

Mr. Singer: The oil and gas leasing.

Judge Richey:: Right.

Mr. Singer: OK. Not the Watergate. The Watergate is...

Judge Richey:: Well, we started in '71 too because the civil suit was filed. Here are the papers right here. Well, this is '72.

Mr. Singer: That's '72. I mean, I remember, for other reasons, that the Watergate starts in the spring of '72. The disclosures start and then there's a lot of stuff. People start looking back at other things that were going on.

Judge Richey:: I'd have to read these things in order to... these are not necessarily... ya know, there's my kids and mother and my wife. These are some pictures going through the receiving line. There's Sirica and Judge Hart, Judge Walsh. This is Alex Butterfield who disclosed the existence of the White House tapes.

Mr. Singer: Of the taping operation.

Judge Richey:: And this is Art Summerfield, now deceased, who was Chief of Staff to Vice President Agnew. They both attended my investiture. There was a multi-million dollar pay raise suit apparently. Involving a pay raise. My goodness gracious. I'll tell you Dan. There is an awful lot written about that EIS decision involving the oil and gas leasing. I told you what Leventhal said.

Mr. Singer: Yes.

Judge Richey:: You got a lot of courage. I wrote a nine-page opinion in February of 1972 in which I said that incarceration of an addict "will do nothing to solve his problem of drug addiction or his underlying problems" and called on Congress to enact new laws being a civil commitment of narcotic addicts rather than have them all incarcerated. There was a lot of press on that I see here from the clippings. It's interesting here, Chuck Ruff the present Corporation Counsel was the lead counsel for the government in the Tony Boyle.

Mr. Singer: Was he the U.S. Attorney then?

Judge Richey:: No, he was a special... he was in the Justice Department as a trial lawyer

Mr. Singer: I see.

Judge Richey:: He was the lead lawyer and the guy that is now Executor Director of the Association of Trial Lawyers of America was his number two person.

Mr. Singer: Was that your first association with him?

Judge Richey:: Yes. I'd never known him. I never saw him before. I upheld a bid protest in spite of the GAO's objection involving \$40 million.... a proposed \$40 million proposal to run six remote tracking stations.

Mr. Singer: Was it a...

Judge Richey:: It was General Electric and they agreed to abide by it and withdrew the appeal. I ordered John Mitchell, the Attorney General, who signed my commission, to testify in the civil cases. If you don't think they disliked me for that you're crazy.

Mr. Singer: Was this the same bunch in the Federal Programs, the same bunch who did the...

Judge Richey:: I have no idea who were the lawyers... Williams and Connolly were the lawyers. I see they wanted me to appoint a special prosecutor. Banzhaf over at GW and I denied that.

Mr. Singer: I see in an article from the *Evening Star*.

Judge Richey:: On February 10, 1972 that Secretary of the Interior Morton blamed me vigorously for delaying in the development of our nation's natural resources and that I misconstrued the National Environmental Policy Act. My... Here's

an article by... dated May 17, 1972. I had determined to go visit prisons during my vacation.

Mr. Singer: I think you mentioned that very... in one of our very early interviews.

Judge Richey:: I'm sorry I haven't read these. I... One of my pictures says "In Love with the Law" means me which is true.

Mr. Singer: They have it right.

Judge Richey:: Yeah. They did have it right.

Mr. Singer: Have you any recollection about this...

Judge Richey:: Forbade the old transit company to get a fare increase and around June 5, 1972, the *Evening Star* said that "in forbidding a Washington bus fare increase, unless the Transit Commission or the courts specify, specifically authorize it, Federal Judge Charles R. Richey has returned this controversy for the moment at least to a framework of sanity." Three cases in 1971. There was a case where Georgetown University was indicted for polluting a stream that led to the pollution of the Potomac River. I acquitted them on the ground that they had been... they indicted the wrong entity. It should have been indicted... they should have indicted, I held, the independent contractor rather than the University. They had...

Mr. Singer: The entity hired by the University to do certain things.

Judge Richey:: Right. Right. A lot of publicity about that. This was after... American University was indicted also by Tom Flannery. And they pled guilty. But Georgetown wanted to go to trial so we gave them a trial and I decided that they were right. And guess who was the trial lawyer.

Mr. Singer: I give up. Oh, for Georgetown?

Judge Richey:: Yes.

Mr. Singer: Would have been Ed Williams.

Judge Richey:: No. It was Brendan Sullivan. His very first case he ever tried.

Mr. Singer: Well. Let's say I had the right firm then.

Judge Richey:: You sure did. You sure did. Here's a case involving the President's barber who pled guilty to embezzlement. I'll never forget that case.

Mr. Singer: Who was the barber? What was he embezzling from?

Judge Richey:: Steve E. Martini. M-a-r-t-i-n-i.

Mr. Singer: What was he?

Judge Richey:: Quote "The Barber of Presidents" end quote. And Lyndon Johnson once jokingly called "my best foreign policy adviser." Both embezzlement and income tax evasion, he was indicted for.

Mr. Singer: Well, income tax evasion I can imagine, but from whom was he embezzling?

Judge Richey:: Let me find out. Some trust.

Mr. Singer: It wasn't the barber shop that he was embezzling from?

Judge Richey:: He converted two insurance policies to his own use that he got from John G. Hayes, a military aide to President Johnson. They were intended for Hayes' five children. I sent him to jail. I remember David Bress.

Mr. Singer: All right.

Judge Richey:: ... was his attorney. He couldn't believe that I would send a man like that to jail. And he talked down to me as if this was just a five-cent traffic case and I didn't buy it. He was very upset with me. But that's... Here are some

pictures of some nuns. I used to be on the Board before I came here at Immaculate College and they came to the investiture.

Here is an editorial from the old, I don't know whether it's still in existence, WWDC.

Mr. Singer: Yeah, I think it is.

Judge Richey:: This is...

Mr. Singer: Yes. I think it is.

Judge Richey:: Let me just read it to you. "Judge Charles R. Richey, the newest member of the U.S. District Court, is misbehaving."

Mr. Singer: The date of this broadcast?

Judge Richey:: 1971.

Mr. Singer: Umhum.

Judge Richey:: August 23, 1971. "Judge Richey held the Public Defender in contempt of court for failing to appear when his client's case was called. He dismissed the case because the court reporter lost a key transcript. He's even been known to appoint new lawyers when the defendant complains that his court-appointed attorney is not providing effective counsel. The judge is impatient with lawyers who fail to appear in court on schedule. Prosecutors complain that Judge Richey rules against the government. What does the judge say to all of this? I am leaned over backwards to uphold the Constitution and be fair to the accused as well as to the government. In this day of interminable trials and seemingly automatic government rulings, we could use some more Judge Richeys." End of quote.

Mr. Singer: That's very nice.

Judge Richey:: Here's an article calling me, in the *San Francisco Chronicle*, "The Maverick D.C. Judge".

Mr. Singer: Why don't we move forward a decade or so where things may not be quite so...

Judge Richey:: Smooth.

Mr. Singer: So old. And where there isn't so much ink devoted to the Watergate matter.

Judge Richey:: Wait just a minute.

Mr. Singer: All right.

Judge Richey:: In June of 1972, the Court of Appeals upheld a suppression of a quarter of a million dollars' worth of cocaine found in the apartment or room at the Holiday Inn Hotel at Fourteenth and Rhode Island Avenue.

Mr. Singer: Right.

Judge Richey:: When I suppressed that evidence, I came down to get breakfast, my wife and two kids were then very young. I had picked up the paper and here I was on the front page, "Judge suppresses a quarter million dollars' worth of cocaine." And all three of them said, "What in the world has happened to you? Are you crazy?" Obviously, that decision was appealed. The two defendants were an Italian fellow from New York and a fellow nicknamed "Bad News Barnes" who was a Boston Celtics basketball player. They didn't go get a warrant. They had this place under surveillance for nine hours. And they could have... I don't know how many... I figured out how many blocks it was from the courthouse, how much time it took; they could have easily done that while they waited all day long in this look-out across the hall.

Mr. Singer: Uhhuh.

Judge Richey:: The judge in the Court of Appeals who wrote the opinion was none other than Roger Robb.

Mr. Singer: Oh, really?

Judge Richey:: The son of a former circuit judge from New England someplace, Vermont, I believe.

Mr. Singer: Well, Robb himself was a former prosecutor.

Judge Richey:: Exactly. And he was very pro-government.

Mr. Singer: Very.

Judge Richey:: To say the least.

Mr. Singer: That's an understatement.

Judge Richey:: Illegal drug seizure rule is upheld. I was affirmed. In spite of my...

Mr. Singer: In spite of Roger Robb.

Judge Richey:: Well, he didn't like that. But he did uphold my opinion.

Mr. Singer: Sure. He did what he should have done.

Judge Richey:: GOP loses bid to delay the bugging suit..

Mr. Singer: This is now coming up to the election. In '72.

Judge Richey:: Here's a very interesting case. April of 1972. Class action wherein I ruled that savings and loan associations in the District of Columbia had an obligation to pay interest to their homeowners on mortgage escrow accounts.

Mr. Singer: Here's one lawyer who applauded that. Now that you mention it, I remember the decision. There was this guy named Scrivener who was one of the parties. He was the head of Perpetual.

Judge Richey:: He was vice-president and general counsel for years.

Mr. Singer: Right. Am I right in saying...

Judge Richey:: Yeah. Yes.

Mr. Singer: I remember that case.

Judge Richey:: I tried this zoning case when he was chairman of that board and he went off the bench over there at the District Building and said, "Did you ever hear of a college fraternity as an educational institution?" I was representing somebody who wanted a special exception or a variance up on N Street and I won. 3 to 2. Kinda close. In 1973, apparently Nixon's re-election committee filed a subpoena against the *Washington Post*., the *Star*., the *New York Times* and *Time* magazine to testify and turn over notes or other documents concerning the Watergate bugging case and I said, quote, "This court cannot blind itself to the possible chilling effect the enforcement of these subpoenas would have on the flow of information to the press and thus to the public."

Mr. Singer: So I guess people have been quoting that pro se for some time.

Judge Richey:: Yeah. They have. Some of my newspapers... with a picture of me speaking, "Judge Richey urges reform and says U.S. prisons breed more crime." I still believe that....'73 apparently... The Farmers' Home Administration had stopped approving low interest housing loans for poor rural Americans. And I held that that was improper. And ordered the agency to pursue the processing of that.

Mr. Singer: Right.

Judge Richey:: Here is an interesting story. Carl Rowan, in the *Philadelphia Bulletin*, said that Judge Charles R. Richey ordered the Nixon Administration to reinstate the federally subsidized housing programs that the Administration abruptly stopped funding last January. He quoted me as saying, "It is not within the discretion of the Executive to refuse to execute laws passed by Congress, what with which the Executive President disagrees." And, he went on to say, "Let the record be clear that Judge Richey is no left-wing Democrat, sniping at the political opposition while hiding behind the bench. He is a Republican. He is, in fact, a Republican judge who has been mentioned, unfairly I think, as the one who was secretly going about the Nixon Administration in the Watergate matter by letting Democrats' civil suit come to trial before the '72 Presidential election."

Here's are details. Something that... lots of publicity and lots of articles about where I held that the Nixon White House engaged in political interference with the IRS. The name of that case is *NRDC v. Schultz*. They noted an appeal and withdrew it. And, let me tell you this for historical purposes. That decision became the basis for the second article of impeachment of President Nixon. The man who appointed me. I didn't know it, but what happened was that one day, Bert Jenner, now deceased, Minority Counsel to the committee, showed up in my courtroom.

Mr. Singer: He described it in....

Judge Richey:: Is that in there?

Mr. Singer: ... in some length...

Judge Richey:: Then I won't do it again. But, the FBI had improperly wiretapped a lobbyist over there at the hotel across from the Watergate. I mean the Statler Hilton at 16th and K. Fred Black. I'm sure, I remember this, because it said when they called him that I'd go over and he said "I'll be darned." That day I ruled in favor of the Humane Society in an action to prevent hunting which would be detrimental.

Mr. Singer: What was the detriment from hunting?

Judge Richey:: Apparently, it had to do with wildlife refuges down in Virginia. Here's a '74 article about where I allowed the Vietnam war veterans to camp on the Mall. That night when I issued my opinion, right after issuing it, I went out the door and there were about six lawyers for the government standing outside. A fellow named Zimmerman was their lead counsel. And they went upstairs and got a special hearing. Arnold & Porter were representing the...

Mr. Singer: The vets.

Judge Richey:: The vets, pro bono. And they were sitting in their offices and never got a call. They heard argument from the government only.

Mr. Singer: The Court of Appeals?

Judge Richey:: The Court of Appeals. And then reversed me. On the basis of an unpublished order of Warren Burger, Chief Justice of the United States.

Mr. Singer: Burger in '74 was still a...

Judge Richey:: Chief Justice. He was Chief Justice at...

Mr. Singer: He was Chief Justice.

Judge Richey:: Here's the story. *Washington Evening Star* June 29, 1974. Ohhhhh...

Mr. Singer: You were not happy about that one.

Judge Richey:: I was not. I was not happy one bit. Democrats got 775,000 Watergate settlements and that's just part of it.

Here's where I was sent to Tallahassee to try a drug conspiracy case involving a son-in-law of the late Judge Carswell who had been nominated for the Supreme Court. He was convicted.

Here's an article from the old *Star News* which pointed out that I was criticized for allowing the vets, the Vietnam war veterans to camp on the mall. That's all I've got for that. What's the next one? Or do you want to get another one?

Mr. Singer: Ummm. Yeah.

Judge Richey:: You can do whatever you want. I'm here at your service, not mine.

Mr. Singer: OK. I'd like to...

Judge Richey:: I just hadn't looked at that in twenty-five years.

Mr. Singer: This next one moves you forward.

Judge Richey:: All right. Whatever. You're the boss.

Mr. Singer: To July beginning... This volume begins in July 1985.

Judge Richey:: My goodness gracious. I've just got to...

Mr. Singer: Is that it?

Judge Richey:: Well...

Mr. Singer: It would have to be a Washington dateline.

Judge Richey:: Oh.

Mr. Singer: Here we are. It has to do with the PLO. What's the date of this?

Judge Richey:: Yeah. '85.

Mr. Singer: October '85.

Judge Richey:: Ummmm. Yes. It does. October 13. On October 11, 1985, I received a telephone call as the duty judge at home. You got this?

Mr. Singer: Yeah. Word for word.

Judge Richey:: And, this was from... a fellow named Lawrence Barcella or Barcello of the U.S. Attorney's office, and he was calling from the Command Center at the White House. The ship, *Achille Lauro* had been hijacked by a man named Mohammed Abbas who was head of a PLO faction and he was ultimately charged with the murder of Mr. Klinghoffer on board that ship. The government found out that he was in Italy, Rome.

Mr. Singer: That Abbas was in Rome.

Judge Richey:: Yes.

Mr. Singer: Yeah.

Judge Richey:: And, they wanted me to hear the evidence as to whether there was probable cause to arrest him, telephonically, and they would record it and then the next day bring out papers for me to sign memorializing whatever I decided. They told me that it was only the second occasion in the history of this Republic where that had been done.

Mr. Singer: Meaning a telephonic hearing.

Judge Richey:: Yes.

Mr. Singer: Ex parté?

Judge Richey:: Those are always ex parté.

Mr. Singer: OK.

Judge Richey:: And so I did it. It extended almost 45 minutes, the hearing. And then two FBI agents and Barcella came out to my apartment. They were supposed to be there at 1:00 on Saturday afternoon.

Mr. Singer: You were living as you are now at Connecticut Avenue?

Judge Richey:: Chevy Chase, Maryland.

Mr. Singer: Right.

Judge Richey:: They were late.

Mr. Singer: [Laughter] You found them in contempt.

Judge Richey:: No. I should have, but they... but I was so interested in what they doing, I thought they were doing the right thing. So I issued the arrest warrant, or caused it to be issued, approved.

Mr. Singer: UhhhUhh.

Judge Richey:: They wired it to the Craxi government in Italy.

Mr. Singer: He was the Prime Minister then.

Judge Richey:: A couple good days later, he resigned and the whole Craxi government fell. Meanwhile, Abass escaped to Yugoslavia. He's never been found since, to this moment. He was subsequently indicted, under seal, in this court.

Mr. Singer: What does it mean to indict "under seal"?

Judge Richey:: Well, they didn't want to release it so that he would know that he was a, you know, try to escape.

Mr. Singer: Right.

Judge Richey:: And avoid the strictures of the law. About two years went by and some lawyer from the Department of Justice came in one day and said, "Sorry, Judge. You won't like this but we're going to have to dismiss this indictment against Mr. Abass. That was after NBC News conducted an exclusive interview which I saw of Mr. Abass but without disclosing his location. As far as I know, that's the last the public ever heard about him. There was a great tragedy. But, you know, that's the first time I've heard or knew of CNN News. There was a woman standing out in front of our apartment accosting everybody that came and left. "Are you Judge Richey?" "Are you related to Judge Richey?" And I told you they were late. And I was tired and Mardelle and I were there alone so I said, "Let's go for a ride." We did. We came back and she said, "I think I'll go get the mail before we go upstairs." And I was sitting in the passenger side of the car and all of a sudden I see out of the corner of my right eye a big television camera and a couple of people. And at that point, Mardelle was racing in front of the car to get back in the car. She had obviously discerned before I did that the press was out there. I learned then that CNN had the largest news presence in the Middle East and that's how they got wind of this top, top secret. I mean, Dan, they told me there was nothing more secret in the entire government of the United States than this arrest warrant. And, of course, I was totally surprised that the press had gotten a hold of it through CNN News.

Mr. Singer: Sure.

Judge Richey:: Anyhow, that's another tragedy. A real tragedy.

Mr. Singer: Well, in reflecting on it. Do you think the government...essentially are your reactions to the...

Judge Richey:: Oh, I thought it was terrible they dismissed the indictment. And I told them so. It's a sealed record, but I don't... the world ought to know it. That it.....

Mr. Singer: When did the world find out?

Judge Richey:: I don't know whether they ever have.

Mr. Singer: I see.

Judge Richey:: But it's, it's... I just... you look at all these clippings through this period in 1985. The Italians let him out and let him loose. And it was wrong.

Mr. Singer: What the Italians did was wrong.

Judge Richey:: Yeah.

Mr. Singer: For sure.

Judge Richey:: Certainly. And he should have been brought to justice in the United States for killing this American citizen. We have special jurisdiction in this court to try a terrorist like that.

Mr. Singer: Under what authority?

Judge Richey:: Well. It's some statute that Congress enacted. That's why they have the secure courtroom next to mine here.

Mr. Singer: UhUh.

Judge Richey:: And, it's been tested.

Mr. Singer: But that's not under... I mean the crime, I think, was committed on the High

Seas in.....

Judge Richey:: That's right. And the Congress in the early '80's created special jurisdiction in our court to try people like that.

Mr. Singer: I see.

Judge Richey:: You talk about a world-wide effort vowed to apprehend Abbas with all the resources of this country and, for example, the Israeli intelligence community. I learned in that case that Israel has the best Intelligence of any country in the world, including our CIA and all the...

Mr. Singer: Certainly with respect to the things that are of importance to them.

Judge Richey:: Well, anyhow. Now we're bringing me to Paul Thayer.

Mr. Singer: What about Paul Thayer? I mean, that's....

Judge Richey:: What do you want to ask me about him?

Mr. Singer: Well. It was a high profile trial, this guy was... if I remember correctly, he was a Deputy Secretary of Defense.

Judge Richey:: Deputy Secretary of Defense.

Mr. Singer: And he was basically... was he trading stock or giving tips to his girlfriend about something?

Judge Richey:: Yes. Inside information.

Mr. Singer: Right. And it was the stock of his prior company in Texas?

Judge Richey:: Well, companies of which he was a director. And the SEC got onto him. He pled guilty, I think, believing that I would give him, since this was a white-collar offense, and in view of the fact that he had an outstanding war record, former president of the U.S. Chamber of Commerce who made the

Vietnam War Memorial here in Washington a reality, raised the funds for it, major funds. I would give him a slap on the wrist and he got, this is why I don't think Robert Fiske is the man that the press today thinks he's such a great man. I don't think Fiske is such a great man because he got all of these Republican leaders, such a Cap Weinberger, President Gerald Ford, former Secretary of Defense Melvin Laird, people I barely knew. And there were about 75 letters. "Dear Judge Richey. Please give Paul Thayer probation. He's a great American." And so on. And it angered me. I called my then secretary in and said, "Take this order. The Clerk will make the attached letters a part of the official file in this case. Signed Judge and date." Ha. As a result of that, the National Press Corps was in my courtroom on the date set for sentencing. And, I gave him three years. Robert Fiske talked down to me. And....

Mr. Singer: What's the content of talking down to you? What kinds of things? I mean, it's kind of a dumb thing for a lawyer to do under any circumstances. To talk down to anybody. Certainly the juries don't like that as far as I know.

Judge Richey:: Juries don't like it. Judges don't like it. But...

Mr. Singer: People don't like it.

Judge Richey:: It was just a haughty... to summarize, it was just a haughty "I'm better than you are, Judge" or you're just a five cent flunky here and "I'm from Wall Street and I know. I know better than you."

Mr. Singer: UhhUhh. But you've seen enough lawyers around and including Wall Street lawyers, haven't you, so that that's, I don't want to know that it's aberrational

conduct, but these are Wall Street lawyers who don't do that.

Judge Richey: Well, more of them do than don't. More of them do than don't.

Mr. Singer: Why does that sound like Arthur Liman?

Mr. KAPP Arthur Liman's got... he's an exception. Arthur Liman is one of the greatest lawyers of all time, and a protégé of Judge Rifkind.

Mr. Singer: Correct.

Judge Richey: But. That's not the rule of the day from New York Wall Street law firms. Arnold Bauman was another exception. But he'd been a trial lawyer in the U.S. Attorney's office and so on before he went on the bench, then left because of, to go to Sherman and Sterling. He was not that way. But, most of them could have appeared...

Mr. Singer: Did you know my one-time partner, Leon Silverman at all? Leon was...

Judge Richey: I think I had him a couple of times over the years. He's very good.

Mr. Singer: He was with the...

Judge Richey: Deputy A.G.

Mr. Singer: Right. To Walsh.

Judge Richey: I think I had some limited contact with him. He was great. Let me just see here. Here is the *Kansas City Times*.

Mr. Singer: And then there's George Spielberg, of course. The founder of our law firm.

Judge Richey: I don't believe I know him. "Judge Richey Wasn't," the *Kansas City Times*.

Mr. Singer: Date?

Judge Richey: March 11, 1985. His was a kind of life the American system rewards and many Americans strive to emulate.

Mr. Singer: "His" being yours.

Judge Richey: Thayer.

Mr. Singer: Thayer?

Judge Richey: "Former Deputy Secretary of Defense had done well attending the University of Kansas. He'd been a Navy Ace in World War II. A highly successful head of our TV corporation and an all-around exemplary business leader. When he was sentenced this week in U.S. District Court for four years in federal prison for perjury, nearly 70 influential friends pleaded for parole for Thayer. To his credit, the judge in the case was not totally mesmerized by the power of Thayer's friends. Judge Charles Richey explained that a jail sentence was necessary to deter other white collar criminals, and in a comment worth repeating to preserve, quote the one sacred thing we have in this country, our system of justice, unquote. All too often people of power, money and influence become seduced by their status into thinking laws do not apply to them. Or if they get caught, they can use high-priced legal talent to soften the punishment." Robert Fiske. "Judge Richey could have given Thayer five years, maximum for the charge. He chose instead a lighter sentence, meaning Thayer would be eligible for parole in about a year. The lesson is that the powerful cannot expect to play by a different set of rules."

Mr. Singer: Is that Thayer's hometown newspaper? Was he from...

Judge Richey: Texas. Dallas. I remember...

Mr. Singer: Dallas was where LTV was. Didn't they say that Thayer had gone to the

University of Kansas?

Judge Richey: It did. Yeah. I don't know where it is, but it was the *Miami Herald* which wrote praise of me and said that I ennobled the system of justice by not capitulating to your friend Fiske.

Mr. Singer: [Laughter] My friend Fiske?

Judge Richey: There is a group called the Synanon S-y-n-a-n-o-n. They allegedly were a drug rehabilitation group that had cult-like qualities. IRS took away their tax-exempt status. The case was tried before me and I ruled in favor of the government.

Mr. Singer: Now you know the...

Judge Richey: Got a lot of praise for that.

Mr. Singer: ... the Scientologists are still in existence.

Judge Richey: This is another religious group. And then the Scientologists, ohhhhh. They were indicted, criminally indicted, the Scientologists. My court. We'll get to that in a minute I see. Oh, here. My goodness gracious. Jillions of press clippings involving the D.C. Homeless Shelter a couple blocks from the courthouse which I... you see, in Reagan's, Ronald Reagan's second campaign for the presidency, he made a promise in some speech or press conference that he would fund the shelter with \$3 million. And, of course, later he changed his mind and wouldn't do it and this lawsuit was filed. I got the case. I upheld Mitch Snyder and the homeless. And I'll never forget it. Before the opinion was released, I decided I was going to try to get the attention of the President. So I sat down there at my desk and

wrote about four pages saying that this case cried out for a solution to a social problem rather than a bunch of legalisms. And that the President of the United States should call a national White House conference on the homeless problem to try to come up with a solution rather than a political football. And I went on and on and on about how he should use his friends who are captains of industry and business and so on to help assist in this. And a young man named Robert Veith, whose father had been Managing Partner of Arnold & Porter, dear friend of mine, was my law clerk at the time and he just gave me holy heck by saying: "Judge, you can't do this. This is inappropriate for a judicial decision."

Mr. Singer: That judges shouldn't write to Presidents?

Judge Richey: Well yeah. Except I do feel he was correct. But I said, "Bob, I don't care. I'm going to do it anyhow. I feel so strongly if these people need help then there's got to be a solution. I'm going to do this because the press will pick it up and maybe it will get in the press summary to the President and he might read it." Well, he said, "Well, that doesn't justify doing what you're doing as a judge." I did it anyhow. You see a lot of publicity about it but it didn't really get to the attention of the President; it didn't work. Dan, this is why I respect Robert Bork so terribly much. It went to the United States Court of Appeals and I was affirmed, 2-1. Guess who dissented. Robert Bork. And all that obiter dictum which I put in the opinion, which shouldn't have been there, Judge Bork said, "The views of the District Court below are set forth in the following note." And he put it in a footnote. Now he had

an opportunity to lambaste me from coast to coast, pillar to pillar, but he didn't do that. He just made one comment and put that stuff in a footnote. Now, Dan, a lot of liberals opposed Bob Bork. But when I saw that, knowing that I was wrong, I said, "There is a man of good judgment and good common sense." He didn't take it out when a man was down. He didn't take the opportunity, which was his, to jump on somebody and I respected him for that. I thought it was a tragedy they turned him down for the Supreme Court because he had superior qualifications. You don't agree with that, I know you don't, but I do.

Pardon? And I said at the time to my friends. The liberals are going to rue the day that they opposed poor Bork and Clarence Thomas and the excesses they engaged in with respect to those nominations will come back to haunt them. And you mark my word, if Clinton nominates somebody of his own views, or a liberal elite.

Mr. Singer: Well, he nominated two people of the liberal elite and they both went through rather handsomely.

Judge Richey: Who's that?

Mr. Singer: Ruth and...

Judge Richey: Steve Breyer?

Mr. Singer: ... Steve Breyer.

Judge Richey: Well, Ginsburg and Steve Breyer are not of the liberal elite. You're wrong.

Mr. Singer: Why?

Judge Richey: Both of them are not liberals. I mean they are liberal in a broad sense of the

word, but they are not...

Mr. Singer: Ruth was after all general counsel to the ACLU.

Judge Richey: Of course. But that wasn't generally known. She was a very conservative judge on our Court of Appeals.

Mr. Singer: Concur. But when...

Judge Richey: Judge Bazelon, she by her own admission to me and said Judge Bazelon looked very disappointed on my service on the Court of Appeals. She told me that.

Mr. Singer: Well, that's probably because she didn't just swallow everything David was saying about her.

Judge Richey: No, she didn't. Unlike me, but ahhh...

Mr. Singer: [Laughter]

Judge Richey: You know how... here's a *Wall Street Journal* article. Just to prove that judicial activism isn't dead, "Federal Judge Charles R. Richey this week ordered the federal government to develop a plan to eliminate homelessness in the Nation's Capital." unquote. August 23, 1985.

Mr. Singer: Do you ever feel frustrated that this order of yours eleven years ago...it seems to me...

Judge Richey: Wait a minute. The last paragraph says that "If Judge Richey is intent on being an activist, and his past record leaves little doubt of that, why not be an effective judicial activist? Question mark. Why not find occasion to rule that the District's rent controls are an unconstitutional taking of private property. If the courts could ever get that principle established, the colossal housing

problem the judge worries about would start healing itself." *The Wall Street Journal* is giving me heck.

Mr. Singer: That's certainly true.

Judge Richey: What?

Mr. Singer: That's true.

Judge Richey: They were giving me heck.

Mr. Singer: They were.

Judge Richey: Oh, yeah. They always have. I'm not one of their favorite judges. Who cares?

Mr. Singer: That's an Article III [?].

Judge Richey: Mary McGrory wrote a column on August 16, 1985. This was in Frankfort, Kentucky; it was also in the *Washington Post*. She said... it's entitled "Love in the D.C. Courtroom" where Snyder tried to get himself arrested when I was conducting the Saturday afternoon hearing in that case. And they got him to the door with two marshals and I said, "Marshal, do not do that. Bring him back." And when he came back I invited him to the lectern and I said, "You can say anything you want. "Stirring speculation that Snyder might have added contempt of court charges to his quarrel with the President. The Judge, it seemed, welcomed the outburst. He needed someone who would help him grope his way through the legal thicket of the decent thing. Snyder certain in his denims, the Judge troubled by his black robes, fell into an amazing exchange. We need your help in these times,' said the agitator. Richey replied humbly, 'Mr. Snyder, I can only do so much. I know I will have your

respect and you will have mine regardless of how this comes out.' Snyder, 'You will have my love.' 'Sir,' said the Judge, 'You will have my love.' And the Judge said, 'You will have mine.'" Paragraph. Last paragraph. "Love was not in the headlines of either side. Nor is it an item in the Reagan budget. But it had made its way into the courtroom. Snyder who was embraced by his lawyer said, quote 'The Judge is a wonderful man and he's just like the rest of the country. He doesn't want to think about the homeless but knows we have to.'" You are laughing. Why is that?

Mr. Singer: But.....

Judge Richey: Huh?

Mr. Singer: Who was she quoting at the end? That knows he has to?

Judge Richey: That's herself. That's Mary McGrory. It's in all the papers. Editorials. All over the country. The man who spoke out and the Judge who listened.

Mr. Singer: He was...

Judge Richey: When pleading the case of the homeless, try love. Huh. "Thrashing between plight of the homeless and presidential pledge." Wilmington, Delaware paper.

Mr. Singer: Very interesting...

Judge Richey: Aw, people have been accusing me of that for over a century.

Mr. Singer: Yeah. [Laughter] What's the answer?

Judge Richey: I don't know the answer. Just, just... I just got them. I didn't seek them out. It's....well, you're rolling your eyes.

Mr. Singer: No. No. I'm trying to think about how to phrase the question. I mean I....

Judge Richey: The cases are randomly assigned.

Mr. Singer: I know that...

Judge Richey: There is no Mickey Mouse to it.

Mr. Singer: In the Court of Appeals, I remember they instituted a... they had a...one of those shakers from pool tables which had numbered little balls in it and they would shake. Each judge had a number and that's the way the panels were made up and I always thought that it was an absolutely fair shake and I do to this day. How do they do that in this court?

Judge Richey: You know something. It's absolute random. I know people have tried to evade the system of getting cases assigned to various judges, but it's never been... the code has never been broken so to speak.

Mr. Singer: UhUh. UhUh.

Judge Richey: And I know it's honest.

Mr. Singer: Well, I mean...

Judge Richey: Harold Greene once said to me, "It's not the case that you get. It's what you do with the case once you get it."

Mr. Singer: Would that suggest that there were probably half a dozen judges who could've essentially opened the homeless issue or any one of these?

Judge Richey: Well, the easy thing to do would to have been close it down.

Mr. Singer: But, no, I mean in terms of... addressing in an imaginative, aggressive way, the homeless issue. There were constant series of cases that anyone of a half dozen judges could've used as a platform in the way you used Mitch Snyder's case.

Judge Richey: Not very many people would have done it.

Mr. Singer: That I understand. But at least the opportunity... what you're saying is the opportunity was there, what Harold Greene, you're saying.

Judge Richey: Yes.

Mr. Singer: These cases present themselves routinely on every judge's calendar or on many judges' calendars and most judges seem just to pass them off; that to ignore those issues that lurk within these cases and other judges, called activist judges, tend to reach out.

Let's revert now to where we started the day when we talked about it not making much of a difference except in cutting edge cases. The work of judges that... most of what most judges do is quite ordinary or routine.

Judge Richey: It is. But when you get that opportunity, if you're so inclined, you seize upon it.

Mr. Singer: Right. And it's that quality that a President should be seeking out when he makes appointments?

Judge Richey: Well. I suppose if you took a referendum of the American people today, they would say that they should exclude people like me for that tendency.

Mr. Singer: Well, that's where I was kinda going with that...

Judge Richey: I know what you're going to. You don't think I don't know that. C'mon. But, on the other hand, I think in addition to management ability, you ought to have somebody with experience and a record of social consciousness that enables a judge to recognize these kinds of problems and help, not to legislate, but to solve problems. The law is not a static barrier to achieving some good

for society as a whole when you have public questions of broad public law. I guess that makes me a judicial activist as the *Wall Street Journal*, and I have a record of that, I guess.

Mr. Singer: You don't reject that label at all?

Judge Richey: No. I couldn't care...

Mr. Singer: You could wear it as a badge of honor.

Judge Richey: I do. I could care less what they think.

Mr. Singer: How many Judge Richeys do you think a court of this size can digest?

Judge Richey: Oh, a couple.

Mr. Singer: Couple.

Judge Richey: Couple.

Mr. Singer: A couple more.

Judge Richey: I would hope.

Mr. Singer: Yeah.

Judge Richey: Ahhhh. Judge Gerhard Gesell was widely recognized about the country in many respects. He was always in competition with me in these high profile cases.

Mr. Singer: UmUm. UmUm.

Judge Richey: And, until the end, the last couple of years before he died... I think he... it's fair to say, that Gerry resented me in many respects. You see, in the early days.

Mr. Singer: Was there a pedigree in some sense?

Judge Richey: Oh, yes. That's it. Pedigree. His father is a famous doctor.

Mr. Singer: Oh, I know, Arnold Gesell. [Laughter] We worshipped those people in that

field, worshipped at the Gesell Institute. Major law firm.

Judge Richey: Here's a quote about me. I don't know where it comes from. The National Resources Defense Council :quotes me as saying, every time I see somebody like the NRDC coming to my court, I say "thank God" because I know I'm going to have competent counsel that does not represent the government or proprietary interests.

Mr. Singer: Is that the definition of competent counsel? Surely you'd have trouble with that.

Judge Richey: That's an accurate quote. All I can tell you. Here's a lot of publicity about my book.

Mr. Singer: Which of your books?

Judge Richey: My first book on EEOC.

Mr. Singer: UmUm.

Judge Richey: Here's some material about the organization of the Washington Council of Lawyers. Pro bono workshop.

Mr. Singer: Right.

Judge Richey: March of '86.

Mr. Singer: Let's go back to Gesell for a minute.

Judge Richey: Yes.

Mr. Singer: Recognizing this, what I call for the moment tension that pre-existed between you and Judge Gesell and what I characterized as a pedigree problem in part and he would be Washington's figure of a Wall Street lawyer for sure.

Judge Richey: Gerry.

Mr. Singer: Yeah. In your lexicon, I mean he...

Judge Richey: No question about it.

Mr. Singer: And yet you recognize him as an activist and as I think a positive force within the court and with a commitment.

Judge Richey: Oh yes. Oh yes. No question about it. He was a man that notwithstanding his background, representing the National Football League and...

Mr. Singer: Right. Du Pont.

Judge Richey: And Du Pont...

Mr. Singer: Du Pont was his great victory in the cellophane case.

Judge Richey: Right. Won by one vote in the Supreme Court of the United States.

Mr. Singer: UmUm.

Judge Richey: Yes. But he was honest. EEOC originally and helped in those areas.

Mr. Singer: His daughter was, I think, she was a pro bono lawyer for a long period of time.

Judge Richey: Is that so? I didn't know her. As children we used to talk about them occasion when we were on trips together, but...

Mr. Singer: Are there others who you would identify, perhaps whether or not they are sitting at...

Judge Richey: There was Judge Louis Oberdorfer is my idea of a great judge who's independent, who's compassionate and who, at the same time, applies the law even though he might disagree with it. But he'll get a barb in if he doesn't agree with it.

Mr. Singer: UmUm.

Judge Richey: I think...

Mr. Singer: He'll 'get a barb in' is what I think...

Judge Richey: At the injustice of the law that he is required to apply.

Mr. Singer: Right.

Judge Richey: He'll do that.

Mr. Singer: Right.

Judge Richey: So will Judge Harold Greene. Not unlike me. If I have to apply law and I don't think it's fair or I like it and don't like the policy reasons in favor of it, I'll say so

Mr. Singer: Bill Bryant fit that?

Judge Richey: Not really.

Mr. Singer: UmUm.

Judge Richey: Bill doesn't write much.

Mr. Singer: And yet you have to write to take this role.

Judge Richey: I've got a whole shelf full of published opinions over there. More than any other judge here in the last twenty-five years. The fact of the matter is, a couple weeks ago I went in to see Judge Royce Lamberth and he had a... the chamber in his office was just overladen with piles upon piles of unresolved motions and matters. And he cursed me out by saying that, "Back in 1971, Chuck, you started to write opinions and were the first one to start that practice. Now the Court of Appeals requires all of us to do it and I blame you for part of my backlog."

Mr. Singer: You're sure he was ... [Laughter] ... good natured...

Judge Richey: He was not being good-natured, but you know, he was telling the truth. I did

start the practice of writing opinions, of almost everything I did. And I still do it. And here are my reasons. Carl McGowan who was the insurance commissioner in the state of Illinois and Adlai Stevenson's principal advisor and speech writer, great judge on our Court of Appeals said to me one time, "When I came here, Chuck, the District Court Judges used to write, "Grant" or "Deny" on a Motion to Dismiss or in the alternative for Summary Judgment." When you'd see "Grant" or "Deny" only, you didn't know which one they were granting.

Mr. Singer: UmUm.

Judge Richey: I sucked that in and I didn't think that was fair. Didn't think it was proper for the litigants to not know just to get rid of a case on a peremptory fiat was improper. I didn't like that as a lawyer. I determined when McGowan said it, I was going to do something about it. So I did start that. Lamberth was correct. Laugh if you want, but that's what I did.

I don't know. What year do you want to go to now?

Mr. Singer: Let's just take the next book. It's 1986 through 1989.

Judge Richey: Oh. This is 1986. Ten years ago I got the American Law Institute to start teaching employment discrimination and civil rights and my dear friend and colleague, Judge Sol Schreiber, Magistrate Judge in New York, was my intermediary with the ALI. Here are the pictures of the first program we had. I guess it was in Los Angeles. December 1986. We've done that all over the country. As a matter of fact, in December, I did one called advanced employment discrimination.

Mr. Singer: December 1995. Just a few months ago?

Judge Richey: '85. This was first started in December of 1985. December of 1995 they had an Advanced Discrimination Law Institute here and the faculty grades you just like law students grade their professors. I got the highest grade of anybody on the faculty for an evidence segment I did at that seminar.

Mr. Singer: That feels pretty good.

Judge Richey: Yeah. Pretty nice. There were a hundred and eighty-seven lawyers there from thirty-seven states.

Mr. Singer: Tells you where the money is. Where the money is.

Judge Richey: Not as much as you think, even though it's probably the largest area of litigation today at this moment. I know that's going to change, but it's more money today because of defense than it is for the plaintiff's.

Mr. Singer: Well, that doesn't really distinguish it from the whole lot...

Judge Richey: No. But you said money and...

Mr. Singer: Well, for the first, I mean... given the way legal fees are over there. Not just in terms of the awards to plaintiffs' counsel in litigating the cases but the impact in settled cases of the attorneys' fees makes them, I think, fairly attractive Title VII litigation; has attracted a fair amount of talent into this kind of activity.

Judge Richey: It has. Do you know who did that? Brought that about? Charles R. Richey. It's section...

Mr. Singer: I never doubted it for a minute.

Judge Richey: It's Title 42, Section 1988, providing for the prevailing party to get attorneys'

fees. Charles R. Richey and Judge Harold Leventhal. I testified before Senator Kennedy in the Senate Judiciary Committee. I got Harold Leventhal to go to the House side. And we did this over the objection of the Carter Administration.

Mr. Singer: That's interesting.

Judge Richey: Who wanted to create a federal ombudsman to represent plaintiffs in civil rights employment discrimination cases. I said, "No, you don't want a government bureaucracy. You want the independent bar to undertake this, provided they can get their costs back and attorneys' fees if they prevail."

Mr. Singer: Right

Judge Richey: That was my theory. Kennedy bought it hook, line and sinker and we got it through over the opposition of the current Carter presidency and his administration. I don't know why Jimmy Carter didn't buy this, but he was very strong in that view.

Mr. Singer: Hard to tell.

Judge Richey: Here's a speech at the National Archives in the Rotunda in front of the Declaration of Independence and the original Constitution, and Congressman Lantos of California was one of the speakers with me.

Mr. Singer: But Section 1988 has gotten scope well beyond employment.

Judge Richey: No. You're thinking of the Equal Access to Justice Act.

Mr. Singer: Ahhh. That's correct. I'm sorry.

Judge Richey: That was a natural follow-on of that statute. Here's some publicity about a new organization in 1987 called the Plaintiff Employment Lawyers'

Association. PELA. I helped organize that.

Mr. Singer: Were you actually active in its organization or just kind of?

Judge Richey: Well, supported it and I spoke, encouraged them and so forth. Ahhh, this is about the D.C....

Mr. Singer: Firefighters?

Judge Richey: Yes.

Mr. Singer: What was that case about?

Judge Richey: Whether there had been discrimination in hiring and promotions within the D.C. Fire Department.

Mr. Singer: You mean discrimination against Blacks?

Judge Richey: Right

Mr. Singer: This is ten years ago.

Judge Richey: Blacks. Right. You know that case is now pending certiorari review by the Supreme Court of the United States.

Mr. Singer: How long a life is this case going to have?

Judge Richey: Not unlike many of them. They have fifteen, twenty years. I've got a case that started in 1972 involving the migratory farm workers headed by a lawyer from Austin, Texas. A guy named Tuddenham. He was in my court last week for a consent order against an apple orchard company for a judgment about the... they have collected, he told me, something like \$16 million as a result of my decision.

Mr. Singer: They being the plaintiffs then, the class of which he has... out of which he sent a number of his own kids to college I suspect.

Judge Richey: I suppose. Well, he's a public interest group. *NAACP v. Brennan* it started out to be. It's now *NAACP v. Wright*.

Mr. Singer: I see.

Judge Richey: I didn't know it amounted to that amount of money.

Mr. Singer: That's why I think that many of these cases are very attractive, even to fancy law firms if they...

Judge Richey: Well, if the fancy law firms would devote that many years to this process, sure. But, they're going to incur a substantial overhead all through the years and the trouble with big law firms, even like the one you came from. If they got a case like this, I know what would happen. They'd over-staff it in the beginning. That's really true. And they would probably quit or look for some way to quit before it was really concluded because of the expense. That's why we need the Washington Lawyers Committee for Civil Rights Under law, the NAACP Legal Defense Fund and organizations like that because private law firms can't do it. And that's why I take such great credit in putting forth the idea that prevailing lawyers ought to get attorneys' fees. That's what enabled this process to work.

Mr. Singer: Oh, and how.

Judge Richey: And I count myself really primarily responsible for that.

Mr. Singer: You list that among the top three, top five things that...

Judge Richey: Oh, yes. I certainly do.

Mr. Singer: You would be proudest of...

Judge Richey: Oh, yes. Absolutely.

Mr. Singer: Has there been a down side to that at all? If you can...

Judge Richey: Well, I don't like...nobody likes to go through bills, time charts and stuff like that. And fixing attorneys' fees when there's a dispute.

Mr. Singer: Well, the down side is the detail work that follows behind that.

Judge Richey: Oh, yes. It's awful.

Mr. Singer: In a broader context.

Judge Richey: Oh, it's exhilarating. It's fun. And it's a means of vindicating the public interest, a broad public interest for disadvantaged people who don't have access otherwise to the courts. That's why I think Rule 23, class actions is so important. And there's an attack on that now going on all over the country.

Mr. Singer: Well...

Judge Richey: In academia, would you believe. Who sold out to the insurance companies and so forth.

Mr. Singer: Well passing the insurance companies, but how...do you have any kind of uneasiness about the...I mean, ask the question in terms of the American Trial Lawyers Association and the plaintiffs' bar in the medical malpractice area in connection with the breast implants suits and things like that where there is...

Judge Richey: An alleged abuse of the class action device.

Mr. Singer: Right. Right.

Judge Richey: There's a simple answer to that. You tell me, what is the alternative to handling these mass torts? Toxic tort disasters. Or breast implant, Dalkon

shield, and so on. What is the alternative? And, to my knowledge, and I've attended many conferences on this...

Mr. Singer: Well, I know that.

Judge Richey: No alternative has ever been put forward. This is not, when I say what is the alternative, that's not original with me. My friend Kenneth Feinberg is the one that made the speech on this.

Mr. Singer: Right

Judge Richey: But I mentioned in Cincinnati, Ohio at a Mass Torts Conference, state and federal judges, academics, lawyers, and Jack Weinstein was on the program.

Mr. Singer: Could I ask you what Jack Weinstein thinks about this?

Judge Richey: Generally favorable. It's the same as my view. We're going to do a Mass Tort seminar here in Georgetown and according Feinberg, he just said it's going to be you, Weinstein, and some guy from Cincinnati. I don't know what.... In any event, after Ken made that speech in Cincinnati, the last speech, I said to Jack, I said, "Wasn't he absolutely magnificent this morning?" And I won't use the exact words of Judge Weinstein, but he said, "That SOB could sell ice to Eskimos."

[Laughter]

Judge Richey: He's one of the... Ken's great fans, but nevertheless he said the SOB could sell ice.

Mr. Singer: Feinberg recently had a role in one of these mass tort cases.

Judge Richey: Oh. He's running all over the country doing nothing but arbitration and special master work.

Mr. Singer: Right. That's what I...

Judge Richey: And very successfully. One of my law clerks was in one, a big mass tort case in New Jersey. She's a young woman and she said, after it was over, "Mr. Feinberg, you did a brilliant job. You're almost as good as my former boss." He said, "Who's that?" And she told him me. He said, "Well, there's one difference." "What's that?" "He's got a robe and I don't."

Here's something you ought to look at. I want you to read this letter.

April 6, 1987 from the *National Law Journal*: Read that.

Mr. Singer: From the *National Law Journal*? To whom?

Judge Richey: It's an editorial.

Mr. Singer: Oh, an editorial.

Judge Richey: Called "The Shock Troops".

Mr. Singer: "The issues with which a federal judge must wrestle on a routine basis are among the most complex in society. A complete list would be endless; a partial list would cover toxic waste, employment discrimination, pollution, housing, discrimination, rights of homosexuals and heterosexuals, religion, educational criteria, AIDS, and more. And the shock troops, as it were, are the federal district judges, the trial judges before whom these issues arise long before they are riveted in the nation's consciousness by a major Supreme Court pronouncement. A recent speech by Judge Richey, one of the judicial shock troops, reminded us again just how important these jobs are." The rest of it, if you want to direct it to... [Laughter]... into the record yourself. But that's what judges do.

Judge Richey: Well, after all as Judge Richey noted, federal judges form a bulwark against tyranny, a calling that requires, at the minimum, a full complement of competent jurists.

Oh, here's a lot of publicity about the Adolescent Family Life Act which I struck down as unconstitutional on its face and as applied because it provided for federal monies to go to religious schools throughout the country to teach anti-abortion policy. And it was put in that law by former Senator from Alabama named Denton. Republican Senator. It was defeated.

Mr. Singer: Jeremiah Denton?

Judge Richey: That's right. That's the guy.

Mr. Singer: An establishment clause case.

Judge Richey: Correct. Between the time of my decision, since it involved the constitutionality of a statute, there is only a direct appeal to the Supreme Court of the United States.

Mr. Singer: Even from a one-judge court.

Judge Richey: Correct. If a one-judge...a single judge holds something, a statute unconstitutional, it goes right to the Supreme Court. Between the time of my decision and the time it was heard in the Supreme Court, Chief Justice Warren Burger resigned, Anthony Kennedy from the Ninth Circuit was appointed and as a result, I was reversed on the facial invalidity of the statute 5 to 4. Blackmun, I believe wrote his most brilliant opinion.

Mr. Singer: Who did?

Judge Richey: Harry Blackmun.

Mr. Singer: Blackmun.

Judge Richey: Wrote his most brilliant opinion in dissent that he ever wrote. One of the things he said in the footnote was, "I hope the trial judge won't tire of this case.

Mr. Singer: [Laughter] Nobody's known Judge Richey to tire of anything, I don't think.

Judge Richey: In any event, that was a great blow for liberty, I think. And I would have been upheld had Burger stayed on the podium.

Mr. Singer: Oh, yeah. Burger was an active bear on establishment courts. It was a very good area.

Judge Richey: But...

Mr. Singer: And it was clear here when he was on this court. On the...

Judge Richey: Is that true?

Mr. Singer: Yeah.

Judge Richey: I didn't know that.

Mr. Singer: Absolutely. It was the one area...

Judge Richey: You can count on it.

Mr. Singer: ... in which I found myself quite comfortable. I mean, it sounds a little arrogant for me to say that, but I really thought his views were very...mine were congruent with his in that area. I don't know what it was coming out of Minnesota that led to that. I remember...

Judge Richey: You've got to understand something, Dan. You're disclosing a bias. People like me from the Midwest are the most populist of most all people.

Mr. Singer: Absolutely. I know. I feel that.

Judge Richey: I feel you're indicating that in a left-handed or right-handed way, whichever you choose, to say, well, those Midwesterners are generally in [?].

Mr. Singer: No. It's called.... Minnesota has the greatest tradition of populism and that they have a real kind of...

Judge Richey: Would you say more so than Wisconsin?

Mr. Singer: I'm sorry. I was thinking of basically they were the same place. They would follow...

Judge Richey: They are.

Mr. Singer: ...tradition in the upper Midwest. There's no question about that. Though I'm not sure I'd apply that to Ohio, Mother of Presidents, and such great...

Judge Richey: Well, some of the presidents they provided us were not of that tradition.

Mr. Singer: And a good many are...

Judge Richey: Ohio's produced a lot of populists, but... and I think I'm one of them.

Mr. Singer: That's OK. I mean...

Judge Richey: I don't care if Sol Schreiber calls me the "Midwestern populist."

Mr. Singer: That's OK. That's good.

Judge Richey: Well, some people don't think it's good. I had to dismiss some sleeping charges against park...Lafayette Park protesters across from the White House.

Mr. Singer: Have any of your clerks gone on to be judges yet?

Judge Richey: No. But they've come that close. Some of them. A couple of them.

Mr. Singer: Right.

Judge Richey: One in Minnesota, believe it or not.

Mr. Singer: Good.

Judge Richey: But she didn't make it. Oh, my goodness. There's Charles Horsky who did the investigation of me for the American Bar Association and Alan Morrison head of public interest group in some judicial conference.

Mr. Singer: Both great men.

Judge Richey: That man [Morrison] has done more as a private lawyer than a hundred judges and a hundred members of Congress. Oh, he's very special. He sure is. And, I don't know what this is about.

Mr. Singer: Must be about you, you think?

Judge Richey: It must be. I don't have any idea.

Mr. Singer: That's your two juries stuff that...

Judge Richey: Appellate Record of Judges District of Columbia Circuit.

Mr. Singer: Well, there you are. How'd you make out?

Judge Richey: Number two.

Mr. Singer: Which way do you count?

Judge Richey: I don't know. Total affirmances. Cases. Gasch - 10. Richey - 14.

Mr. Singer: And that's just because you decide more.

Judge Richey: That's exactly right.

Mr. Singer: What about...

Judge Richey: And 84%.

Mr. Singer: 84%

Judge Richey: He was 87.

Mr. Singer: Gasch?

Judge Richey: Yeah.

Mr. Singer: Look at that picture you have over there, and he really looks terrible.

Judge Richey: Yeah. That's the latest court.

Mr. Singer: Oh my.

Judge Richey: You know, that isn't bad for a cottonwood like him.

Mr. Singer: We talked earlier about most of what most judges do most of the time is affirmed?

Judge Richey: No. No. No. Most of what judges do most of the time, never gets to the...

Mr. Singer: Right. OK. Sorry. That gloss is correct.

Judge Richey: This proves that if you write opinions, at the trial court level, it takes a lot of extra effort. You're probably going to have a much better fare in the court of appeals

Mr. Singer: Does Gasch write a lot of opinions? I bet he's got a better percentage than you have.

Judge Richey: Yes. He didn't have as many cases, but that's all right. I don't know.

Mr. Singer: A lot of judges, I would guess, believe that writing opinions gets you in real trouble.

Judge Richey: Ahhhh, that's the old theory. No, that really is. Don't write opinions so that the government can adopt whatever position is most salable.

Mr. Singer: Right.

Judge Richey: To the particular panel on the Court of Appeals. Now that's the old school of thinking.

Mr. Singer: Yeah.

Judge Richey: You ought to know that from your work as a clerk on the Court of Appeals. But that isn't the way it really should work, and there again, I think in the last twenty-five years I've changed that.

Mr. Singer: Yeah. It was always much...

Judge Richey: I'm serious.

Mr. Singer: ...much better for us to be able to deal with substance and not to guess what the judge was doing.

Judge Richey: Sure.

Mr. Singer: That was clear.

Judge Richey: "Equal opportunity is right not radical."

Mr. Singer: Is that quoting you?

Judge Richey: Yes. In *USA Today*. What's the date? September 15, 1982. This was about the State Farm case in California where they had a judgment of \$1.3 million against them for sex discrimination. On the same day in Washington, D.C., a federal judge ordered the U.S. Information Agency to pay up for past discrimination for more than 4,000 women who applied unsuccessfully for jobs may receive compensation. That case is still pending. 1982.

Mr. Singer: UmUm.

Judge Richey: The government let eight years go by before they attempted to appeal my decision on liability. And what do you think happened? Under 1292(b) last year, about a year and a half ago, the Court of Appeals granted an order for collateral review of that decision. And what happened was, they didn't deal

with the issue of liability, but they remanded it for redetermination of the class certification under Rule 23 for these poor women.

Mr. Singer: On a collateral attack?

Judge Richey: Yes. Eight years later. And two dear friends of yours and mine were on the panel. It is the craziest decision you ever saw. And you know what? In May of this year, it's going to be reargued.

Mr. Singer: En banc?

Judge Richey: No. Panel. But Judge Wald is somehow or other not going to be on the case anymore.

Mr. Singer: Is that because of senior status or...

Judge Richey: She's just no longer on the panel. Sad, but, anyhow, her name is on the opinion. Some law clerk wrote it for her.

Mr. Singer: Oh, come on.

Judge Richey: I'm teasing.

Mr. Singer: I suspect that.

Judge Richey: Pardon?

Mr. Singer: I just said, that's not nice.

Judge Richey: I don't want...

Mr. Singer: Actually, I said she...

Judge Richey: She's one of the greatest judges of all time.

Mr. Singer: I saw Pat and Bob I guess last weekend, we ran into them at Starbuck's up on Connecticut and R.

Judge Richey: Well, this week I asked her secretary where she was. She said she's in

Bosnia.

Mr. Singer: That's exactly right. And we saw her, the two of them went from their cup of coffee out to...

Judge Richey: The airport?

Mr. Singer: Out to the airport. And she got on the plane to Bosnia.

Judge Richey: What in the world is Pat doing there?

Mr. Singer: She's meeting with some judges from, some European judges on how to set up a court system in Bosnia. Not a trivial undertaking. And Bob, you know, is the Chairman of the Board of the Romanian American Enterprise Fund.

Judge Richey: I know that.

Mr. Singer: That's fun. I think they're wonderful.

Judge Richey: Well, you couldn't be more right. But, after my experience in 1994 of cutting up the delegation to England to ostensibly teach the British judges how to deal with employment discrimination damage actions for compensatory and punitive damages, I don't want to do that anymore. Because they were so far behind the United States and so biased and bigoted towards minorities, that I got sick and I almost quit and came home in the middle of it. It was just awful. God bless Bob and Pat for doing what they're doing but I'm not of that variety that wants to... I'll pick on the odd state, but I'm not interested in what goes on in Europe. Dick Schifter had us to dinner a couple of years ago and there was some guy from Romania, some minister, and we had a long discussion at their lovely dining room table afterwards, and I asked this man a

question and he said, "Judge, I don't know." "Why?" "Because I don't know whether I'll be in office tomorrow morning."

Mr. Singer: A problem.

Judge Richey: This is some more of that establishment clause case. Here's somebody who wrote me, I don't know who it is 'cuz it's not... I struck down and caused to be removed from Washington, D.C. the Palestine Liberation Organization office in Washington on the basis of a new statute Congress had enacted that had never been discussed or ruled on before. And somebody is writing me saying that it appeared in the *India I-n-d-i-a Times* in New Delhi.

Mr. Singer: UmUm.

Judge Richey: Oh, here is an interesting case. Rochon. R-o-c-h-o-n. A picture of him in the *New York Times* I held the FBI was engaged in discrimination against him on account of his race.

Mr. Singer: Black?

Judge Richey: Black. And they admitted it in part. Major part. And that resulted in a multi-million dollar settlement.

Mr. Singer: He was a class rep.

Judge Richey: Sir?

Mr. Singer: He was a class.

Judge Richey: No.

Mr. Singer: He was all on his own?

Judge Richey: All on his own. Yeah. He was a big... Look at this. "The racial storm that rocked the FBI." There's his picture.

Mr. Singer: Yeah.

Judge Richey: It would be teaching sentencing guidelines. This is all EEOC stuff, raises fees for public interest lawyers.

Mr. Singer: Ha.

Judge Richey: Oh. This is a seminal decision. When Judge Royce Lamberth was the head of the Civil Division in the U.S. Attorney's Office here, he adopted the view that the government should never be required to pay more than \$75.00 an hour for EEOC and Civil Rights lawyers. And there should be no award for enhancement or enhancement of a lodestar factor for success. And in an environmental case involving the Equal Access to Justice Act, I held that Yablonski and his firm were entitled to an enhancement for success. And, believe it or not, I was upheld, 1988.

Mr. Singer: Well, I believed it.

Judge Richey: And it's still cited.

Mr. Singer: It sure is.

Judge Richey: That's the seminal case for the whole country. Here it is. A note from Alvin Rubin sending me pictures and a plaque. Here's the class action notice in that *Hartman v. Wick* I was talking about a while ago.

Mr. Singer: That was Wick who was head of USIA.

Judge Richey: Here's a speech I gave in 1980 to the D.C. Bar on what every young lawyer should know. Got it over there. How each program... speeches and stuff.

Mr. Singer: Well, tell me how you've enjoyed your walk down memory lane here this morning.

Judge Richey: Oh, this is another headline in the *Washington Post*, 1989 is it?

Mr. Singer: March.

Judge Richey: When I struck down the curfew law. I did it not once but twice. They went back and did it over again and I still struck it down. Now, that same issue is before this court. Not me, but Judge Sullivan. It will be very interesting to see what he does. Well, oh, have I enjoyed it?

Mr. Singer: Yeah.

Judge Richey: Oh, so, so.

Mr. Singer: That figures.

Judge Richey: Who cares? I care. But..

Mr. Singer: Oh, other people will care. I mean...

Judge Richey: I hope so.

Mr. Singer: In terms of the resource for...

Judge Richey: I repeat again, I've not looked at these.

Mr. Singer: Yeah.

Judge Richey: Since they were...?

Mr. Singer: That's why they're interesting.

Judge Richey: I have to look at them, you know. As you saw.

Mr. Singer: Right.

Judge Richey: I see what they were saying. It didn't take me long, but lots of times I didn't know what the heck they were...

Mr. Singer: Well, but the idea was to bring back, as I said, we walked down memory lane to see what kinds of memories they brought back and I thought it was a

worthwhile...

Judge Richey: Well, great.

Mr. Singer: It's... we've been at it two and one-half hours.

Judge Richey: Let me take you to lunch. May I do that?

Mr. Singer: I can't let you do that today. Thank you very much.

Judge Richey: Why?

Mr. Singer: We have some work going on in our house and my wife and I are jockeying...

