ORAL HISTORY OF JUDGE CHARLES RICHEY

The following interview was conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is District Judge Charles R. Richey; the interviewer is Daniel Singer. The interview took place in the chambers of Judge Richey in the United States Courthouse in Washington, D.C., on May 9, 1995. This is the fourth interview.

Judge Richey: Today we had conference with the other judges.

Mr. Singer: That's the Voting Rights Act case.

Judge Richey: Also school board election in the parish of the Bossier Parish. They have what they call a police jury down there. Same as a county commissioner or county counsel up here in the north and the school board follows the same boundaries. Twelve members in an election district. In 1991, the Department of Justice precleared the police jury plan. And in 1992, there were objections to that plan for the school board which were identical in boundaries because it didn't include a capacity for a 20% black minority to elect anybody. They want two black majority districts and so you have this tension between the Department of Justice in 1991 and the Department of Justice in 1993.

Mr. Singer: They were different organizations.

Judge Richey: Yeah. The only trouble is that Civil Rights Voting Rights Section over there is not what it used to be. I remember sitting on several of those cases with McGowan, Judges McGowan, Leventhal, Spottswood Robinson. They were inordinately competent and helpful in the early days, but not so much today. I haven't seen the impact of excellence in briefing and that sort of thing that we used to see. Now maybe I'm not fair. I don't want to be that way.

Mr. Singer: Yeah. I think at least when I was...

Judge Richey: In other words, it hadn't permeated from the top down, you see what I'm saying.

Mr. Singer: Sure.

Judge Richey: And, it's getting more complicated. I don't know whether you are familiar with a recent Supreme Court case, about a year old involving a North Carolina Congressional District, not a Section 2 or Section 5 case; this is a Section 5 case. *Shaw v. Reno*. And that didn't do anything but muddy the waters in terms of statutory standards.

Mr. Singer: It's one of these kind of string bean type districts really. Yes, that's exactly right. I think that's one of the more difficult kinds of things to come to grips with.

Judge Richey: Well, my dear friend. What do you want to ask me?

Mr. Singer: I want to ask you about yesterday. I want to ask you about questions of style on your part in terms of how invasive and intrusive you are into the settlement process and the kind of case that you were involved in that really...

Judge Richey: This is a case involving... I think it started in 1984. I ended up, I thought, because of my personal friendship with the late Dr. Hubert O. Reid, who was then Corporation Counsel after a settlement conference he agreed; I asked him to stand by with everybody's permission [?] a half million dollars after being reversed 6-5, en banc. There was a settlement agreement and so on and then they added the question of implementing that and paying out the various sums that the people were entitled to of that sum plus interest and so.

Mr. Singer: This is a suit against the District of Columbia?

Judge Richey: Right. And, there were two promotional tests provided for in that settlement agreement and decree for 1990...

Mr. Singer: The fire department you mentioned? Right.

Judge Richey: And, one in 1991. Well, they litigated the 1990 exam and they lost before me -- a bench trial. And, now this case involves a 1991 examination. If your question is how invasive should I be or am I...

Mr. Singer: What role do you see for yourself as appropriate to play in bringing the parties, particularly when one of them is a public agency, to a resolution?

Judge Richey: Well, they wouldn't have gotten a dime but for me in the first case there. I would like to have five cents for all the hours I've spent on the case and we were going to go to trial in this case on June 5, come heck or high water and they know it. But, the plaintiff filed some sort of a pleading with me indicating they'd made a demand on the District government about alleged cheating in the second promotional examination. Well, cheating by itself, I think I know what I'm talking about from the first test, it was an allegation that somebody might have gotten in advance some of the answers or during breaks in the bathroom, had some help from whoever, I don't know. That doesn't prove discrimination by itself standing alone. So I directed, yesterday afternoon, that the Corporation Counsel himself be here and that the union and the plaintiffs' responsible parties -- I was told by my law clerk that the court room was full, and I got visited with the lawyer but they came back here today and we are back to square one, and they are now visiting about it indicating

that the plaintiffs want far more than a simple demand. They told me they didn't want money, but they want a restructuring of the whole basis of hiring and promotions along the lines of someplace like Phoenix, Arizona and some other city, I don't know which, they mentioned it but I've forgotten. It's the first time I ever heard of that. It almost made me laugh because years ago, in the first case, the D.C. government wanted to appoint three experts to design a test. And, I must have told them seven or eight times I thought that was a waste of the taxpayers' money. All they had to do was call St. Louis, Detroit, Cleveland and get the affirmative action plans that they had utilized and successfully put in place and be done with it. They obviously had it committed to writing. I couldn't persuade them to do it. Now, this new group of lawyers is essentially asking for the same thing. What some other city has done in allegedly the same or similar circumstances, I don't know. You know, you put out fires as I told them. It's not a heck of a lot different in Washington, D.C. than it is in St. Louis.

Mr. Singer: That's certainly true.

Judge Richey: I wouldn't think.

Mr. Singer: At least there may be margins of difference, but not...

Judge Richey: It would be so de minimis it wouldn't make any difference. But, anyhow... It essentially [garbled] employment discrimination in civil rights you have to be very, very cautious and I wouldn't let them tell me because I got to try it for myself without benefit of a jury. But, the elements are there and demands were. It's just using my office to compel them to talk to each other.

Mr. Singer: It's surprising to me because... now that I've gotten myself a role as a mediator for this court, I see that so often, that lawyers don't seem to know frequently how to talk to each other or...

Judge Richey: We know what the trouble is. Talking to each other among lawyers is too often deemed a confession of weakness. It really is. And, it's a psychological impediment.

Mr. Singer: Right. It's exactly the conclusion I've reached.

Judge Richey: And, I knew that long before I became a judge. And when I got here, I started to use a paragraph and various orders, pretrial orders, that the counsel shall meet and confer in person. And along comes the Civil Justice Reform Act which required new district court plans... you'll see all over the country in 94 districts now requiring parties to meet and confer in person, same as Judge Richey ordered 25 years ago.

Mr. Singer: That should make you feel pretty good.

Judge Richey: No, it doesn't. I thought it was so simple. But, you know what, Dan? The real story is, lawyers still don't pay any attention to it. They don't pay any attention to it. What are you going to do? Put them all in jail, sanction them, and so on. That isn't going to accomplish the...

Mr. Singer: Somehow you have to figure out a way to change the incentives.

Judge Richey: You couldn't be more right.

Mr. Singer: And the incentives... Would you like to talk about the pending legislation about civil justice, civil tort...

Judge Richey: I don't know anything about it. I know generally about what the issues are.

Whether there should be a cap on punitive damages, whether there is such a lack of standards in the award of punitive damages, whether it should be limited to product liability cases covering the whole spectrum. Those are legitimate issues for the legislature, but I don't think it's going to serve any purpose for your mission here. Unless you feel otherwise I'll be glad to...

Mr. Singer: No. I mean the views that interesting in this session are yours. My job is somehow to tease them out in a wide range of stuff.

Judge Richey: I don't think the world's going to come to an end...

Mr. Singer: Either way.

Judge Richey: Either way. No. The lawyers are creative enough to find a way to live with whatever they do and it will probably create more litigation than we've got now.

Mr. Singer: You talked about the changes, what I assume were changes in the quality of stuff coming to you from the Justice Department.

Judge Richey: Yes, sir. Those changes used to be...

Mr. Singer: And that those changes have been negative. There has been an erosion of quality.

Judge Richey: That's correct. And that's a very unfortunate thing. I don't like to say that but, you see, I think part of it is in response to economics to be candid with you, Dan. Young people getting out of law school today, unless they are very fortunate, have big law school debts. I've had law clerks myself who have had as much as $100,000 in debts.

Mr. Singer: Between college and law school.

Judge Richey: Between the two. Seven years. And how can somebody do public interest work or government work on a $30,000 or $35,000 salary. Be engaged in a public career like a lot of wonderful people have done with the demands of that kind of a debt. I think it's terribly unfortunate to hand a youngster a diploma in the right hand and a promissory note in the left hand.

Mr. Singer: Second mortgage for life. (Laughter)

Judge Richey: That isn't right. You're right. You said it. A second mortgage for life when they get their last degree. It isn't fair. There's something wrong with this. Now, some of the law schools, I think like Columbia and Harvard, have started some modicum of small programs to encourage people to do public interest work, deferring student loans, and so on, but…and I'm not fully familiar with all the details of the various programs but it's not a satisfactory response to the tremendous economic demands made on youngsters going to college and law school today.

Mr. Singer: It's also a very expensive thing for the institutions to defer, I mean...

Judge Richey: You couldn't be more right. The institutions have got to survive. I think today's got a problem and the next half a century when a lot of colleges and universities that we know of today won't even be in existence. Probably even many state schools go out of business. They've sprung up all over here and every place. But they will be consolidated and many of the private institutions, I think, are going to go under.

Mr. Singer: It's interesting if you... I mean I have no doubt from what I've seen in the private practice that the lure for that first five or six years after law school, and

frequently in our firm after clerkships, judicial clerkships. Those kids are doing it for the money. That is to say to get the loan monkey off their back and frequently now there are two of them. There is a husband and wife and what used to be $70,000 of debt may now be approaching $150,000 that they are carrying.

Judge Richey: You couldn't be more right.

Mr. Singer: And they've somehow got to get rid of that monkey if they want to start families and do a whole lot of other things. But, very, very often I have seen when for one reason or another, either people get disillusioned with private practice which is very easy to do, or they would like to stay but they're not going to become partners and they're invited as gently as possible to look elsewhere. But the place they go and where they become extremely happy is into government work of one kind or another. I mean, we are a regular feeder into the U.S. Attorney's office at the various pieces of the Justice Department and other agencies and based on what I've seen, many of them feel much better about themselves as kind of civilized human beings after they get back, if you will, on the other side of the table and are picking up the public interest. You know, it may be a decade after that they go out and they directly become partners in law firms and they all think they died and went to heaven at that point.

Judge Richey: That doesn't last long.

Mr. Singer: It's because the money is so good and that doesn't last at all that long anyway.

Judge Richey: Well, that's correct, but you asked me why I thought that the quality of work

by the government has declined and I think that's part of the answer.

Mr. Singer: It may well be.

Judge Richey: Young people just can't afford it and they are not attracting the quality of people they used to for economic reasons, I guess.

Mr. Singer: Do you think it's economic or do you think there's something that says, "Gee, the New Deal was a great time and if it's not that good..."

Judge Richey: Well, that's it in a small part, but it would have to be less than three or four percent. The major reason is economic. We've got a debt to pay; we don't have a choice; we have to go to the high-paying large law firms.

Mr. Singer: Yes. Puts a lot of very good people out in private practice.

Judge Richey: It does. It does. But, you know, I just happen to believe that government has a role to play in our society. I think you share that.

Mr. Singer: I do.

Judge Richey: And, unfortunately, access to public employment is not as attractive as it used to be because of invasion of privacy and all kinds of other restrictions, even for senior lawyers. But particularly young people and, of course, I was reared and imbued with the best thing in the world a person in the world can do was public service. And I just couldn't wait until I got an opportunity to do something for human kind. But, you know, those same kinds of opportunities are not available today. Why? Because as I said, earlier, economic reasons.

Mr. Singer: You mentioned at the beginning today, maybe even before we had the machine on, you talked about a case in which you were reversed 6-5 en banc.

Judge Richey: Yes. Ab Mikva says that's one of his greatest opinions.

Mr. Singer: Majority or dissent.

Judge Richey: Dissent. Yes.

Mr. Singer: What case was that?

Judge Richey: *Hammon v. Barry*.

Mr. Singer: Barry is the mayor. Formerly.

Judge Richey: Yeah. Former mayor. Cert was denied. I had approved of an affirmative action plan for hiring of new personnel in the department but I had disapproved of an affirmative action plan for promotions because I felt that those firefighters who were already there, and who may have been quite incidentally, were not there because of any wrong-doing they had done, and that they were innocent victims of a discriminatory system. A wide, widespread practice; my goodness gracious, any objective observer would look at the history of this fire department, and previous to that the police department in this city was rampant with discrimination. Terrible. And I was glad to do what I thought and maybe strike a blow for liberty. And I did it and obviously what I thought was in accordance with the law at the time. Mikva said it was in accordance with the law and that's good enough for me. Kenneth Starr was the one who wrote the dissent.

Mr. Singer: And, the dissent was... Oh, he wrote the dissent.

Judge Richey: Oh, yeah. For the majority. I mean Mikva wrote the dissent and Starr wrote for the majority. Pardon me.

Mr. Singer: And, the majority held that you had to apply across the board. No, they

wouldn't have done that.

Judge Richey: Well, I was reversed. I know that, on both grounds. So...

Mr. Singer: The one time I remember where I could say I was reversed, which is not quite the way to put it, was when Judge Washington wrote an opinion on the Court of Appeals and it went up to the Supreme Court and the Supreme Court did reverse it. It had to do with certain due process rights in connection with the then Defense Department's industrial security program. And then clearly the Supreme Court just said it and therefore it was correct. I was delighted. My reaction was that I was overjoyed because I had argued with the Judge and argued with him and argued with him and finally did it his way and was reversed. But, there was a very personal identification on my part with that reversal and I'm wondering how does it, how did... I mean, maybe you've been at it so long you can go...

Judge Richey: Well, I've had eleven cases go to the Supreme Court on the merits. A lot of them were cert. denied and that sort of thing, but I don't count that. Eleven cases have been involving my decisions when I've been affirmed 8 out of 11 times. And they haven't been mossback decisions either such as *Nader v. Allegheny Airlines* which was the famous over-booking case. Reversed just quickly in the Court of Appeals, but 8 to 1 affirmed in the United States Supreme Court. And, that's established a right to sue for damages in tort or contract if a confirmed reservation is not honored, overbooking. And that applies to all public accommodations.

Mr. Singer: It changed the way things happen in the real world. It is not always apparent

from what you do on the bench.

Judge Richey: That's correct. It was a very major, major change in the way people travel and do business and live in the United States of America. I get a great deal of satisfaction out of that.

Mr. Singer: And the way airlines treat their customers.

Judge Richey: Right. Right.

Mr. Singer: We do a lot of traveling into the Caribbean where overbooking is very common. But now they bribe the passengers. They don't just throw them off; they bribe them.

Judge Richey: Right. I was in a bidding war in Salt Lake City, Utah, with about seven federal judges.

Mr. Singer: (Laughter) I can see it now.

Judge Richey: Oh, six or seven years ago. And all of them except me had been bumped. I told them...

Mr. Singer: "Did you auction off your seat?"

Mr. Singer: (Laughter)

Judge Richey: They started to bribe people. How much would it cost to give up your seat? Because I told my colleagues, I said, "The law is, I made it, and you have some rights here that the officials of the airline know..."

Mr. Singer: That's a square meal...

Judge Richey: And they sure did and boy, people got as much as $1500 to give up their seats to go from Salt Lake City to Jackson Hole, Wyoming.

Mr. Singer: That's a nothing trip. I mean... (Laughter) make it [?]

Well, they always make sure your seat is confirmed. You probably...

Judge Richey: Well, I don't know. I never... But I've been in airports around the country right after that happened and I remember being in, I guess it was Dallas, Texas, coming from Brownsville trying to get to Los Angeles and there was a Mexican there who had a band and he had been denied access to an airspace pursuant to a confirmed reservation and he was screaming at this airport manager, manager of this airline, that there was judge in Washington, he was standing right beside me, within three or four feet of me, and he's screaming at him. He says I have a right to my seat.

Mr. Singer: Good for him. You must have felt wonderful.

Judge Richey: Oh, it was so funny just to sit there and watch this argument. Come and sit with me for just a second and we'll see what happens.

Judge Richey: We didn't decide anything except that it was a matter of discretion, now the discretion of the District Court.

Mr. Singer: Thank you very much. OK. You were talking about how it felt to be reversed or affirmed, I guess is the other part of it.

Judge Richey: Well. Frankly, I tried my very level best to apply the laws as laid down by the Appellate and Supreme Court. But I like the kinds of cases where it's an open question and I had many of them in the early days of my career in the environmental area, employment discrimination, civil rights, labor law and so on. Don't have as much of that today. Now maybe this current Congress will create a lot of new issues, new opportunities for judicial, shall we say

intervention, at the trial court level and that will be fine.

Mr. Singer: You're looking for the interstices.

Judge Richey: But I think that it was egregious that I got reversed in the *NAFTA* case and it was reversed by two judges, I forget who the third one was but they were intimate friends of mine. Pat Wald and Abner Mikva. And they held essentially that that was a political question for the other two branches of the government. However, this fast track trade legislation runs right counter to the Constitution. Don't tell me that isn't a treaty. But putting all that aside, that wasn't the basis of my decision. The basis of my decision was that when the Executive presents a legislative proposal involving major federal action, the National Environmental Policy Act requires the preparation of an Environmental Impact Statement, known as an EIS. They didn't do it. Now I didn't enact NEPA, even though I was the first judge to have an opportunity to construe it and to require an EIS which is nothing more than, as Leventhal said, the reasonable alternative doctrine. They ignored that in this case. I thought it was a slam-dunk decision and was praised in most newspapers across the country, except for the *Washington Post* and they would have had a lead editorial, "A Bad Decision" or something to that effect, because they were strong for that NAFTA Agreement. A lot of the things that I predicted. Not only some of the things in the opinion, but privately to myself. But the adverse effect on working men and women in this country and on the environment and things like that, this treaty has not solved, it's not going to solve it. I think Rubin, Secretary of the Treasury, giving them all this

money, he's going to end up a scapegoat. You watch. Watch history. It's just like my decision back in 1976 in *Williams v. Saxbe* in which I was the first judge in the country to say that sexual harassment was cognizable under the Civil Rights Act. *Time* magazine gave me holy heck saying that that was never contemplated by the Congress in 1964 or 1972. Well, it was and as Judge Wald said, "Chuck, you've been vindicated by history. What do you care?" I predict I'll be vindicated by history as a result of this egregious trade agreement and also by GATT. I don't like that either.

Mr. Singer: (Laughter) Fortunately, for its advocates, it hasn't jumped up and bit you on this court yet.

Judge Richey: No. No. One of my colleagues was supposedly going up on the Hill today to testify about a discrete portion of it involving cases where some international body on trade disputes rules against the United States, there will be a group --commission, board or whatever court, five or six appellate circuit judges -- who will sit and determine whether the United States was disadvantaged.

Mr. Singer: It's a very complex procedure which was once explained...

Judge Richey: And that presents a serious separation of powers problems, and so on and so forth. But, I guess we've got to make progress. I don't hold it against those who negotiated the agreement and so on and try to do best for what they think will serve the interest of the United States. To that extent, it is a policy question but I doubt the application of NEPA passed by Congress superseded any fast track legislation but said nothing about that. It was an easy decision.

I resented the reversal in that case. I still do. I'll go to my grave saying it was wrong.

Mr. Singer: But did it suggest that there were instances in which you yourself viewing this as an open question took one tack. I'm now talking about instances of reversal and…

Judge Richey: Well, I've been reversed from time to time as all judges are. You just blur. You don't take it personally and so on. Probably on some occasions I've been affirmed and then maybe I shouldn't have been; I don't know.

Mr. Singer: Do the rest of your colleagues feel that it is not a personal?

Judge Richey: Well, Gerry Gesell used to take every reversal very, very personally and would just rant and rave for days. You could walk into the judges' dining room and tell that Gerry had been reversed. Red. Angry. Charlie Horsky was down there one time to see me. He is a personal friend.

Mr. Singer: Yeah, I know.

Judge Richey: And I was teasing him about Gerry getting reversed and he said, "Oh, my goodness, Chuck," he said, "I was in his chambers one time when he first went on the bench and he got reversed and he said I was so glad to get out of there. I couldn't wait."

Mr. Singer: Horsky, of course, was his partner for years.

Judge Richey: Sure. Sure, at Covington. Old Man Covington started on this court, you know, and then left after a few short years and went around the world on a bicycle soliciting business. That's how that law firm began.

Mr. Singer: (Laughter) That's a wonderful story.

Judge Richey: I think it was a 3-judge court at that time.

Mr. Singer: Have you spent much time on either 3-judge courts or on sitting by designation on the Court of Appeals?

Judge Richey: Oh yes. I sat by designation a lot.

Mr. Singer: You like it?

Judge Richey: No. I quit in 1985.

Mr. Singer: You quit doing that.

Judge Richey: Yes.

Mr. Singer: Is it voluntary? I mean, is it the kind of thing where you can say...

Judge Richey: Yes, it's voluntary. They can't make you sit up there.

Mr. Singer: They don't give you any extra money.

Judge Richey: Oh, no. Who cares about that? Anybody who does that for the money, he's a good candidate for St. Elizabeths. But, I finally, as a result of the changing over the years, I found that I was having to give up two-thirds of our principles to get one-third and it was offensive to me.

Mr. Singer: Would it be fair to characterize that as saying there's kind of a joy in what one would call a loneliness of sitting alone as opposed to...

Judge Richey: Oh, there is a tremendous joy in it. You're accountable to the public, the bar and the litigants, but I'd rather make my own decisions rather than have to compromise and politic with my colleagues. There is an article in today's *Washington Post* about Justice Brennan and Dean Sexton of NYU Law School presented apparently at the Supreme Court yesterday. Some award or program for Justice Brennan. And as I read the paper this morning, it

seemed to me that he was selected and pointed out on the basis of his ability to solicit votes and achieve consensus and so forth. Kind of like a Quaker type of thing which I only know vicariously through my kids in being a president of parents' association at Sidwell Friends. I really don't like that. It doesn't appeal to me. It did in the beginning but it doesn't any more. I just don't like to do that. I want to do what Richey thinks is right. What is the law? What is fundamentally fair?

Mr. Singer: It's a powerful writ that the district judge holds in his hand.

Judge Richey: Yeah. I used to tease Skelley Wright, we had more power than circuit judges. One time he said, "Well, what do you mean?" I said, "I can unilaterally put somebody in jail and you can't."

Mr. Singer: That's right. We once tried a criminal case and I remember sitting in a... where the... basically the Court of Appeals sat, Judge Washington, Judge Fahy, I forget who the third one was; neither of them knew from anything about criminal procedure, but it was essentially a contempt case and it was contempt of that court and it had to do with a headache remedy where the manufacturer had basically thumbed his nose at the Court of Appeals and...

Judge Richey: A criminal... it couldn't be criminal contempt.

Mr. Singer: Whatever it was...

Judge Richey: You see, the reason I say it couldn't have been is because in criminal contempt, you are entitled to a jury. Civil contempt you're not.

Mr. Singer: It was... these guys took it very seriously and they basically waffled their way through all the way to the end. It had been a long time since any of them had

thought about any of these issues as if it were straight in front of them. It was one thing to sit and review somebody else's mistakes.

Judge Richey: It sure is. You have no idea, Dan, having been only in the upstairs atmosphere, how much more difficult it is to be a trial judge. Now, if you understand that, who are circuit or appellate judges. Mikva understood it because he practiced law. And he used to tell me over and over and over again, "You work three times as hard as we do."

Mr. Singer: Oh, sure.

Judge Richey: And, the trouble with, the sad part is most judges up there don't even understand that. Have no appreciation for it. Why? I think it basically is because they never tried cases. They don't know anything about the dynamics of how to manage people, what goes on in the court room. Jurors, witnesses, the public, the press, probation officers, marshals, corporate lawyers, court room clerks, your law clerks, goodness knows what.

Mr. Singer: Well, they must know how to manage law clerks. They've certainly got a slew of them up there.

Judge Richey: Uhhh. Yes. That's another thing that gripes me. I think in the American scene where we've got courts of appeals who now have armies of law firms. Young lawyers who are what they call "staff counsel". That's a creature of...

Mr. Singer: Where is... what is that?

Judge Richey: That's an entity within the courts of appeals all across the country. I think we have fourteen or fifteen right here that work on motions. Another thing that generates applications for law clerkships is the high profile case that gets

some press. It's amazing how the law schools and students think, "Oh, gosh, I agree with that decision. I'd like to work for that judge." Every time you have a high profile case, the avalanche of applications goes way up.

Mr. Singer: Do you get people who come because they have some sense they'll disagree with you, who look for the challenge, who look for the opportunity, the arrogant opportunity to straighten you out?

Judge Richey: I don't think so. Not that I know of. I think more of them are interested in being a part of some history and development of the law and that sort of thing. I'll tell you; it's a common thread and a common mistake that youngsters make. I apply to you because I want to learn from you. And that kind of turns me off, to be candid with you. What can you do for me? What can you do for my court? Can you stay ahead of me? Are you a person of original ideas? What do you know about Constitutional doctrine, civil criminal procedure, evidence, all the other billions of problems that we have to deal with on a day-to-day basis? I was telling Judge Silberman and Judge Kessler today that, in one of these 3-judge Voting Rights Act cases, that Judge Bork apparently, former Judge Bork, sat on one during the taking of the evidence. This case today, I arranged to take it myself with their consent and the parties consent. But, apparently whoever had that case didn't do it and so they all three sat during the taking of evidence and "Objection", "Overruled", "Objection" "Sustained", and he looked at one of the judges and said, "Is this what you people do all day long?"

Mr. Singer: [Laughter] That's a great line.

Judge Richey: That's a real true story. I heard him say it. I wasn't there, but I'd been told afterwards.

Mr. Singer: That's a great line. I noticed when I had some time yesterday in your chambers and I noticed that you have a shoe, a bronze shoe, it's not a baby shoe. It's obviously an adult shoe.

Judge Richey: That's one of my shoes. A few years ago the *New York Times* did a profile on me and they quoted either a juror or a former student "as tough as shoe leather but fair to a fault" and the marshal and his deputies had obviously seen that in the *New York Times* and they decided, well, we're going to get a shoe, tough as shoe leather, that led to the shoe. They called up my wife and asked her to get one of my shoes. I loved that shoe. One of my favorite, most coveted...

Mr. Singer: You love it even more now.

Judge Richey: Yeah. [Laughter] My wife didn't know why they wanted it. She just gave it to them.

Mr. Singer: But, Judge. Marshals don't generally get together to do something for judges.

Judge Richey: It's a rare exception.

Mr. Singer: So, it's a rare occasion. And, it wasn't just that the *New York Times* guy came up and reported somebody's epigram. There's got to be more to it than that. What lies behind...

Judge Richey: What I think as a human being, they like me. Probation officers do, the court reporters do, you see...

Mr. Singer: I was going to follow on to what you did...

Judge Richey: When I have time. It's a matter of relieving the tension. Sometimes I'll walk through the Clerk's Office, walk through the Probation Office, or the Marshal's Service. You know, I love people. I hope you know that that produces...

Mr. Singer: You know the Kipling poem?

Judge Richey: No. What's that?

Mr. Singer: "Walk with kings nor lose the common touch. If you can do all those things, you'll be a man."

Judge Richey: Well. I love people. I am duly concerned about it, but I think it's obvious to the people with whom I work.

Mr. Singer: It must be.

Judge Richey: It is. I hope you've picked that up.

Mr. Singer: What I didn't realize is that you're obviously something of a baseball fan.

Judge Richey: No. That didn't have anything, I am, but that didn't have anything to do with it. I spoke to the Kentucky Bar a few years ago.

Mr. Singer: I see. But I noticed the painting, not just the bat. Louisville Slugger.

Judge Richey: Oh, well, that was a gift to me in a will, believe it or not, of the old Griffiths Stadium up there by former Congressman Jack Betts who served about 25 years here and we used to go to the ball games out at old Griffith Stadium, he and his wife, sometimes his daughter and he left that picture to me in his will.

Mr. Singer: You and I may be the only ones left who have actually been to Griffith Stadium.

Judge Richey: About. I used to go out there on Saturday afternoons all the time. It was a great time and I love that little picture. It wasn't what I thought it was. Jack told me he put it in his will. His daughter had it in Buffalo, New York. She's married to some, I think, Episcopal clergyman, bishop, or something. And, it came in the mail one day.

Mr. Singer: By the way, Sherman Cohn did call me back and I was able to catch up with him in terms of what he and I both have done. He's no longer part of that group.

Judge Richey: Oh, he's not?

Mr. Singer: He is part of the group but he's not going to be here on that day which kind of stopped him as to what I was calling him about. But he said he felt certain I should just show up and that there wouldn't be any problem.

Judge Richey: That's great.

Mr. Singer: So I'm looking forward to it.

Judge Richey: Well, you know Justice Ginsburg and you know Judge Mikva and I'm sure they would be glad to see you too.

Mr. Singer: I now feel comfortable enough so I can ask you the following kind of questions. Did you take a pay cut when you came on the court, or did you get a pay raise?

Judge Richey: Oh, of course. Yes. There's an old story. It's true. You know you have this system of direct deposit with your paycheck through the bank. And so when Mardelle got the notice of my first paycheck, she called up my then secretary who had been with me in private practice and said, "Mary, is this for

a week or two weeks?" "No, my dear. That's for a month." I think Mardelle had a heart attack. Really. She couldn't believe how we were ever going to make it in a...

Mr. Singer: Did you really change your lifestyle when you came on court?

Judge Richey: Oh yeah. Absolutely.

Mr. Singer: What kinds of things did you give up?

Judge Richey: Oh. All kinds of things... extracurricular activities, clothing, all kinds of things that you really didn't need but you had plenty of money to buy.

Mr. Singer: What about charitable contributions?

Judge Richey: That had to be cut back. The whole host of things of just living the way in which you live. You know, Judge Holtzoff, I heard him one time in court with some dispute over a lawyer's will with his widow standing up there and somebody was seeking to sanction the poor widow for not doing something and he said: "You know, lawyers live well but they all die poor."

Mr. Singer: [Laughter] That's not true. And I'm sure he knew that.

Judge Richey: Well, I think it is true in a lot of respects.

Mr. Singer: …poor, perhaps. Some have been.

Judge Richey: Some have been eminently successful, but...

Mr. Singer: Do you think that pay is a serious problem for judges?

Judge Richey: Getting judges?

Mr. Singer: Yeah.

Judge Richey: I think a lot of them take the job because it's a panacea, the height of their professional objective and then they realize they really can't live on it the way

it was. In my early days, many of them leave because of that and that's unfortunate. I always felt that I made a commitment. I have a contract with the people of this country and if I got the job I would stay there and not try to capitalize on it or profit from it. And I know that Judge Gesell had very strong feelings, totally consistent with that. Thought it was improper for judges to leave and go into private practice to try to make money. I have had very strong feelings against judges or public officials in any branch of the government writing books and getting money for something they create out of their offices with the use of public funds, directly or indirectly. I think that's just dead wrong. I know one publisher sold ten thousand copies of my book, just one out of four publishers that had the same material. At $75.00 a head, that's a lot of money. No royalties. No nothing. And this book right here on the prisoner law in the United States, that's being published again totally pro bono because I don't think it's right. My law clerks helped me with that, doing some of the research, and so forth.

Mr. Singer: Have you had occasion to make that view public in a wider sphere?

Judge Richey: I put it in the preface of the book. Yes, I've made public statements to that effect that I don't think it's appropriate. I didn't think it was appropriate for Sirica to write his book; I didn't think it was appropriate for Douglas to write his book while he was on the Supreme Court.

Mr. Singer: Distinguish between writing the book and getting the royalty.

Judge Richey: Well, I don't know whether you can distinguish it. It's all right to write a book as long as you're not benefiting economically yourself. If somebody

wants to retire and so forth...

Mr. Singer: But you would take the position, I assume, based on your own conduct that it's not only not wrong but in some ways it's quite appropriate for judges to continue on a scholarly type of path and to produce works of scholarship, not just opinions because textbooks are...

Judge Richey: Oh, absolutely. Judge Keeton does that and others have done that. Sure.

Mr. Singer: Weinstein's been writing all over the place.

Judge Richey: Right.

Mr. Singer: In law journals. And I don't know...

Judge Richey: Well, he published his famous series on evidence. Weinstein on evidence is widely cited. He made a million dollars on it in the first go-round. He was very proud of it.

Mr. Singer: As a lawyer or when...

Judge Richey: As a judge.

Mr. Singer: As a judge.

Judge Richey: I love the man and if you don't believe it, I put his picture on the wall right there.

Mr. Singer: Yeah. I saw that. I saw that.

Judge Richey: It has been there for years but he knows that I don't think that's correct. I don't. That's just my personal view. I don't want to impose my view on another...

Mr. Singer: Ok. You're not out as a missionary on that.

Judge Richey: No. No. But, look, I'm the fellow that was appointed by President Nixon.

I had to do several things that he didn't like. I knew it. I held that he didn't own his tapes and papers. That ultimately led to the Presidential Materials and Preservation Act in 1978.

Mr. Singer: It led to a stalemate until yesterday on the appointing of an archivist by this president.

Judge Richey: Yeah. Well, it made oblique references to my decision which struck down on the Bush-Wilson agreement.

Mr. Singer: Right. You're the world's leading expert on presidential papers. You gotta be.

Judge Richey: I'm probably one of the world's leading experts. I really am.

Mr. Singer: Have things gotten...Has the compensation of judges reached a...become more appropriate in size than...

Judge Richey: Yes. It's more appropriate now. But because of the political climate in which we are living today, I think it will probably go on for another, oh, maybe five to ten years, before we get another raise, and then they will be behind again, the curve, and as a result of the enormous raises to just stay even. You know, with the advent of inflation and so forth and the Congress will not divest itself from its attachment to Article III judges. And that's our political problem. And judges don't have any constituency. Come on.

Mr. Singer: No, they don't. And, I suppose, although I haven't thought about it much, it is probably appropriate that they not have a constituency.

Judge Richey: Maybe it is appropriate. Maybe it is appropriate.

Mr. Singer: But it's certainly a fact and...

Judge Richey: It is. And you know, if you're going to be a good judge, you're not going to win a popularity contest.

Mr. Singer: Right. That's true in a lot of areas.

Judge Richey: Well, it's particularly true in the courts, in the trial courts in particular.

Mr. Singer: Right.

Judge Richey: Because, you know...

Mr. Singer: It's down and dirty.

Judge Richey: Right. And you know, the plaintiff doesn't win all he or she or it wants. Therefore, the part that they lose is going to cause dissatisfaction. The other side is going to lose probably all. So, the plaintiff isn't fully satisfied and his lawyers blame it on the judge. Don't kid me. I know what they do. And, the defendant is going to blame it on the judge, not themselves.

Mr. Singer: Never.

Judge Richey: Never. And so it's hard to win a popularity contest if you're going to be a good judge. And that's one thing everybody ought to understand when they take the office. I'm not sure all of them do.

Mr. Singer: But the people who come onto the District Court are at least, are people who for whom it is not their first entry into a courtroom by and large. These are people...

Judge Richey: That's correct.

Mr. Singer: ...who I mean there is some rationality that creeps into the appointment process that gives some weight to the fact that someone has been in court before and indeed they've spent a lot of time and surely the ABA review and

rating system, at least for district judges, I think, puts a fair amount of weight on the judges on experience in trial courts, so that they're not naive folks who are joining you in this.

Judge Richey: No, that's correct. But let me tell you, Dan. If you went across this country as I have for twenty-five years and talked to judges coming on the bench. I taught for twelve years in the new judge's school at the Federal Judicial Center and at one time I knew 98% of the judges in this country, federal judges, by their first name. I don't any more. But, there is a wide divergence of backgrounds and experience. You know, out in the hinterlands, all you have to know is the senator and if he or she is in the majority party, that senator can probably make you a federal judge. Now it's a lot more difficult to be a federal judge in the District of Columbia than it is in Podunk, what have you. I don't want to cast aspersions on any state or part of the country. So there is a wide divergence of experience and background and training and some of them haven't had any experience, believe it or not.

Mr. Singer: That's a surprise. But at some point, doesn't the process...

Judge Richey: With about twenty-five Article III judges that have been rated as unqualified that have been confirmed by the United States Senate in my life time. And, take former Chief Judge Browning of the Ninth Circuit. He was rated unqualified, appointee of John F. Kennedy. He turned out to be a great judge. Alex Williams is sitting now in Beltsville, Maryland the new District Court, rated unqualified. Unanimously confirmed by the United States

Senate. I predict he'll be a good judge. I hope when somebody listens or reads this someday that they'll agree. But, you know, here in the last five new appointments, there is a broad range of experience absolutely magnificent. The best at one time any administration has appointed since I've been.

Mr. Singer: These are all now...

Judge Richey: Brand new judges.

Mr. Singer: Are they all Clinton appointees?

Judge Richey: Yes. And, they're just absolutely great human beings. Diversity, everything else. And they're going to carry the torch into the future and do it well.

Mr. Singer: Was it in this morning's paper that I read about your neighbor, Urbina, as being the focus of some attention in the Clerk's office?

Judge Richey: Yes. And you know that [?] that threatened him, was one of the cases of mine that he inherited.

Mr. Singer: You're really there but for the grace of who knows what.

Judge Richey: Yeah. Yeah. The man told him that he loved me, that he knew that I understood his case, but that the new judge and his staff didn't.

Mr. Singer: I see.

Judge Richey: It sounded ridiculous but...

Mr. Singer: Did you call up Urbina and apologize? [Laughter]

Judge Richey: No. He's busy and so am I. He's in trial.

Mr. Singer: Who are the five?

Judge Richey: Oh. Paul Friedman, Gladys Kessler whom I met this noon, Rick Urbina, Jim

Robertson and Emmet Sullivan.

Mr. Singer: I think Sullivan is the only one I never even met. Jim I knew sort of well.

Judge Richey: He's president of the Bar.

Mr. Singer: He is president of the Bar but more importantly, he was the lawyer for the Carnegie Institution which my wife heads.

Judge Richey: Oh, is that so. Was he?

Mr. Singer: Well, Wilmer Cutler had represented the Carnegie Institution of Washington for years.

Judge Richey: Oh, I see.

Mr. Singer: And, Marshall Hornblower has been lead counsel for decades now.

Judge Richey: And Jim did the basic work...

Mr. Singer: And Jim was probably... started working when he came with the firm as an associate in it and grew up with it as a partner. A very, very decent guy. Really.

Judge Richey: Oh, he is. He served in Mississippi in the civil rights movement. Just gave up his partnership and Wilmer, Cutler and took off with a young family and, oh, tremendous courage and commitment.

Mr. Singer: I did that too. I went down for a month in '65 in Mississippi and again in '66. Those were the glory days. I'm sure it's the best thing I've ever done as a lawyer.

Judge Richey: Absolutely, sure.

Mr. Singer: It's something one can relive and relive and relive.

Judge Richey: One of my patrons, Senator Mathias, was then a member of the House of

Representatives in Maryland, went down in the Selma march in Alabama.

Mr. Singer: In March of '65.

Judge Richey: 1965. And I'll never forget the terrible fallout and suffering he was subjected to as a result of his participation in that march. Political. Both Democrats and particularly Republicans. But Mac was a committed man and is a committed man. Pardon?

Mr. Singer: He was absolutely a wonderful person. Is.

Judge Richey: Is. That's right. I hope it's wrong but somebody told me recently, I don't know who, just within the last two or three days, that he suffered a minor stroke.

Mr. Singer: I have no idea.

Judge Richey: I don't know.

Mr. Singer: I just don't know. I gather from what you said that getting promoted, that is to say going up from here to the Court of Appeals, was not a matter of great interest to you?

Judge Richey: Well, it was in the beginning. And it was really fun in the beginning because David Bazelon was chief judge, Skelley Wright was there, Harold Leventhal was there, Carl McGowan was there. They liked me as a human being, they respected me as a lawyer, a man of the law. I respected them. It was very collegial and fun to strike blows for liberty. In those days we would have big fights in the city and the law was under the applicability of sentencing. Under the Youth Corrections Act, under the Narcotic Rehabilitation Act and had an opportunity to write and made some good law. I think.

Unfortunately, Congress repealed them. Both statutes. But those were fun days. But then the '80's came along and new judges came along and it became a bartering system. And I don't like that.

Mr. Singer: On the Court of Appeals.

Judge Richey: On the Court of Appeals.

Mr. Singer: And you would see this at lunch or...

Judge Richey: Oh, I'd see it sitting with the judges and in conferences.

Mr. Singer: I see. When you were sitting by designation.

Judge Richey: Right. Right.

Mr. Singer: And that's one of the things...

Judge Richey: I remember sitting up there once in 1984 or something like that. Maybe it was '85. Start mentioning the names of the judges, the presiding judge turned to me, "What's your view?" And I said, "The agency ought to be reversed", and gave my reasons. He said, "I think Chuck's right, what do you think?" And the other judge changed the subject and started talking about something as irrelevant as baseball or whatever it was. And about fifteen minutes went by and he was going along on this diatribe, I think it was just obviously because he knew he didn't have the votes. And finally, the presiding judge said, "Look, I've got to get out of here. What is your position?" "Well, I'd like to have the privilege and opportunity to write a non-binding, non-precedential decision affirming the agency." And the presiding judge, to my distress, having said that he agreed with me, said, "Well, all right." And he did, the author did exactly that very promptly and

the vote sheets came around and I thought my colleague would never adhere to this even though the judge did write a non-precedential, non-binding decision. It wasn't a case of great national importance. In any event, by return mail I got the concurrence from the other judge who had agreed with me in the conference and I said, "Aw heck".

Mr. Singer: That goes to another kind of interesting aspect of sitting here and one that has no obvious public event and that is the relations between the judges themselves. I mean, that exchange was obviously not on the record any place.

Judge Richey: Oh, no.

Mr. Singer: That's just three guys talking.

Judge Richey: Correct.

Mr. Singer: So we're not talking and just initialing pieces of paper. But clearly judges are, in almost every instance, Type A; they're strong, independent, success driven, ego driven, successful human beings in a very difficult and intense environment. And there is certainly no reason to expect them all to agree with one another all the time. Quite the contrary. But it seems to me that it could go either way in terms of the personal interchanges that take place and whether those personal interchanges really reflect substantive disagreements that kind of spill over into personal relationships or whether some guys are just not very nice. I mean I'm prepared to believe the latter is a real possibility.

Judge Richey: Definitely, you are correct. I hate to say it, but you are correct.

Mr. Singer: But, I mean, there's got to be instances where some judges just don't respect other judges either…

Judge Richey: Oh, yeah.

Mr. Singer: ... through their personal habits, their intellectual capacity or the rest of it.

Judge Richey: Exactly. You couldn't be more right.

Mr. Singer: Does it get in the way of doing the business of the court?

Judge Richey: To some extent. Fortunately not substantially. But it does. It depends on the leadership of the court.

Mr. Singer: Here you are dealing with whatever the number of judges is on the District Court.

Judge Richey: Fifteen.

Mr. Singer: There are fifteen judges.

Judge Richey: Active judges. Senior judges. Four or five senior judges.

Mr. Singer: And as to each one of these judges, it's at least an archduchy if not a principality or a kingdom that one has to deal with. How does the personality and kind of respect that the chief judge can command, play into that? What does it matter what the chief judge thinks?

Judge Richey: It doesn't unless it impacts on other judges or the clerk's office or the probation office or the marshal or some court-wide policy. Then the chief judge can intervene or does, depending on the chief judge again.

Mr. Singer: You've experienced how many chief judges?

Judge Richey: Oh my goodness. About eight, I guess. Sirica to Penn. A lot of judges. If you want me to name them, I can, but it would take a long time. It's about

eight. Seven or eight.

Mr. Singer: My point really is, what difference does it make? There is no discipline, is there?

Judge Richey: Well, not really.

Mr. Singer: I mean they can't slap your wrist and make you stand in the corner.

Judge Richey: No, they can't.

Mr. Singer: And, they can't dock your pay.

Judge Richey: No. They can recommend today to the Judicial Council that a senior judge, for example, be denied recertification and the ability to sit and have chambers and have law clerks and that sort of thing.

Mr. Singer: That power exists.

Judge Richey: That power exists today.

Mr. Singer: Has been exercised how often?

Judge Richey: Well, it has been exercised twice in my career. Did it right here. Judge Sirica and Judge Walsh. They were literally thrown out. And I thought it was wrong at the time but the chief made the decision and that was it.

Mr. Singer: And that's a decision that the chief can at least operationally make alone?

Judge Richey: Yeah. His colleagues and the Chief Judge of the Circuit. Time's come for Singer to leave. We need the space. He's no longer competent. Blah, Blah, Blah. Out.

Mr. Singer: You know, it's the Chief Judge of the Court of Appeals who essentially runs the building.

Judge Richey: Well, in consultation with the Chief Judge of our court. There's a comity

principle that...

Mr. Singer: Those are the things nobody ever knows about. So, talk about comity.

Judge Richey: Well, they manage their own affairs. Our chief meets every month a couple of times with what we call today, unit managers. It's like the Clerk of the Court. Her deputies, the Circuit Executive, Chief Probation Officer, U.S. attorney, federal public defender, bankruptcy judge, pre-trial services, marshals, the whole panorama thing both internal and external, the other courts.

Mr. Singer: The other courts being...

Judge Richey: Superior Court, the D.C. Court of Appeals, the Bar...

Mr. Singer: Spend your life in meetings...

Judge Richey: Yeah. Oh, correct. In addition to that, he handles grand jury matters all the time. Return of indictments and that sort of thing.

Mr. Singer: Does the chief judge have time to hear cases on anything?

Judge Richey: He does on a limited basis. It depends on the chief judge.

Mr. Singer: Right. How much has that varied?

Judge Richey: Well, some people are born to be managers.

Mr. Singer: Is that a positive remark or not?

Judge Richey: Yes. Judge George Hart was a born chief judge. Judge Aubrey Robinson had many of the same qualities. Judge Pat Wald was a born chief judge, a natural leader.

Mr. Singer: I think she's upstairs.

Judge Richey: Right. Just to name a few who were really just born to be what they were.

Chief judges. I think Ab Mikva would fall in that category.

Mr. Singer: David Bazelon. He thought he was born to be a chief judge. Was he in the sense of running a...

Judge Richey: Well, David was more contentious and he had both strong allies and strong enemies.

Mr. Singer: But that's who he was.

Judge Richey: That's who he was. I loved him, but, you know Pat Wald, I don't know of anybody who was more adept at managing disparate views and disparate facts and seeming to bring about a consensus. I don't think there are very many people that have her ability. She was the best chief judge we've ever had.

Mr. Singer: And, the ability expresses itself in terms of whether the building is clean...

Judge Richey: Oh, such things as that. Security measures, bomb threats today. A lot of dealing with law enforcement. Congress.

Mr. Singer: How Congress? Why, you folks are here for a good long time.

Judge Richey: Well, we have a judge up there today on some committee. Finance Committee in the Senate on the GATT treaty. Talking about the separation of powers problem that that may create, not giving an advisory opinion or ruling, but essentially according to what he told us yesterday, he had been asked by the...

Mr. Singer: This is John Penn.

Judge Richey: No. Stanley Harris. Judge Stanley Harris. He was asked by the powers that be to express the view of the Judicial Conference of the United States to the Committee. They wanted some viewpoint from the judges of the

country.

Mr. Singer: OK. But he is up there then in the, if you will, in an agency relationship. He's not speaking his own view, he may be, but he purports to...

Judge Richey: Represent all the Article III for the judiciary.

Mr. Singer: Right. And he's up there because... presumably he has consulted in some non-trivial way with...

Judge Richey: Oh, the staff at the Administrative Office. That's a big bureaucracy today. I know hundreds of people that work there. Hundreds of people. And they prepare big briefing books four or five inches long on all kinds of, myriad of subjects.

Mr. Singer: And they prepared a briefing for Harris?

Judge Richey: Yes. They did.

Mr. Singer: And how did they know what to put in the book? I mean, did they just put in...

Judge Richey: Well, we have a legislative liaison, a big staff there that works with both committees or all the several committees of Congress.

Mr. Singer: But, let me argue with you. He's not up there representing the views of the staff of the Administrative Office of the United States Courts.

Judge Richey: No. Up there, they're there to assist judges and in formulating policy and so on, implementing it. They prepare just like they do in the Executive Branch. What do they call them? Action papers.

Mr. Singer: Oh, yeah. But there, there is no question about who the boss is. I mean, there may be a question, but...

Judge Richey: There isn't much question about who's the boss in the United States courts. That's the Chief Justice of the United States.

Mr. Singer: That's right. But they didn't call him. And I would guess that...

Judge Richey: I think they did to be honest with you.

Mr. Singer: And he said, "Look, I'm too busy, I don't want to do it" or something.

Judge Richey: Well, he doesn't do that sort of thing. No chief justice does.

Mr. Singer: But somebody gave somebody Harris' name.

Judge Richey: Yes.

Mr. Singer: And Harris was invited or told or viewed himself as obligated in some sense.

Judge Richey: He was invited by virtue of a committee assignment on the Judicial Conference.

Mr. Singer: Right. OK.

Judge Richey: He appeared to represent the Judiciary.

Mr. Singer: Right. How did he find out what the Judiciary thought?

Judge Richey: By consulting the Administrative Office. They have staff that serves the committees of the Judicial Conference of the United States.

Mr. Singer: Oh, OK. So somehow, he didn't have to pick up the phone and test the waters in the Ninth Circuit.

Judge Richey: Oh, no, no, no, no, no. They've already done that for him. As a matter of fact he told us they'd prepared the statement for him out of his briefing book. Just like an executive, the head of an agency goes up before the...

Mr. Singer: But, the head of the agency, I mean the lines of authority at least purport to be clear. One thing about federal judges, you know they are basically

irresponsible.

Judge Richey: I don't think we're irresponsible.

Mr. Singer: Don't...Irresponsible in the sense that you don't have to answer to anybody.

Judge Richey: Well, that's true.

Mr. Singer: I mean, you answer to your conscience. You answer in the sense that you all kind of would rather be favorably than unfavorably thought of by your peers and by your colleagues at the Bar and so on. But, basically, they can't lay a glove on you.

Judge Richey: Correct.

Mr. Singer: And, so a Stanley Harris or a Charles Richey gets invited to go up and somebody from the Administrative Office says, "Here Judge, this is what you're supposed to say." It's not my view of this bunch of Type A guys.

Judge Richey: Well. Asked to express an opinion to the Committee of the Congress, we've had hearings, we've had meetings, -- here are the issues, here are the arguments, pro and con, the policy of the conference is X. Would you have any objection to articulating that position? You know, Yes or No? And, they are pretty much controlled and selected by the Chief Justice, depending on who that person may be and as a consequence that's the way it works. It's a strange thing for somebody on the outside but it's been a part of it for a long time.

Mr. Singer: So the person who is invited in fact to testify is someone whose role has been cleared with the Chief Justice of the United States?

Judge Richey: Most generally, cleared with him or Ralph Mecham, the Director of the Administrative Office, consults with the Chief on administrative matters

regularly, and it's a big entity. When I started, there were four hundred federal judges under Article III of the Constitution and now there are about just under eight hundred. That's more than double the number when I came. So, I think it ought to be kept at that level. But, the odds are it's going to be increased with the enhancement of our federal jurisdiction. Crime and all.

Mr. Singer: Do you have a reaction to what seems to be the increasing kind of federalization of garden variety crime?

Judge Richey: Yes, I don't like it. I think they are putting too much of a burden on the federal courts. Many years ago I think the Chief Justice said in a major address to somebody, report to the Congress, that there ought to be a judicial impact statement on all major legislation affecting the federal courts. Just like we do with respect to the environment. But that hasn't been done, but it really should be. You know, when they pass these gargantuan measures like the Speedy Trial Act, nobody can quarrel with the objective of giving somebody a prompt and expeditious trial. But you go to the Middle District of Florida or other courts around the country, they are two to four years behind in getting access to their civil docket. What they do, is they import judges from other districts, senior judges. Too many make a stab at it and then go home. It's really terrible and it's because they are overladen with criminal work or have big complex cases like Judge Pointer in Birmingham, Alabama right now with his mammoth multi-district breast implant litigation, Judge Weiner in Philadelphia with the asbestos claims nationwide. I'm scared to death. I just read in the press that this -- and I saw him in New York two weeks ago -- this breast

implant settlement is going to break down and if it does those cases take about three weeks to try. I will get back personally, maybe fifteen or twenty of those cases. I don't want to ever see them again.

Mr. Singer: Yeah.

Judge Richey: Because I have my docket in a manageable proportion now for the first time in my career. It took me a quarter of a century to do it and I want to have the luxury of having a little more time to spend on the cases...

Mr. Singer: When you say "manageable", what do you mean? As to how far behind you are?

Judge Richey: Well, I'm pretty good. I'm the most current judge in the nation.

Mr. Singer: I don't know enough about judging to know what it means to be current.

Judge Richey: Number of cases.

Mr. Singer: All right.

Judge Richey: We're under the Civil Justice Reform Act; every six months we have to report cases that are two years or older on your docket publicly. We have to report motions held under advisement for more than sixty days.

Mr. Singer: Do you think that is a good idea?

Judge Richey: Yes. Absolutely. Daylight is the best disinfectant, as Brandeis used to say. It is. We've got judges in my court, I'm told of cases they've tried -- sub judice for eight years or more. That's wrong.

Mr. Singer: I agree with you. It's... But, there is nothing you can do about it, is there. I mean, it gets back to returning to the role of the chief judge, assuming he is not a principal offender. What can you do? All go around and put his arm

around his shoulder?

Judge Richey: They do that. As a lawyer, Dan, if you have a case before me and I don't decide it and I let it linger, you're going to have complaints from your client, aren't you?

Mr. Singer: I am. Believe me, I am.

Judge Richey: You certainly are, and that is a legitimate complaint. So, when you say, "Well, sir, you've got one remedy and that is I can petition the Court of Appeals for a writ of mandamus..."

Mr. Singer: I would be your friend for life. [Laughter].

Judge Richey: If I do that, that judge will hate me and will never forget it.

Mr. Singer: Right.

Judge Richey: And he probably will rule against you on the merits.

Mr. Singer: Right.

Judge Richey: So that's not a really effective or proper answer for your client. Or you.

Mr. Singer: And the client understands that.

Judge Richey: Well, I'm not sure that all the clients do.

Mr. Singer: Why, it's the client saying, "Good grief, don't just stand there, **do** something".

Judge Richey: Exactly. And what's the other option? Well, you go to the Chief Judge and lodge a complaint. The Chief Judge calls up, Judge X, and says Dan Singer has been in here complaining about your not deciding the cases... or some motion or anything I can do to help you or what... what's the problem. Well, I just haven't been able to get to Singer's motion. You know, I've been busy with other things, or my wife's been sick, or something. And that's the end of it.

Well, he's been complaining about it. I'd recommend you get it out. This has never happened to me.

Mr. Singer: But, you think that's a pretty good reason to...

Judge Richey: No. No, I don't think that's good... because...

Mr. Singer: No, No, No. But, do you think it's accurate?

Judge Richey: Yes. I know it's accurate. It happens. Now the other alternative is what I published in three different articles. Rule 16 of the Federal Rules of Civil Procedure adopted at the behest and suggestion of the former Chief Judge of this court in 1937, Bolitha J. Laws and in a speech to the ABA in Philadelphia. Pre-trial. That came out of this court, believe it or not, as a result of Bo Laws' speech. His bust is down there in the lobby of this building. In any event, that has been amended constantly over the years. Now, as I have pointed out in my article, this is the answer to the most common question that judges get from the bar. How could I get Judge X to decide my motion or my case? How could I get access to him? Through Rule 16. Comes now the plaintiff by and through his attorney, Daniel Singer, of Fried Frank and moves this honorable court for a hearing on the pending motion for summary judgment. Counsel for the defendant and interveners, defendant interveners are hereby given notice that I expect to appear before Judge Richey at such and such a time and place. Make arrangements for the courtroom clerk to find five minutes of the judge's time. Tell him that's all you are going to take. That's one way of doing it.

Mr. Singer: Yeah.

Judge Richey: It's not offensive.

Mr. Singer: You come in and you cry. Basically. [Laughter]

Judge Richey: Please. This is a new case that I've just found, Your Honor, and I wanted to bring it to your attention on this pending motion.

Mr. Singer: Right. While you were thinking so hard about this case, four of the circuits have ruled my way.

Judge Richey: Exactly.

Mr. Singer: Yeah.

Judge Richey: See. It's a partial answer. Much more effective. The judge can't get too mad at you for that.

Mr. Singer: No. And it's... I suppose the thing that the judges probably really don't like is the embarrassment...

Judge Richey: Exactly.

Mr. Singer: ... of having some kind of public announcement. This is...

Judge Richey: The *Washington Post* six months ago did an editorial about the judges in arrears. It called for an investigation but nothing ever happened with it, but I remember it. And they by and large are very good people.

Mr. Singer: Who?

Judge Richey: The delinquent judges, the quote delinquent unquote. You know who are behind and so on.

Mr. Singer: Have you had any experience with judges who have basically just not been able to keep up and said that "this is just too tough, this work"?

Judge Richey: Yes. It's why some resign.

Mr. Singer: And some resign?

Judge Richey: Yes. Mike Boudin is an example. He is now sitting on the First Circuit. He stayed here thirteen months. Just didn't like the dynamics of a trial court. Too much for Mike. He quit. I've never known anybody else who ever got on the Circuit Court of Appeals -- after doing that.

Mr. Singer: There are stories about Judge Whittaker...

Judge Richey: Well, that's right. Charles Evans Whittaker from St. Louis or someplace...

Mr. Singer: Yeah. The middle west.

Judge Richey: Missouri.

Mr. Singer: And he had been a Court of Appeals judge, I think, when he came up...

Judge Richey: That's right. He was on the Eighth Circuit. I think he had been a District Judge for a short time. I represented, I don't know what it was about, but he had a secretary who came to me as a lawyer while he was a sitting justice. I don't know what it was about, it was very insubstantial, but somehow this secretary to Justice Whittaker came to me as a lawyer. I don't know, as I say, what it was about, but kind of an interesting aside.

Mr. Singer: The story was that he had found that the intellectual pace and intensity...

Judge Richey: I guess was beyond his capacity. That's what the press said.

Mr. Singer: He just could not stay with it. He was probably up against one of the quickest minds up there who was not loathe to embarrass his colleagues, Bill Douglas...

Judge Richey: Well, Frankfurter too.

Mr. Singer: Was Frankfurter still there?

Judge Richey: Oh, yes. Yes.

Mr. Singer: That must be a terrible experience for somebody. I go all the way to the top of

the heap and I'm nobody.

Judge Richey: Could be.

Mr. Singer: It was a wise choice on his part.

Judge Richey: Must have been a very difficult one, but...

Mr. Singer: A very difficult one.

Judge Richey: What do you do, do you say to your friends afterwards? I don't know.

Mr. Singer: Just say "I got tired and I've been judging for ten years and I'm going to take my marbles and go home." I suppose. Do you personally have any interactions with the Circuit Executive?

Judge Richey: Yes.

Mr. Singer: And how does that work? I mean, is it because you are a nice guy and you like Linda, or does it derive ex officio?

Judge Richey: More officially than ex officio. I've been on...I've run the judicial conferences. One since Linda was here. My appointment of Chief Judge Mikva. We alternate between the District and Circuit Judges to chair the judicial conferences each. Now every other year, it used to be every year, but because of funds we only do it every other year. And that is quite an undertaking. The Circuit Executive helps with that. She runs it. She's our secretary. And, so I've had a lot of interaction with her on that; I've had business with her dealing with the task force on race, gender and ethnic bias -- a whole host of other things. Many, many meetings. She is extraordinarily competent.

Mr. Singer: That is certainly my impression in my dealings with her.

Judge Richey: Oh, yes. She is a lovely person.

Mr. Singer: The way the dispute resolution service runs is really good. Really impressive.

Judge Richey: She started that over in the Supreme Court under Chief Judge Moultrie. I'll never forget she wrote me a lovely note years ago when I was given an award named after Chief Judge Moultrie called the Judicial Excellence Award. Must have been five or six years ago. And she said that he was one of her all time fans... friends. She thought he was just the greatest and I think that the reason she said that was because he had allowed her the flexibility to start the ADR program in the Superior Court before we did it. That provided the foundation for her to be brought over here as our Circuit Executive. You know, the Circuit Executive office is a creature of Warren Burger and David Bazelon fought it tooth and nail.

Mr. Singer: For the obvious reasons. I mean, it somehow was getting in his way and was...

Judge Richey: Well, that's what he thought and it was another bureaucracy that was unnecessary and a waste of money. But, I figure he thought of it as an invasion of his power as Chief Judge and he didn't like that. We had a Circuit Executive when I first came with an ex-captain in the Navy. Had one secretary. That's all. Two persons. I think Linda Ferren now has 16, 17, maybe 18 people on her staff.

Mr. Singer: She's got the dispute resolution,..at least the dispute resolution...

Judge Richey: Well, that includes Nancy Stanley and Mike Terry and some secretaries and paralegals... I don't know.

Mr. Singer: Cause I think... I mean, my vision is that at some point the mediation will no longer be effectively optional with the judges but become somehow an integral

part of one of the hoops you have to jump through before you can get to trial.

Judge Richey: Is that right? In your view, Dan?

Mr. Singer: Yeah. It is. Yeah.

Judge Richey: It is? In other words the public should be required to go through a process twice before they get to an end result.

Mr. Singer: I'm not sure that's right. I would argue somewhat differently. I would say that the effort to resolve the dispute without going to trial under some kind of assisted or supervised process is an essential. I think it has lots of good consequences and I'm not sure I see the down side because the process moves along quickly within the time parameters between, if you will, the filing of the complaint and the trial date. It doesn't delay trial. The only thing that really postpones is the onset of what most people I know, particularly those who are not litigators, view as the most intensely wasteful part of litigation, which is discovery. And it has the potential, it being the process, of not only saving time and money but allowing the parties, who are frequently well known to one another, to get back to the business of doing business with each other instead of making war on each other. And that's been my experience as a mediator.

Judge Richey: Good. [Laughter]. Tell that to the Bar and the Middle District of Florida.

Mr. Singer: Well, I can't.

Judge Richey: I just spoke to the Bar down there two weeks ago. One hundred and seventy-five employment discrimination lawyers. And they have a rule in that court that you have to go to non-binding arbitration whether you like it or not in every civil case unless there is a constitutional question. And, three arbitrators

are appointed and the losing party pays their fee of $100 each. The arbitrators are appointed by the court. Do you like that?

Mr. Singer: No, that sounds like a pretty crummy system to me.

Judge Richey: Course it does. Course it does.

Mr. Singer: But what Linda has put... what Nancy has put together is kind of a classical standard mediation as the way it's normally done and in cases where it seems to have some potential for use is either a neutral evaluation or a mini-trial or one of the other techniques. I don't know what the success rate is...

Judge Richey: They give us statistics and... depends on the type of case.

Mr. Singer: Yeah. Give me statistics... I get the same data I guess you get. Because I don't know what other questions you could ask me beside what she is accounting for. And, it seems to me that they settle a lot of cases in the mediation context which I think is a far cry in almost every way from this so-called non-binding arbitration.

Judge Richey: It is. It is. But I have great worries about overloading the courts with too much jurisdiction and responsibility, particularly the federal courts, and not enough resources or human power to do the job. And then the alternative is to go to mediation, early neutral evaluation or arbitration. Do you know a court just approved an award of punitive damages in an arbitral proceeding involving the securities industry? Now that's outrageous, Dan.

Mr. Singer: That an arbitrator should have the power to impose that?

Judge Richey: Yes. And, a lot of the public are very up in arms about it and I think legitimately so. Particularly the disadvantaged and the poor. They haven't

had the advantage of discovery, they are pushed into mediation by the arm of some judge and they are at a terrible disadvantage. If it doesn't work, then they are disappointed. If the mediator doesn't have access to all of the information because it is in the hands of the defendant, there may be an injustice done. Usually mediation is done before discovery is completed, again to save money. Or if it is done after discovery, then it may result, in arbitration at least, not mediation, in making the parties go through the process twice at double the expense...

Mr. Singer: I myself don't see any...

Judge Richey: There is a down side to it, Dan. It is not a one-sided question.

Mr. Singer: I appreciate that, and I think...

Judge Richey: And you know, there is a devil's dictionary.

Mr. Singer: [Laughter]

Judge Richey: Really. Ambrose Bierce. Have you ever heard of it?

Mr. Singer: No.

Judge Richey: It defines litigation as a process into which you go as a hog and come out as a sausage. And that's true for many people. And that's unfortunate.

Mr. Singer: And mostly they are called clients. They are not called lawyers. The people who suffer that... and that's one of the things I'm interested in is how to change the incentives and I think the mediation option does change the incentives to some extent with respect to...

Judge Richey: Well that helps tell each party the strength or weaknesses of their case if they know it and if the mediator knows it or can be advised on it.

Mr. Singer: The mediator can tease it out and use it as a device to push the parties closer together, but it's...

Judge Richey: You know what the best mechanism of settlement is? Normally, most litigation, when it gets to that point, has been in dispute before it ever comes to a lawyer.

Mr. Singer: That is certainly true.

Judge Richey: The lawyer is generally the last resort and then the lawyer files a lawsuit. People have been discussing it and getting angry at each other long before that. And so the best thing that will bring about a resolution of that particular dispute is a firm discovery deadline, prompt ruling on the motions, if any, a pre-trial date and a trial date and the prompter the better and no continuances. You can talk until you are blue in the face about the virtues of ENE, mediation, arbitration, binding or non-binding and you are never going to convince me that is as effective as those tools which I just mentioned. And if you don't run your court that way, you're going to have a backlog and it is going to be terrible. It brings me to a point that it is essential to the fair administration of justice and that is judges should have management ability. The ability to make prompt decisions. Obviously, they've got to have judicial temperament, they've got to know something about the law and all of those other criteria that we often think about and the literature is full of as to what is required to be a good judge. But if he or she on any court and doesn't have management ability, they are not going to be a successful judge and justice is going to suffer.

Mr. Singer: There are two ways to respond.

Judge Richey: There are.

Mr. Singer: One is to say, "you shouldn't be talking to me about this, you should be talking to the president" or whoever.

Judge Richey: All right. That's a fair comment.

Mr. Singer: And the second is that we are stuck with your colleagues on the bench and how do we deal with what...

Judge Richey: We do it through these seminars that I attend and teach at and the workshops at the Federal Judicial Center. Tom Clark should go down in history as a genius for starting the FJC.

Mr. Singer: He said there are eleven of you down here.

Judge Richey: Fifteen.

Mr. Singer: Fifteen of you down here.

Judge Richey: Active judges.

Mr. Singer: Active judges. Of the active judges, how many have been to a seminar in the last six months?

Judge Richey: I don't know, except me.

Mr. Singer: [Laughter] I hate to take some pleasure in winning that argument. [Laughter]

Judge Richey: Well, I don't know what you want.

Mr. Singer: Well, if they don't go, then they're missing out.

Judge Richey: Of course they are!

Mr. Singer: And, there is no discipline. There's no... I mean, we're back to where we were about the principalities and the little kingdoms; that they run... that there's no...

Judge Richey: That's right. I remember Judge Oberdorfer when he came here he said, “Ya

know, Chuck," he said, "I don't feel any different than a judge in South Dakota. I'm going to run my court the way I want." And bless his heart. Good for him.

Mr. Singer: Yeah, well...

Judge Richey: There's an element of truth to that.

Mr. Singer: That's right and that's Lou Oberdorfer and that's a very special guy.

Judge Richey: It sure is.

Mr. Singer: And he's someone who had a lot of experience as a practitioner...

Judge Richey: Exactly. And he's a great, great guy.

Mr. Singer: And he's also had experience managing a very large law firm. Managing it extremely well.

Judge Richey: No question. You're so right.

Mr. Singer: But that's not your run-of-the-mine judge.

Judge Richey: Nope. Unfortunately.

Mr. Singer: That's right.

Judge Richey: Well, I guess you're right that I should've been making this speech to the President of the United States. And I will one of these days when I get time. I don't mean to any particular president but I'm going to write a piece about it because I feel strongly about it.

Mr. Singer: Yeah. I understand and the "it" includes the notion of the value or marginal value at best of the ENE and the mediation and that kind of thing that you could address those problems. The problems that the system means to address by using mediation and ENE are problems in your mind that ought to be solved by

judges being better judges.

Judge Richey: Correct. But since we don't have that, you're saying this is the only alternative. And, there is some element of truth to it.

Mr. Singer: Well, it may not be the only one, but it's one that seems to have some positive impact. It's great work for lawyers who are of counsel and otherwise unemployed. (Laughter) Even for some that are; they are still active.

Judge Richey: People like you, huh!

Mr. Singer: I think that one of the things that is a problem that Nancy Stanley faces that for a lot of reasons it would be wonderful I think to get young litigators to serve as mediators.

Judge Richey: They would have to be trained.

Mr. Singer: They would be trained. They won't be born with good judgment and all of the things that go with gray hair, but they would, I think, if they were put in the role of being responsible, independently responsible for trying to bring their peers, their peer group to a little reality therapy on what's likely to happen in trials and what the costs are that the clients are going to be required to bear, that they themselves might be better lawyers for it in terms of counseling their own clients. That peroration doesn't come with guarantees, but that's my sense, that if some of the people who have been so well trained as military tacticians, as warriors in the pits, and they really are good and all that stuff that runs the bill up and does not necessarily achieve better results. If you took all that talent and you aimed it in a somewhat different direction, I think we would make better lawyers out of those people. Better in the sense that they would be

giving their clients, at an earlier stage, much more realistic assessments of outcomes and the costs associated with those outcomes. And in particular, the opportunity costs.

Judge Richey: That's right. But let me tell you something, Dan. If you're young and you start telling clients that you've got this weakness and that weakness with your case and the other side has got this strength and that strength, you're going in as a hog and you're going to come out as a sausage; the only one who is going to benefit is me and therefore we ought to try to get together with the other side and resolve it. You aren't going to have very many clients. There was a lawyer in this town who is now deceased. I used to watch him, he tried many cases before me and I really never have figured out, or could figure out, what it was that was the basis for his success. Finally, somebody told me, "But Judge, it's not as complex as you think. He tells his clients what they want to hear." You get that -- I'll repeat it. This lawyer now deceased told his clients what they wanted to hear. He didn't attempt to evaluate their claims. He'd come into a court, my court with his darn calendar and it would take eight months or maybe a year before I could get a free date to bring him and his client to trial. Maybe a year and a half. Or he would try to tell me. I resented it; I didn't think it was fair; there were other people in his law firm, but they would try to tie your hands and he would tell all his clients that "we're going to get them" and "they're no good" and appeal to their basest emotions. But he was very successful as a lawyer. Got a lot of business.

Mr. Singer: That's the measure of success.

Judge Richey: Well, if that's the measure of success, it is. Yeah. He was successful. In my view, he was not.

Mr. Singer: Course I suppose one question is, would the client come back the next time?

Judge Richey: To him, yes. They would. Provided what you're saying that young lawyers should be trained to do. Nope. You're not going to be a very good rainmaker for a law firm. That's not what appeals to litigants.

Mr. Singer: We've got serious structural problems in the profession.

Judge Richey: If that's what you're talking about. That's what it comes down to. Hell, yes. Of course. There is a tension there. Clients like somebody who is going to be vigorous in their advocacy. One person that's got a pretty good vision of this, understanding of it, is Jacob Stein. And...

Mr. Singer: I should go talk to Jake. I wonder if whoever did the interviews with Jake has tapped into this area of his experience.

Judge Richey: I don't know whether they've done an interview of Jake. They should.

Mr. Singer: He's on the list, I know that.

Judge Richey: Well, he's one of the most marvelous experienced persons at the Bar in this city. He really is -- a man for all seasons. Truly a Renaissance person.

Mr. Singer: (Laughter)

Judge Richey: Well, you laugh. But...

Mr. Singer: I don't laugh because... I laugh because I know him. And we once engaged in... He was in 1700 K Street for a brief period of time. That's where we were before 1970. In '71 we moved to the Watergate. But before that we were 1700 K Street and Jake was before Stein, Mezines.

Judge Richey: That's where the firm started while he was still on K Street.

Mr. Singer: Right. And, he was all alone at that point. We had some talks with him and it didn't work out, much to our loss more than his surely. But he used to write a column for the Bar Journal.

Judge Richey: *The Spectator*.

Mr. Singer: Yeah. And one of the columns was about an examination of the trash...kind of the fourth class mail that he'd gotten in the preceding month and how many copies of each one of these things he'd gotten. It was hilarious, it was literate, it was as good as it gets in a Bar Journal for sure.

Judge Richey: He's a genius.

Mr. Singer: Very good lawyer. Very.

Judge Richey: You know, when he comes to court he uses recipe cards. He doesn't use a yellow pad. He writes down "801D6 or D17" and if there's a bench conference that's all he says.

Mr. Singer: Telling jokes by the numbers.

Judge Richey: He and Paul Rothstein, a professor over at Georgetown whom you see on television commentary from time to time, they did a race to see who could memorize the Federal Rules of Evidence when they first came out. I don't know which one won, but he's always doing unique esoteric things. His whole life is just wonderful. You should have been a couple of years ago hidden behind a chair in my dining room. Frank Morrison, his lawyer wife Kathy and Jake Stein and Mary and me, my wife, and Jake and I got started. We talked about the whole history of the Bar in our younger days in the fifties and sixties.

Mr. Singer: I should have had my machine there.

Judge Richey: You should have. Frank calls me all the time. When are you and Jake going to get a tape recorder -- put all this stuff down like "How to prove a prima facie case, how to prove a prima facie defense.

Mr. Singer: You could sell that. You could make a lot of money.

Judge Richey: Well, those were the kinds of... Who cares?

Mr. Singer: [Laughter]

Judge Richey: But those were the kinds of things -- well, they are still, that young lawyers don't know about. But that what we used to learn how to prove a claim or a defense in court. I'll bet you don't even know about them.

Mr. Singer: Look, I never... The only place I ever really was a litigator was during my tours in Mississippi. Other than that, I am the prototypical office lawyer. I'm a guy who thinks if something gets to court I must have failed badly some place.

Judge Richey: Well, that isn't necessarily true. But, there's some merit, not in your case, but there is some merit to that. Jake's done it all. He's a very crafty, able, office lawyer but he's also good in court.

Mr. Singer: My long suit was drafting all those documents, leases and mortgages and contracts and getting people, usually more than two people, to sign the same piece of paper. I was lead counsel for the developers of Watergate and all those negotiations and also for Springfield Mall.

Judge Richey: I see.

Mr. Singer: That is what I did mostly was real estate development, acting for what I used to call the poor side of the deal, the developer. And, fortunately, there were

people in the firm who found very large clients who were poor in the sense that they were borrowers. And, I used to make those deals go and I loved it. I loved battling with the insurance companies, their lending mortgage loan officers, and the banks for interim financing and tenants, and most of the time when we acted in leases we were acting as tenants. But I thought it was great.

Judge Richey: I didn't do much of that kind of work until near the end of my career. Again, I come back to it what I think I mentioned to you that had a big impact in my life was Jake Ehrlich's book entitled, *Never Plead Guilty*. A young Jewish boy who grew up in Rockville, Maryland and he knew he couldn't represent General Motors or the Du Ponts so he went to San Francisco and became a trial lawyer, personal injury field and ended up a millionaire. His brother Myron stayed here as a criminal defense lawyer and became very successful. But that book had a big impact on me because I knew, coming from a modest background in the Midwest where you didn't know anybody and the odds of my representing General Motors was nil at that stage of my career. And so, as I say, that book had a big impact on me. I wish I still had it. I loaned it to somebody and I don't even know where it is now.

Mr. Singer: That's what happens to the best books. [Laughter]

Judge Richey: It does.

Mr. Singer: It's very aggravating. I know exactly what you mean.

Judge Richey: There's a fellow named Alan Barth that wrote a book, *Dissents that Became Law*. I've got to get that book because... I have it at home...

Mr. Singer: I think his wife is still around town, isn't she? Adrienne?

Judge Richey: I think she is. I want to get it because I promised it to Judge Pat Wald and I have not delivered on it and they're just about to go on a trip to Egypt. I don't know why anybody would want to go to Egypt but she...

Mr. Singer: Oh, I'd want to go to Egypt...

Judge Richey: Well. That's ridiculous.

Mr. Singer: Well, it depends on where else they would go.

Judge Richey: A friend of mine went to Egypt about fifteen years ago and he fell down at a pyramid and ended up in an Egyptian hospital and had to have a blood transfusion...

Mr. Singer: That I would not do. I'd sooner come home.

Judge Richey: Well, he was in such distress that he couldn't. He's a paraplegic today -- a great man...

Mr. Singer: That's really serious. They're probably going to Romania. Probably Bob has got...

Judge Richey: They're going to Egypt. Judge Cacheris, the father of my law clerk, he's over there now, -- or just got back. Bob is going sometime this year, I gather by implication, a few months hence but they told me -- I just forgot. But -- oh, well -- where...

Mr. Singer: I'm going to turn the machine off in a minute...

Judge Richey: All right, sir.

Mr. Singer: And, I have talked to Jeff, your clerk.

Judge Richey: Oh, yes.

Mr. Singer: And he said we can go again on Friday from 4:00 to 6:00.

Judge Richey: Well, whatever he said. I don't know. I'm a prisoner of my staff.

Mr. Singer: I see. And then again...

Judge Richey: Is that this week?

Mr. Singer: The 12th. Yes.

Judge Richey: OK.

Mr. Singer: And then on Tuesday the 16th again.

Judge Richey: I see your name down here. It's already. OK.

Mr. Singer: And Tuesday the 16th from 3:00 to 5:00.

Judge Richey: OK.

Mr. Singer: And maybe on the second of those, on the 16th, we can...

Judge Richey: That's my birthday!

Mr. Singer: Well, OK...

Judge Richey: No. No. Wait a minute. I'm thinking of October. No this is the 16th of May you're talking about. Yeah. No, it isn't.

Mr. Singer: At that point maybe we can sit down and lean over those magnificent scrapbooks and talk about...

Judge Richey: Oh, in there. Yes. They are in the robing room. There are 13 of them. I think.

Mr. Singer: Some of the... particularly the early cases. Or the cases that really stressed you, stretched you, angered you, forced you to your limits. OK, I'm going to turn this off.

Judge Richey: Yeah. Albacane and what do you call it, cortisone, I guess did the trick. Even though the X-rays showed there was some kind of foreign thing

underneath the patella.

Mr. Singer: Oh, really.

Judge Richey: And I guess a lot of people have, they must, I obviously have had it for a while, but boy, oh boy, it was painful. Didn't do anything to it except stick a little particular little thing and I'm not even sure he stuck me 'cause I didn't feel it.

Mr. Singer: [Laughter] He sounds like he knows what he's doing. Last time we sat together, I think it was the last time, I asked you whether you had sat on the Court of Appeals here.

Judge Richey: Many, many times.

Mr. Singer: By designation, you've done it a lot and you didn't particularly find it an uplifting...

Judge Richey: I did in the beginning, but as the years went by, up through 1985 when the membership of the court changed, I found it was not a pleasant experience for me and that I enjoyed being a trial judge much more where I made my own decisions.

Mr. Singer: Right. You didn't have to discuss it with anybody but your family and your law clerks.

Judge Richey: Well, I don't even discuss my decisions with my family. I usually make them right here within the confines of this room or in the car or, the funny thing, as the years go by you change. At least I've found that I have changed. I used to be down in the courthouse by 8:00 in the morning or maybe 7:30 or 7:00. Early. Now I'm finding I'm just the reverse. I still get up early but I don't

like to come to work as early as I used to. I don't move as fast in the morning but I stay later -- 7:30 or 8:00.

Mr. Singer: Do you think that's a function of how many people are at home waiting for you?

Judge Richey: No. I think it's a function of age. I've got a lovely wife. I like to see her, but...

Mr. Singer: No, I meant that if there are children that are at home.

Judge Richey: Well, it may be in part that. But, really, I think it's just a function of age primarily.

Mr. Singer: Have you sat by assignment or designation outside of the District of Columbia?

Judge Richey: Yes. As a district judge.

Mr. Singer: As district judge.

Judge Richey: Los Angeles. Tallahassee. The only two places. But, boy, they were enormous cases.

Mr. Singer: What were they?

Judge Richey: Oh, the one down in Tallahassee. All the judges of the Fifth Circuit recused themselves. It was a massive drug conspiracy in the early seventies involving the son-in-law as a principal defendant of the late Judge Harrold Carswell.

Mr. Singer: A man who had his own problems.

Judge Richey: And he had sat on that court for thirteen years in Tallahassee.

Mr. Singer: This was now on the Fifth Circuit, at that point the Fifth Circuit.

Judge Richey: Thank goodness I took my marshal and my law clerk and my own court reporter. One of the good decisions of my life. It just turned out that way because it was kind of a stacked deck. Carswell... the courtroom down there is divided in three parts exactly as our ceremonial courtroom is here. He and his wife and family sat in the center section of the front row leering at the jury all the time and I will never forget the first morning of the trial, the marshal came back to me and said, "Judge, you're going to have a mistrial." Oh, my goodness.

Mr. Singer: This was your own marshal that you...

Judge Richey: Right.

Mr. Singer: So you could rely on his ears.

Judge Richey: I asked, "What's the matter, Ed." And he said, "Well, the jury is in a room right across the hall from the drinking fountain and the Carswells are right there using the drinking fountain and they're going to bump into this jury." I said, "Seal the hall off." And we worked night and day. Took ten days to try the case. I got down there on Thursday night and we finished the motions at 2:00 a.m. on Monday morning. Sat all day Friday, Saturday and Sunday to get ready for trial on Monday morning. I went to bed a little after 2:00 across the block.

Mr. Singer: Let's say by that time you probably didn't have many friends at the Bar in Tallahassee!!

Judge Richey: By the time we got over to that courthouse whom Carswell had appointed from top to bottom were very distressed at his conduct in [garbled] that jury

and he was successful. His son-in-law was acquitted. The others were convicted but, like the judge, he got his just desserts later on in other ways and so did that young man who was the defendant. But it was a bad miscarriage of justice. And it might have even been worse had it not been for my having my own marshal.

Mr. Singer: Did you yourself feel threatened in some way? Discomforted? Nobody was out.

Judge Richey: No. But, you see this indictment was returned in New York, Southern District and there was a motion for a change in venue and I guess the judge up there decided, "Oh, I'll grant it. I'll get rid of another criminal case." And the grounds were that they wanted the jury to visit an abandoned airport near right outside of Tallahassee, wherein the part of the conspiracy showed that the airport from South America someplace was going to land to import this marijuana.

Mr. Singer: Marijuana. All this fuss for marijuana.

Judge Richey: Tons.

Mr. Singer: They didn't grow it locally?

Judge Richey: Well, I don't know. Anyhow, that was the case.

Mr. Singer: And you said you also sat in Los Angeles.

Judge Richey: Um hum. Three weeks. In a criminal case, a major case. Worked night and day there with my own staff. I made a lot of friends. Only judges...

Mr. Singer: That was different.

Judge Richey: The lesson though in going to another district, I guess, is to be very wary of

that for future historians and judges, because you usually get a tough case and a dog case and you better just stay home.

Mr. Singer: I gather you've taken that learning.

Judge Richey: I haven't done it since.

Mr. Singer: Right. Is there an upside though to doing it? Are there advantages?

Judge Richey: I suppose you get to know the other judges, if that's an advantage. But you're usually working so hard and so long, fifteen to twenty hours a day, that's not worth it. And of course I didn't have my family in either case.

Mr. Singer: And how about from the point of view of the court that you're visiting. In other words, I want [?] explore this from sitting here with respect to judges who come to sit here.

Judge Richey: Yes. Well, of course, in Tallahassee, there was only one judge at that time, and he had announced his retirement, early retirement. He was going back to practicing law. He didn't like being a judge. Nice guy.

Mr. Singer: He didn't like the money, or he just didn't like the loneliness, sort of lonely.

Judge Richey: I think it was economic in part. And, he was finishing up when I got there and then the man that was then U.S. attorney, is now the chief judge of that court. I think there are two or three judges there now. But they were all very nice to me and I still see the U.S. attorney who is now chief judge from time to time.

Mr. Singer: Los Angeles must be a whole different ambiance.

Judge Richey: It's a different ambiance but it's not a whole of a lot different than what we have here.

Mr. Singer: You felt more comfortable in Los Angeles than you did in Florida?

Judge Richey: I guess so. I guess so because I wasn't attuned to a place like Tallahassee as much as... Los Angeles is very much like Washington.

Mr. Singer: From the point of view of, I mean, flip it over and say from the point of view of the judge sitting here, are there real advantages for the purposes of just plain curiosity, judicial administration, improvement of the court system that derives from moving judges from place A to place B.

Judge Richey: Well, since that time, the chief justice has changed the rules and I'm not sure I can explain it to you except in this way. Simplistically, if a court is a borrowing court, in other words, if it needs judges from other districts, the judges on that court can't go to another court, can't be assigned to another court. Now, as you know, we have five vacancies for 2 and 1/2 years here and we were a borrowing court. So, therefore, we couldn't go anyplace even if we asked unless we were a senior judge. Then you can do whatever you want, I guess. I don't know. That's what I'm told.

Mr. Singer: You're not a senior judge because you've chosen not to be a senior judge.

Judge Richey: That's right. That's right. I don't have any desire to go in another district. Maybe once in a while... I've often thought, "Well, I might like to go back out to Ohio and sit once or twice." I might like to go to Baltimore.

Mr. Singer: Well, then you're really not going anyplace. I mean you are just visiting with other friends. But, do you see any advantage to the...

Judge Richey: To the system? Not really.

Mr. Singer: Not really.

Judge Richey: Oh, over the last two years when we've had visiting judges here, we just were so overladen with work. I've found that in every case, I was giving them instructions, telling them how to rule on evidentiary questions and all... I just had to...

Mr. Singer: That's a little much, isn't it?

Judge Richey: Well, fact is, it's true. You've asked me and I'm going to tell you.

Mr. Singer: No. I mean, but...but that's pretty surprising.

Judge Richey: They weren't my cases but nevertheless, the word gets around that Richey's the one that's got all the stuff and he knows, so...

Mr. Singer: And that people would come to you and ask these questions. But they are the type of questions which I gather you think they should've known the answers to pretty easily.

Judge Richey: In many instances. Not all. Many instances. But, they were very, very helpful. My goodness gracious. We couldn't have got along without them. We had them from Hawaii and California and North Dakota, you name it.

Mr. Singer: But that's because they're just processing stuff.

Judge Richey: Right.

Mr. Singer: Not because...

Judge Richey: They were trying cases.

Mr. Singer: Right. Not because there's any interchange at lunch of significance or...

Judge Richey: Not of any significance. We have a rule in our dining room, you don't bring books up there. It's all kind of weird, but no word ever spoken there is repeated outside, that kind of stuff.

Mr. Singer: That's OK. It's like a fraternity. But, but the [laughter], but in terms of there being any significant, either social or other kinds of cross fertilization...

Judge Richey: Not much.

Mr. Singer: You're shaking your head, "No" with some kind...

Judge Richey: That's correct. You get that, or I've gotten that over the years through judicial workshops because I've been invited to be a lecturer, faculty member, teaching other judges.

Mr. Singer: Right.

Judge Richey: Therefore, I've had to interchange with ideas and so on and in addition, I've been invited three times to speak to the panel on complex and multi-district litigation; they have a special corps, transferee judgment, a lot of interaction there. Well, other workshops and conferences around the country.

Mr. Singer: And you think that's much more valuable than...

Judge Richey: Oh, absolutely. The National Conference of Federal Trial Judges which I chaired. Went through all the chairs and that was enormously helpful with the panorama of evenly disbursed judges from all around the country. Gerry Gesell used to say it was a waste of time, but he didn't realize how much I was...

Mr. Singer: He thought it was a waste of time, the...

Judge Richey: ... to go to the ABA meetings, and so forth and also Judge Tamm even sometimes would imply that there was some impropriety of judges participating in the ABA, but Judge Frank Kaufman of Baltimore and I thought it was appropriate to... I don't know what it is today. I spent twelve

years doing that and I know I'm a better judge for it because I have more ideas. Also able to sell some of my own.

Mr. Singer: I was waiting for that. [Laughter]

Judge Richey: Also able to sell some of my own.

Mr. Singer: That there would be a certain amount of either proselytizing or propagandizing whatever you want to call it that...

Judge Richey: Yes. There is. My oath, my two juries, anonymous sequestered juries, all kinds of innovations.

Mr. Singer: And you have the opportunity essentially to sell those ideas to others.

Judge Richey: Right. And I've done it. Direct testimony in written narrative form, like you try regulatory cases...

Mr. Singer: I insist on that in arbitration cases when I sit as an arbitrator.

Judge Richey: Well, you do. And you find it works, doesn't it?

Mr. Singer: Absolutely. You know, once the lawyers get over the shock...

Judge Richey: Right. [Laughter] Right.

Mr. Singer: And, once they realize you're serious and you're really testing their laziness which is substantial.

Judge Richey: Substantial.

Mr. Singer: Yes.

Judge Richey: I want to say some. That brings to mind and I think something ought to be noted. You know, the legal profession, which includes judges, is based on history and precedent right or wrong. But that doesn't... just because it's always been done in such a way doesn't make that always right. When

somebody comes along that's got a new or innovative idea, there's a natural resistance. Just a very, very vigorous resistance, but it takes courage to inaugurate change, particularly in the law and I think lawyers and judges are probably the most resistant to change of any part of human kind. And I think that's unfortunate.

Mr. Singer: It's interesting that the word "laziness" that I used clearly, it may be...

Judge Richey: That may be part of it, but in fact I wrote it in 1983 in the *Georgetown Law Journal* my reasons why written direct testimony in narrative form for all witnesses within the control of each calling party, plaintiff or defendant in civil cases, was appropriate and proper. I've done it with bench trials and in jury trials and it works like a charm. But as you say, lawyers are not used to that or weren't in the beginning, many of them, not the majority, trial lawyers have never tried the regulatory case, they don't know how it works

Mr. Singer: At what point do you share...

Judge Richey: And they say "No, No, No, No"...

Mr. Singer: At what point do you require, if at all, the offering counsel share the written testimony with...

Judge Richey: Seven days in advance of trial. They'd have five days to go over their evidentiary objections if any and resolve them. Then they file the final version with me.

Mr. Singer: They share that version with the jury?

Judge Richey: No. What the jury gets is what the court decides is appropriate and proper or the lawyers themselves will work that out.

Mr. Singer: Do you push it? I said do you push handing the testimony to the...

Judge Richey: Do I push doing this? Yes.

Mr. Singer: I mean so that the lawyers will be encouraged to agree to hand the written testimony...

Judge Richey: Oh, yes, yes. I've got a standard form order that requires it. I also... another innovation I've started was to, in bench trials, underline those portions of the findings of fact, proposed findings of fact, which you dispute. After a meet-and-confer conference. Put in brackets that which you admit but deem irrelevant. Leave blank that which you admit but deem irrelevant. When you get both sides, after this is done, proposed findings you will find, Dan Singer, that the lawyers have agreed on half the case. So you've only got fifty percent of it to try.

Mr. Singer: Actually, it's been my experience as an arbitrator.

Judge Richey: Sure. So, therefore, when they start going over name and address and a lot of gobbledygook, it's already admitted. "Counsel, I've heard that. That's already admitted. I've read the proposed findings."

Mr. Singer: You say that's only in bench trial.

Judge Richey: Well, proposed findings of fact. That's the only time you have to make them under Rule 52A.

Mr. Singer: But in terms of getting the testimony, the canned testimony if you will, the direct testimony.

Judge Richey: Those are for juries. And I also use them in bench trials too.

Mr. Singer: Oh, yeah. I would think so.

Judge Richey: And I read them in advance and my law clerks put them in books with an index, Joe Zilch, Joe Smith, John Doe. Works very well.

Mr. Singer: Do you sense that that allows you to process more business or just to process it better?

Judge Richey: Both.

Mr. Singer: Both.

Judge Richey: No question about it. And the lawyers, once they go through it, will come back to me without exception and say, "Judge, I hated it in the beginning but it really works."

Mr. Singer: Have you got any converts among your colleagues?

Judge Richey: I think a couple have done it on occasion but not regularly. I do it in all cases.

Mr. Singer: How about in other places?

Judge Richey: Yes. Lots of them.

Mr. Singer: You said you'd be a missionary out of this circuit when you're...

Judge Richey: That's right. When you're at home. You know you are not a king in your own home but you may be in other places.

Mr. Singer: But you're a king. Well, OK.

Judge Richey: Whatever that expression is. I don't remember what it is.

Mr. Singer: [Laughter] Right. Just...

Judge Richey: But, yes. All through the northwest, the southwest, they're doing canned testimony now. I met a woman named Cabraser from San Francisco. Where did I meet her? Someplace on the lecture circuit recently. And this

came up. And she said, "Well, you know, I tried a case just exactly like that before Judge Manuel Real who was then chief judge of your court in Los Angeles and he required that and he didn't put up with any guff." And you know, she said, "Judge, it really worked." I said, "Well, Manny got the order from me."

Mr. Singer: So your order has gotten a large of currency but not on the...

Judge Richey: Well, it's been approved by the Ninth Circuit. Magistrate judge uses it out there and it was appealed -- approved... A bankruptcy judge, not a magistrate judge.

Mr. Singer: Actually, it occurred to me as I came over today to ask whether these had always been your chambers since day 1 or whether you...

Judge Richey: No.

Mr. Singer: You've moved around within...

Judge Richey: These were the chambers of Judge Richmond Keech whom you may recall was…

Mr. Singer: I do.

Judge Richey: …Corporation Counsel and also administrative assistant to President Harry S. Truman.

Mr. Singer: That I didn't know.

Judge Richey: Right. Wonderful man. But, when I first came here and until I came to this chambers, I was down there where the Circuit Executive is now. When I first came, there were two rooms for the Circuit Executive and his secretary, Judge June Green, myself. A few months later, Judge Thomas Flannery, and

then Burnita Matthews, who was the senior judge back then.

Mr. Singer: You were not all on the fourth floor here.

Judge Richey: Right down there where the Circuit Executive is now.

Mr. Singer: Oh, all of...

Judge Richey: All of us.

Mr. Singer: In that... I see. The Circuit Executive's got quite an empire at this point.

Judge Richey: Oh, yes. No question. My courtroom was on the first floor where the bankruptcy judge now sits and we had two special courtrooms which I designed on the third floor which is now occupied by the library. One day I came in and somebody told me they were gone. Which is sad because we could use them now.

Mr. Singer: Special courtrooms for what purpose?

Judge Richey: Trial judges. We had an elevator from the cell block and everything else. They were smaller like the one on the first floor where the bankruptcy judge sits. But very intimate and marvelous. I enjoyed it.

Mr. Singer: I see. So, they were special only because they were smaller. They were not standard, magnificent courtroom size.

Judge Richey: We could use them now because we've got judges running all over the building. We don't have enough courtrooms to go with chambers.

Mr. Singer: As you look back from now, have you got any thoughts on life tenure as to how important that really is, assuming you behave yourself.

Judge Richey: I think life tenure is absolutely essential.

Mr. Singer: Would you see it in your own... I mean, do you ask yourself at some point.

"If I had to run again in ten years for this job, would I be doing it this way?"

Judge Richey: I don't ask myself because I don't have to. But, I think and I've read the literature about it and it's legion in the judicial literature. But this does have an effect on state court judges. Say in the state of Ohio, the nisi prius court judges, trial court judges of general jurisdiction have to be elected every six years, some of them it's four years in other states.

Mr. Singer: Fourteen, I guess in New York

Judge Richey: Fourteen in New York. Fifteen in Maryland. I think in Maryland you can get retirement after fifteen years regardless of your age. But, say in the state of Ohio, I don't think you are unless you get X years of service and X age. That's not wholesome. Members of the supreme courts of the states, limited terms, many of them. Six years, and so on.

Mr. Singer: Do you....have you got any data that really tell you that?

Judge Richey: Oh, yes. The American Judicature Society. The literature is full of this.

Mr. Singer: But it's not just anecdotal?

Judge Richey: No. No. No. No. Well, part of it is anecdotal, but they have interviewed judges and lawyers around the country. There's a woman that's head of it. I've forgotten her name. Frances somebody. She can tell you all about that. But, on the other hand, let me tell you something that was very interesting. I saw an interview on one of the talk shows with former Senator Mitchell of Maine. He was majority leader. Question: What do you think of term limits? I don't like them. Is it going to happen? Probably will. And he said, "You know, it's also going to happen to federal

judges of which I used to be one." That was Senator George Mitchell's prediction.

Mr. Singer: Kind of over the shoulder. Did he go on to...

Judge Richey: That was the end of the discussion. But, I really don't understand it. It think it's the stupidest idea that I've heard of in years to have term limits for legislators and so on because I know from long experience in Washington that there is a great value in institutional memory. Not only on the Hill but in the Judiciary. But, that has less currency out among the people in the states and politically, I think that movement that started about term limits is gaining a lot of credibility. That doesn't mean it's right.

Mr. Singer: One of the arguments that struck me as really very compelling derives from the notion of institutional memory and that is if you have serious term limits, as they say, reasonably short ones, it's like turning the government over to the staff. The legislative process...

Judge Richey: You couldn't be more right. Have you ever gone... I'll tell you what you do to prove that. Go up to the Senate, go to one of the office buildings as the Senators are boarding the elevator, I mean the train, going to the floor to vote and then have two or three staff persons on both sides of them tugging at their coat tails, telling them about this and about that, and they can't possibly do it except by ear. It's kind of like learning "ear law". That's bad. Same as it is bad to have armies of staff counsel with the law clerks making law. Judges ought to do that. Legislators ought to make their own decisions. That's why I have trouble with... I think Justice Scalia is right about legislative

history. Justice Scalia is right on that. Give him his due, Dan. He doesn't believe in legislative history, committee reports, debates on the floor and...

Mr. Singer: Because they're too easy to manipulate?

Judge Richey: Because they're a product of staff. They're not a product of the members' enlightened decision. That's the truth. I remember as a young lawyer, I won a labor case in the Eighth Circuit once because I arranged a colloquy for them between the late Senator Taft and Claude Pepper of Florida when he was in the United States Senate and based on the colloquy which I wrote, the questions and the answers to, I won the case. You couldn't do that again, today. That practice has been outlawed or overruled. But...

Mr. Singer: Feeding questions to a committee chairman...

Judge Richey: Oh, well that's done all the time and some judges will pay attention to that to discern the legislative history. But that's staff or lobbyist and special interest group stuff.

Mr. Singer: Have you found, or are you aware that law clerks in particular and also Senatorial Congressional staff still performing in the way that they did when I was a law clerk which is frequently one would listen and one of the other judges law clerks would say, "We're voting to reverse."

Judge Richey: A law clerk?

Mr. Singer: [Laughter] Yes.

Judge Richey: In the presence of the judges?

Mr. Singer: Oh no.

Judge Richey: Oh well, OK.

Mr. Singer: We're voting to reverse. It's not that the judges...or the same happens... I remember hearing and going to just cocktail parties with friends and contemporaries who were working on the Hill. Well, we're just going to vote against that.

Judge Richey: That's probably more true in the legislative sense. I've never heard that in law clerk lexicon. But, I wouldn't be surprised. There is one judge, senior of long tenure in the Court of Appeals now who won't let his law clerks have any conversation with any other law clerks. That's taboo. They're not to do it. They're not to talk to other law clerks or other judges.

Mr. Singer: This is a judge presently sitting?

Judge Richey: Yes. That's his rule.

Mr. Singer: What's [garbled?]

Judge Richey: I don't know what the rule is. Confidentially and all that stuff, but, except for that one, I suppose what you just said does go on. I don't know. There was only one judge that allowed the law clerks to participate in conferences since I've been here in the last quarter of a century.

Mr. Singer: It was the great part of being a motions clerk which was then called the motions clerk on the Court of Appeals.

Judge Richey: You told me about that. And the only judge that would allow law clerks was Judge Leventhal. Although the other day, I'm sitting on a 3-judge Voting Rights Act case and the Circuit Judge invited the law clerks of the two district judges to come along. Big long record, I suppose he wanted to make the law clerks do that part. I was the only one there really familiar with the record.

Mr. Singer: What would be the theory behind not allowing an appellate court where there is a necessary interaction at the point of decision, at the point of writing, between the judges and there is however much you may not enjoy it, there is a negotiation...

Judge Richey: No question about it.

Mr. Singer: ...between the judges. It would seem to me that generally the law clerks used to go out instructed in one way or another...

Judge Richey: By their own judges. By their own judges. See whether we can...Is there any way you can think of we can do it this way?

Mr. Singer: Yeah.

Judge Richey: Is there any precedent for doing it this way? That kind of thing. But law clerk to Judge X to go to Judge Y's law clerk and lobby him or her, I don't know whether that takes place or not. It never did to my knowledge.

Mr. Singer: Oh, Bazelon's clerks. I don't know if you remember a guy named Harold Unger?

Judge Richey: Oh, yes. I knew Harold very well.

Mr. Singer: [Laughter]

Judge Richey: He also appeared before me.

Mr. Singer: I'm sure he did.

Judge Richey: Harold was good.

Mr. Singer: Absolutely. But Harold was a master at this, I mean, he used to come over and practically break your arm and it would most often be in the context of, you know, if you go that way you're going to lose my judge on this. He

really feels strongly. Or at least modify the language so that he's not precluded in the next case from...

Judge Richey: Exactly. And they did that.

Mr. Singer: Sure.

Judge Richey: And his law clerks were picked with that kind of ability in mind too. You don't have to kid me because I know he did it.

Mr. Singer: Sure he did. Harold was quite, see Harold, when he was...

Judge Richey: Harold Leventhal?

Mr. Singer: No. Harold Unger. When Unger was a clerk, he was much our senior and in some sense he was clerking for Bazelon when I was clerking for Washington. And Harold would come tootling around and Harold was at least ten years older than I was, he had been out in practice and there was a certain panache and style he had that I couldn't hope to achieve at that point and he was also very smart and...

Judge Richey: All of that.

Mr. Singer: And, he did make sense frequently and there were ways to accommodate.

Judge Richey: And he also was kind of intimidating.

Mr. Singer: Yeah. He had that about him. That's the mantle he wore from the judge. The judge certainly blessed him in that regard, but he didn't do it only with...

Judge Richey: But in later years. After Unger left, when I started, was working with David. It was really direct between me and David. When Joel Klein, who's down in the White House Counsel's Office...

Mr. Singer: He just left to go to the...

Judge Richey: I know. He's over in Justice now, but essentially two years in the counsel's office, I think.

Mr. Singer: Right.

Judge Richey: I remember when Joel was David's clerk. He was a wonderful polite guy. He never did any advocacy for David, I think, at least with me.

Mr. Singer: Yeah. Different strokes for different folks.

Judge Richey: Yeah. He probably knew he didn't have to. He didn't have to. He acted as a messenger. Here's what the judge thinks. Let me leave this memorandum with you, or something like that.

Mr. Singer: Yeah. But when he would visit with your clerk...

Judge Richey: I don't know whether they visited with my clerks or not. I always kept that secret even from my colleagues. They're not supposed to tell the Bar or whether they're working on a case or not.

Mr. Singer: That's for sure. I'm sorry but. Maybe we're talking cross purposes, huh? My experience was that the clerks would try to help the decision process along by exploring...

Judge Richey: Different alternatives to reach a given result.

Mr. Singer: Right. And I don't think they would be in...

Judge Richey: But they did that with their own individual judges, but with other chambers, I don't know.

Mr. Singer: Yeah.

Judge Richey: I know in one case it is not done. In other cases it may be done. I don't know.

Mr. Singer: I sense on the Supreme Court, it is done all the time.

Judge Richey: Oh, yeah. Yeah. That's what I hear.

Mr. Singer: That's what I hear from people who were there.

Judge Richey: Correct.

Mr. Singer: Not as judges but as clerks.

Judge Richey: Well, I've heard it from both.

Mr. Singer: On one of our earlier tapes, you said something like, "Your interests blossom when you go onto the court." You were talking about what the difference was when you've practiced and then went to the court. Let's explore that a little bit because it's I think an interesting notion that both a commentary on the way lawyers in fact practice law when they are practitioners. The way people change when they have, as we've already chatted about, the benefit. Well, I'd ask you the question. To what extent is the fact of life tenure something that encourages or permits or makes comfortable this blossoming you talk about and what is the blossoming?

Judge Richey: Well I think even to be a United States District Judge, you are at the pinnacle of your profession. I think the decisions that district judges make day in and day out, if the facts were known, 85 to 90 percent are never appealed.

Mr. Singer: That's for sure.

Judge Richey: And I have awesome power and awesome responsibility. You can't say one without the other. My wife tells me, to digress only for a moment, that I'm a different human being here at the courthouse, whether I'm on the bench or not, than I am at home. And she doesn't really like me around here. I don't

notice that I'm different but she tells me I am. And, she may very well be right, because to be kind of like Judge Holtzoff I think this is a temple where the most important business of the nation is conducted. And, I think that is a weighty responsibility, particularly if you are sensitive about human rights and advancing the cause of justice and civil rights and all those things. It requires every ounce of ability and energy and innovation. Everything at your command to do it and do it right. Fairly. One of my law clerks came in a couple of years ago and sat at my conference table across this room and said, "Judge, I've finally got you figured out." I said, "What's that, Martin?" He's now with Williams and Connolly. And he said, "Well, there's only one way to say it. Is it fundamentally fair? If it is, that's the side you're going to rule in favor of. If it's not, get out of here." And I think that pretty well sums me up.

Mr. Singer: Actually, David Bazelon wrote at some length.

Judge Richey: He did?

Mr. Singer: The notions of fundamental fairness. That this was his view of the scope of the Fifth Amendment. That's what due process, I mean that's...He really defined it in those terms for...

Judge Richey: Well, for a youngster to come in say that to me without any reason or possible benefit to him. I thought that was very interesting because I think that sums myself up pretty well. Is it fundamentally fair? If it isn't, too bad. If it is and I can figure out a way to justify it, I'll do it. Now there is a matter of process in all this. Appellate judges don't have to worry about it but we do.

Mr. Singer: Yeah. You just have to write about it from time to time but they don't have to worry about it in the immediate sense.

Judge Richey: Well, we have to know it and we have to apply it in order to achieve the end result. Now we have a judge, a good judge that you know on this court who could care less about the process. How do you get from A to Z? He knows Z is the right answer. But he gets messed up almost every other case because he doesn't care or even want to know about the rules and the process. And I learned from Trow vom Baur in my very early days that the rules of procedure are probably the most important thing in the law. And then I later met Arthur T. Vanderbilt, modern day court reformer from New Jersey, founded NYU law school and I had a long visit with him. I've attended a lecture by him. He said the best lawyers are the generalists, not the specialists.

Mr. Singer: He'd be a very unhappy man today.

Judge Richey: No, he wouldn't. Well, he might be, but nevertheless, I want to tell you something, Dan. Whether you know it or like it, I don't care. He was right then and he's right now. I made most of my living practicing law on the mistakes of the so-called specialists where a disgruntled client had their rights either compromised because the so-called specialist didn't know and understand the anatomy of the litigation process. And, I do. I not only understand that, but I also understand the strands of constitutional principles, administrative law principles, those kinds of things, constitutional law, conflicts, and so on. The whole panorama. Appellate justices don't have to know about that except in a generalized way.

Mr. Singer: They would think they would know about it, surely. It's...

Judge Richey: I know a woman law clerk who is now with a major law firm here and I remember one time when she and her colleague, another woman, both brilliant, genius qualities, were visiting about something and something came up about the Courts of Appeals, and she said, "Oh, Judge, they make policy, they don't make law." And I said, "Dana, you are more right than you realize at your young age." It really is true, really is true. I've been here and a big part of it.

Mr. Singer: Jerome Frank would surely have appreciated that.

Judge Richey: 'Course. You know who his law clerk was?

Mr. Singer: Oh sure. That's where I first met a lady named Patty McGowan.

Judge Richey: That's right.

Mr. Singer: She was...

Judge Richey: You know what Judge McKinnon said about her?

Mr. Singer: No.

Judge Richey: The best chief judge this circuit has had in twenty-five years.

Mr. Singer: I'm trying to think about when Henry Edgerton left.

Judge Richey: Before that.

Mr. Singer: Since Barrett Prettyman.

Judge Richey: I don't know. He didn't say since. He said in the last twenty-five years. He said it very recently.

Mr. Singer: Pat is...

Judge Richey: I don't know how... I've watched her in meetings be brutalized, I thought.

Very unfairly and I wish I had her, I don't need it, but I wish I had her ability to put up with that stuff and deal with it effectively. She is absolutely par excellence. You have no idea, Dan, unless you've seen her under fire, and I doubt if you have.

Mr. Singer: No. I haven't. The only time I saw her was when I was a first year student at Yale and she was Jerome Frank's law clerk and she was working on the Rosenberg case.

Judge Richey: Well, she's some kind of fantastic.

Mr. Singer: [Laughter]

Judge Richey: She is some kind of... You know, Bob worked on the, her husband, worked on the Rosenberg case at the trial court level.

Mr. Singer: I didn't know that.

Judge Richey: Yes.

Mr. Singer: Let's get back to the blossoming of interests, that comment.

Judge Richey: It's just, I don't know, when you get to here at the pinnacle of the profession, as I said a moment ago, you feel that you've arrived, but along with it, as I said, you have a heavy responsibility. And it's not an easy task. It's the hardest work involving the most intense form of concentration. The lawyers simply cannot accept or understand until they have been put in that position. I didn't really realize it until ten or fifteen years ago I talked to a lawyer out in Silver Spring, their office is in Washington, but he was in his Silver Spring office one day and I asked him about a judge who had been Chief Judge for the Circuit Court for Montgomery County and he had joined their firm as a

consultant and I said, "How's he getting along?" It is - was like duck soup according to him. I said, "What's he doing?" Oh, he's consulting with us. Helping us with our appeals and so forth.

Judge Richey: Being a trial judge involves the most intensive form of concentration known to human kind. He said, "I never realized that. But you have no idea when you've got twelve, fifteen lawyers, with maybe three or four sides in your courtroom in a case of national significance, you just have... until you've been there and have the responsibility to manage it, develop a record and then make a decision, is very, very hard, and you're.. It's like running a small law firm with two inexperienced associates right out of school, don't know anything very much...

Mr. Singer: But you used the word blossoming as...

Judge Richey: I did? Well, you kind of blossom...

Mr. Singer: I used it now but you had used it in…

Judge Richey: …another context?

Mr. Singer: No. Just this context. We talked about going on the court and what that meant and you used this word "blossoming" to describe that. And what you've described doesn't match my definition of blossoming and what I wondered when I thought back on that was whether the fact that you have been essentially relieved of the obligation to respond to the demands of clients allows you to view a problem other than in the kind of framework of advocacy and if that helps...

Judge Richey: That is a great relief and that's correct. It does.

Mr. Singer: Is this what you meant by blossoming? Or did it allow you to read more widely?

Judge Richey: In part. In part. But you're more independent. You have the opportunity to develop a record. Then, as I said, to make a decision. That's certainly blossoming.

Mr. Singer: What about the things you read? Were they kind of different? The things you were reading when you were in practice from the things you came to choose to read as a judge? Both recreational and professional.

Judge Richey: I must say this. I don't read anything except legal literature and biographies. And if you read all of that, there isn't time for anything else. There simply are not enough hours in the day. My wife fusses at me because I don't read novels. I don't read good literature anymore, really.

Mr. Singer: You said, "anymore". Assuming you did once.

Judge Richey: Yes. Yes.

Mr. Singer: When you were in practice?

Judge Richey: Yes. And when I was growing up as a young man. But if you read all the slip opinions of the Supreme Court, the appellate courts, the trial courts, Law Week, all the ABA journals, goodness knows whatever. See that pile over there now. It's about two and one-half feet high.

Mr. Singer: Right.

Judge Richey: And I have another one like it at home. I'm constantly reading.

Mr. Singer: And all of that is what I'd call or you'd call "legal literature".

Judge Richey: Absolutely. You would too. Anyone would. You read all that and you

don't have time for novels.

Mr. Singer: Yeah. But you have time for "Every Man's Talmud"

Judge Richey: Oh, yes.

Mr. Singer: And Judaism and ecology?

Judge Richey: Pardon?

Mr. Singer: Judaism and ecology?

Judge Richey: Oh, absolutely. I apologize to you. That's the exception. I study that regularly. Not as good as Eddie Weinfeld, but I'd like to be. I'd like to be. He's my idol.

Mr. Singer: And is it fair to say that he was in the eyes of most judges, probably the best U.S. District Judge.

Judge Richey: Absolutely. In my view he was.

Mr. Singer: Yeah. My sense from talking with others is that that's kind of who he was. He was the best District Judge in the country.

Judge Richey: No question.

Mr. Singer: Yeah.

Judge Richey: I'd like to think that someday somebody might say that, a few people, about me.

Mr. Singer: Well, some people have said it.

Judge Richey: Have they?

Mr. Singer: I think so. I've been reading a little bit...

Judge Richey: I hope so because you know, Eddie Weinfeld got to the court

Mr. Singer: Very early.

Judge Richey: Went to bed at night and got up again. All his waking hours were devoted to that temple, as he used to call it. Not an original phrase with me.

Mr. Singer: How did you know him?

Judge Richey: I sought him out and got acquainted with him because of his greatness, his genius.

Mr. Singer: I'm going to bring you a...

Judge Richey: Marvin Frankel was a great judge too, believe it or not. He wasn't of the caliber that Eddie was, but nevertheless, he was a great judge.

Mr. Singer: But he left the bench.

Judge Richey: I know. Unfortunately, it was sad. I think it was because his wife had a lot of money and he wanted to do more, have more freedom. And he's been a successful practitioner since. I appointed him as special master in one case. He did an enormously good job, magnificent job.

Mr. Singer: Look, tell me more about the blossoming.

Judge Richey: Well, I can't tell you anymore than I've already said.

Mr. Singer: All right.

Judge Richey: I'm sorry.

Mr. Singer: No. Because it was an interesting comment and maybe that's all there is to say about it.

Judge Richey: I think that's it. That's all I can think of at the moment.

Mr. Singer: You did mention that when you sit or sat as the trial judge in a large case, a case where it wasn't just A against B.

Judge Richey: Right.

Mr. Singer: But, I gather from the sense of what you were saying is not only were there more than if you were just two parties. There's certainly more than two lawyers. Probably more than two for each party.

Judge Richey: Correct.

Mr. Singer: And a whole lot of people sitting around in an open courtroom being interested who had no other interest in the outcome.

Judge Richey: Exactly.

Mr. Singer: That you found that a real challenge. Can you describe it in the context of a particular case or several cases where this phenomenon comes home to you and says "Wow, I've got all this riding on me!"

Judge Richey: Well, I got a call this morning. I had a person there who is an expert in computers and printers and he was trying to fix my printer.

Mr. Singer: The one here?

Judge Richey: At home.

Mr. Singer: At home.

Judge Richey: My library at home. I didn't have anything on the bench that I knew of this morning because it was by mistake my staff had failed to put it on the calendar. 9:30 there was a call, this gentleman and I hard at work, intensely concentrated on what the heck this problem was and I was told about this case, namely it involves the presidential tapes case and records [?]. And there was a motion to compel the government to live up to its commitment to preserve these hard drives and back up tapes. But they've been essentially destroyed and impaired, not destroyed fully, but impaired when Reagan left

office and some to the same extent when President Bush left office. I made the law that e-mail messages, these electronic messages, had to be saved and preserved for purposes of history and that that was a responsibility of the National Archives and Records Administration. I was told that I had a hearing this morning at 11:00, could I be here? Yes, I'll be there.

Mr. Singer: You didn't break any speed laws, I assume, coming down.

Judge Richey: Well, I was seven minutes late, which I resent.

Mr. Singer: Yeah.

Judge Richey: Because I had to be late, but I couldn't help it. And I don't like that. I think judges should be on time and I think lawyers should be on time. In any event, there are about 17 lawyers that have been working on this case since the days of Ronald Reagan. Same lawyers, doesn't make any difference who's president, whether it's Reagan, Bush, or President Clinton. Same people. And they are all taking the same position. Even though there's a change of administration.

Mr. Singer: These are lawyers who worked on...who are on the government payroll.

Judge Richey: In Justice.

Mr. Singer: In Justice.

Judge Richey: The Federal Programs Branch. I guess that's where, I just learned that, but... And there are a whole host of those seventeen lawyers. Five or six and they've done nothing since 19... whenever Reagan left office. '88.

Mr. Singer: It was...

Judge Richey: Do nothing but work on this case defending the government. Well, I had the

press there. I saw the press sitting out there. It was kind of casual, but my God, there are two press persons every time there is... I should have known that there would be press there but I didn't pay attention to that. I never do. But, I had to go back over orders that had been issued three or four years ago and I really hadn't read any of the papers. But, one of the things I possess, God gave me I guess, was a great memory. And, so I really didn't have to read the papers. I knew what kind of a motion it was, I knew what they wanted, I could tell from their argument. I didn't decide the case in advance because I do look at the papers but I was able to pretty well tell them what...

Mr. Singer: What was the underlying...

Judge Richey: The issue was whether or not the independent expert that was appointed at my behest to do what the expert could do to assist the defendant agency to preserve these records and rejuvenate and restore them.

Mr. Singer: That's a technical job.

Judge Richey: Well, in part.

Mr. Singer: Yeah.

Judge Richey: And the government's defense was, well, we signed the stipulation, Your Honor, but there's a line in there that says "subject to our own NARA regulations."

Mr. Singer: NARA?

Judge Richey: National Archives and Records Administration.

Mr. Singer: Right.

Judge Richey: And, we spent a million and a half dollars doing this, at your honor's behest.

And, we just have run out of money. [undecipherable] came back and said, "We may have spent a lot of money on this, Judge, but it was the government's fault in the first place. I don't think, Your Honor ought to take that into account."

Mr. Singer: Take it into account 'cause they're running out of money.

Judge Richey: They've spent all this money and so forth and so on. Now that's an important subject for history. Not only for this country but for all the world for many instances. Whether the... another decision. The same grows out of the same case. Or the National Security Council is an agency within the meaning of the law.

Mr. Singer: On records.

Judge Richey: Yes. Thus subject to the APA. Thus subject to judicial review. Going back to *Marbury v. Madison* and the APA. Later the APA. Those are weighty problems. I like it. It's challenging. I want to do the right thing. That's part of blossoming.

Mr. Singer: It focuses the mind.

Judge Richey: All right, it does.

Mr. Singer: Let me ask you a question kind of in blank, because I want to explore particular aspects of it if I may. Describe the two or three most difficult cases.

Judge Richey: That was one. The Presidential Tapes Case was one.

Mr. Singer: Right. The first one, the Nixon Tapes?

Judge Richey: No. The records of Reagan and Bush? That was one of the most difficult

ones. I got the answer at 2:00 one morning when I couldn't sleep. And I have a PC program called *PC Anywhere*.

Absolutely, we all have that one.

Judge Richey: We do?

Mr. Singer: I have it. The office gives...

Judge Richey: Well, you're one of the few lawyers that I know has it.

Mr. Singer: Well, the firm gives it...

Judge Richey: Both people... You do a survey for me the next time I see you and you will find out that outside of your office, if your office has it, you're supposed to ask to do a survey of other lawyers, and I'll guarantee you they won't know what you're talking about. I'll betcha. That's a lunch!

Mr. Singer: OK.

Judge Richey: Betcha!

Mr. Singer: You're on.

Judge Richey: Majority will not even know what you're talking about.

Well, I couldn't sleep until [?] in the morning, I went in the library and I have a program called "Bit Fax". There are many others now, "Pro Com" and so on and so forth has them. And that enables you to send faxes directly from your computer. And I noticed, fiddling around with that darn thing, that the top of what you get on a fax, my name, addressee, date, time and second.

Mr. Singer: And which page of the fax it is, one of three, two of three...

Judge Richey: But that stuff at the top of the page, there's no way to print that out. It's called "job numbers" in the "Bit Fax" program. And the government was

arguing to me. That all they had to do was print this stuff out on hard copy and that satisfied the Presidential Recordings and Materials Act and the Federal Records Act. I didn't know that this essential information at the top couldn't be printed out and the plaintiffs weren't making it clear to me either. And so I remember back in….

Mr. Singer: Couldn't it be printed out in…

Judge Richey: I remember Howard Baker in the Watergate Committee hearings had a famous question. "What did you know and when did you know it?" This wasn't... That information wasn't available in hard copy because I studied this program. You couldn't print that out.

Mr. Singer: You're right. It comes over the wire.

Judge Richey: Yes. It's a part of e-mail, but it doesn't... You can't print it out that way.

Mr. Singer: Right. That's correct. Only the recipient gets that.

Judge Richey: Right. And, you can't make a tape of that or it appears that the recipient gets. Try it. Right.

Mr. Singer: In other words, your backup won't report that.

Judge Richey: That's right. I couldn't print it out on a floppy to save it.

Mr. Singer: Right.

Judge Richey: I dictated an order, sent it my fax to my staff...

Mr. Singer: Who at 3:00 in the morning were eagerly awaiting...

Judge Richey: No, they weren't waiting, but it was here whenever they got here in the morning. Called the lawyers in two days later advising them of my discovery. And you know what? That was how I made the decision. By

luck. The plaintiffs hadn't really pointed that out. That's why we have today the law that e-mail messages are federal records. Under the Federal Records Act and the Presidential Records Act and must be preserved for historical purposes. I made that law that morning.

Mr. Singer: You know. As a matter of for my own... how do you compel the... this is a record that's in the hands of the recipient.

Judge Richey: Right.

Mr. Singer: It's only the recipient of the fax that has... of the facsimile that has access to that strip.

Judge Richey: Correct.

Mr. Singer: If that person is outside of the government, the recipient, that...

[Telephone interruption]

Mr. Singer: If I got a fax from somebody in the government...

Judge Richey: Yes.

Mr. Singer: From the President. President's office. I have that strip that I receive...

Judge Richey: The sender from the Office of the President has it on their hard drive.

Mr. Singer: OK

Judge Richey: But that sender can't convert that information you get at the top of the page to a floppy drive.

Mr. Singer: Now I understand.

Judge Richey: Well, that's a trick.

Mr. Singer: Yeah.

Judge Richey: But, therefore, if the sender prints out on hard copy, Daniel Singer from Joe

Zilch, that part, "What did you know and when did you know it?" isn't going to be there.

Mr. Singer: Quite correct.

Judge Richey: But they didn't tell me that. If they knew it, they were lying and I don't know the answer. I'm not going to call them liars, but they didn't make that clear. But, that's how I found out. That's what you call "total immersion", I guess.

Mr. Singer: Yeah. But, in what sense was that difficult?

Judge Richey: Well, it's difficult because lawyers weren't making it clear to me; they didn't on either side. Except the government was trying to cover it up. That's the only way I can describe it. And the plaintiffs weren't doing the best job in the world because they didn't make that clear to me. And I only discovered it myself because I was deeply concerned about it. And, I've had other cases like that. But that's the best illustration I can think of that you... part of your independence is to engage yourself and immerse yourself. I tell my law clerks all the time, "Well, Your Honor, I read the plaintiff's brief, I read the defendant's brief... I don't think that plaintiff's right and I'm not sure the defendant's right..."Why?" "Well, I read their papers; I'm not convinced " "Did you do any independent research?" "No, just read their brief." Well, I constantly tell them, "You can't rely on lawyers' briefs. We've got to do our own legal research." We have to do it. Sorry. That's the way it is here in Judge Richey's chambers.

Mr. Singer: Right. What other cases would fall into...

Judge Richey: Fall within that same category?

Mr. Singer: Yeah. In terms of the two or three or four most difficult cases that you've handled. What...

Judge Richey: Oh. NAFTA was difficult. Striking down the gag rule was difficult. The development of the reasonable alternative doctrine in NEPA was difficult. *Thompson v. Boyle* which resulted in the largest settlement in history of employment discrimination case in favor of women was difficult...

Mr. Singer: Was that chiefly an [?] office case?

Judge Richey: Yes. I'll tell you why it was difficult. I inherited that case from the late Judge Waddy. It was a Title VII case and an Equal Pay Act case involving women. Mostly African-American women.

Mr. Singer: Right.

Judge Richey: And the government had filed a Motion for Summary Judgment on the Equal Pay Act, claiming he had granted it. And after I got the case and read it, I thought that was just dead wrong. So as I told Judge Joyce Green yesterday, I started all over from ground zero and I ruled in favor of the plaintiffs that it was an Equal Pay Act viable claim, cognizable under the law, then and now. And effectively overruled my dear friend and late colleague. That was difficult. Whether you think it was or not, but it was hard.

Mr. Singer: But, that's...

Judge Richey: Difficult as a matter of law. It was difficult because I didn't like it. He was a friend.

Mr. Singer: Yeah. That's a different kind of difficult from waking up in the middle of the night...

Judge Richey: I tried Tony Boyle for illegal political contributions. He was President of the United Mine Workers. Right in the first year or two. That was about a ten-day trial. He had, I think, three or four additional co-defendants. It was an unusual case. There were no instructions, [?] that statute, Charles Ruff, now a partner at Covington, was the principal trial attorney.

Mr. Singer: AUSA.

Judge Richey: No. He was from the Justice Department. Prosecutor for Justice. That was difficult. And then...

Mr. Singer: What was there about it that was difficult?

Judge Richey: Because it was the new... that there had never been any prosecutions under that statute. So, you're drawing jury instructions, totally anew... plowing brand new ground and secondly, after the conviction was obtained, I had sentencing, didn't I?

Mr. Singer: Yes. You did.

Judge Richey: I got a suspicion that man was going to do something about his assets. So I ordered the FBI to do an independent investigation above and beyond the probation office. Didn't tell them.

Mr. Singer: Didn't tell anybody basically.

Judge Richey: Nobody, except me and whoever it was I called, some high official in the FBI. And sure enough, that man had transferred $187,000... something between $187,000 and $190,000 from his name to his wife's name between conviction and date of sentencing. So what did I do? I used the Rules of Procedure. Never been done before in this court. We convicted him on thirteen counts.

I gave him probation on some but as a condition of appeal pursuant to the rules, I made him pay the fine, totaling the amount that he had converted from his own name to his wife's name to avoid the fines. And so, the words of art were the defendant shall stand committed until payment of the fine as a condition of appeal. The marshal took him into custody. He was in the cell block for a day. And you know, they got the money. Paid the client. That day. Before the marshal turned...

Mr. Singer: It's no fun in the slammer. I don't care who you are.

Judge Richey: Well, those are the kinds of things that require innovation. You know, there are billions of dollars over there in the Justice Department on the books of uncollected funds. After that case, they changed the rules so you can't do what I did anymore.

Mr. Singer: Who's they?

Judge Richey: Well. The Judicial Conference of the United States and the Congress changed the Rules of Criminal Procedure, so you can't do that anymore. But it was called a "Committed Fine". How did I know about it? By thrashing, staying up late at nights, studying myself, nobody gave me this idea. I just did it by reading and studying. I remember two judges on this court came to me and said, "Boy, Chuck, that was one hell of a sentence. How did you figure that out?" I said, "Reading the rules." That's all I did. Made myself an expert.

Mr. Singer: Law clerks are supposed to do that these days.

Judge Richey: Awww. When I made the... back in 1971, brand new judge, all the oil companies in the country, major ones, were lessees that had received this lease from the Department of Interior for the outer continental shelf off the coast of Louisiana, multi-millions of dollars with no Environmental Impact Statement. Then they had a thing about 700 pages and I was sitting on the bench, no law clerk, looking through this so-called Environmental Impact Statement and one page triple-spaced were the so-called alternatives. And I knew what the statute said. No case law then. I said, "Counsel, this page is not a discussion of the alternatives. Is there any place that I have overlooked?" "No, that's it, Judge. That's all we have to do."

Mr. Singer: They just list the alternatives?

Judge Richey: Didn't discuss them. And they didn't even discuss all that I could think of. So I struck the sale down, enjoined it. Oh, my goodness. That was headlines. Nation-wide headlines. I had no idea it would have such an impact, but boy it did. And a man who was Assistant Attorney General in the United States in charge of the Lands Division, later a judge of the old Claims Court, then the Federal Circuit. I think he's still alive. Kashiwa was his name.

Mr. Singer: Cash?

Judge Richey: Kashiwa. Friend of mine headed GSA at the time. He was at a party up at the Hilton and he ran into Kashiwa that night and Kashiwa didn't know this guy was a friend of mine. He said, "Oh, I just left a meeting of all the assistant attorneys general of the United States and we've got an awful problem." "What's that?" "Well, there's some crazy judge that we've appointed that doesn't know what the hell he's doing." That's what he said. "What's that?" He said, "Well, he made some stupid environmental decision. Let me just tell you this for the record." So my friend called me the next day and told me that. I said, "Well, you tell your friend if you ever see him again that he's the one who doesn't know what he's doing." And then, I didn't fix the bond. I delivered that opinion from the bench and it was a public interest group that bought the case. National Resources Defense Council.

Mr. Singer: NRDC. Right.

Judge Richey: By the time the bond came, three or four days later, the hearing, my courtroom was packed. No room for standing even. And on the front row were all these oil and gas lawyers, one of whom had a daughter who was a classmate of my son. I looked at him and I thought, my goodness gracious, that really incurred my ire. The marshals told me later that they were out in the hallway. Jammed in the hallway. That didn't go over very well with a judge like me. And so, it helped me though in this respect, 'cause it made me angry and I said this is a public interest group that brought this lawsuit for the public interest and, therefore, the public interest would be served by a $100

surety bond. Which I knew would cost them ten bucks. You want to go look at *NRDC v. Morton*.

Mr. Singer: A very famous case.

Judge Richey: You'll find that that bond, aside from the establishment of reasonable alternative doctrine, but that case will run you three or four pages of citations in Wright and Miller and probably Moore. I don't know, I haven't looked at Moore. But I did a couple of years ago and my goodness gracious...

Mr. Singer: This was followed all over the United States.

Judge Richey: By all kinds of courts. Then Christmas came. The late George Hart used to have an annual Christmas party. Hogan does it now. I reluctantly went; got there late.

Mr. Singer: Why reluctant?

Judge Richey: Well, I don't like the idea of the courthouse having liquor served; don't think it's appropriate. Secondly, I don't like, that offends me, religiously.

Mr. Singer: It's a church-state issue.

Judge Richey: Yes. It is. But, reluctantly, I thought, well, as junior judge, I better show up. I went. As I said, I got there late. But just before, Harold Leventhal came and Harold went like this with his finger. Come over here, in other words, come over here in the corner. And the conversation went as follows. An exact quote. "Chuck, do you know what I've been doing all afternoon?" "No". "I've been listening to a bunch and oil and gas lawyers in the ceremonial courtroom for three hours." End of conversation. Oh, one more sentence. "All I can say, Chuck, is you've got a lot of courage." Period.

End of Quote. End of conversation. I thought, well, Harold is telling me that I'm going to be reversed. But it was a two to one decision; I was affirmed.

Mr. Singer: Who were the other two judges?

Judge Richey: I don't know. I remember the dissenter was George McKinnon. I don't know who joined him. Probably Carl McGowan. But I thought Leventhal was telling me I was going to be reversed and I lost a lot of sleep about it because I put a lot into that case. Even though I didn't write, I dictated the opinion. But both of them are still great laws.

Mr. Singer: Still good law.

Judge Richey: Great law.

Mr. Singer: [Laughter]

Judge Richey: I did two juries involving those two members of the liquor board here in the City and some...

Mr. Singer: I'm not a trial person so I really don't...

Judge Richey: The first time two juries had been impaneled in the same case in this Circuit and among...I'd never seen it done before in the country. But there was a prudent problem in the case...

Mr. Singer: That's a question of taint from one to the other?

Judge Richey: Right. In other words, one of the co-defendants in the conspiracy had had a conversation implicating the other co-conspirators, two others, outside of their presence. Therefore, the defendants moved for a severance. The government opposed. I made an inquiry. Well, who else heard this? The defendant and this one person to whom he made the statement. Them ABC boys messed up. Meaning the other two defendants. That's all there was to it. That person he'd made the statement to was a drug addict. Wasn't a very good witness! But you couldn't allow that in a joint trial because of *Bruton v. United States*. So I said to myself, "Well, Richey, they're telling you you ought to have six weeks trial. I know that you aren't going to allow them to spend six weeks but you sure aren't going to let them have two trials back to back because of this *Bruton* problem." So after listening to their arguments out there, I said, "Counsel, court's ready to rule. I'm going to impanel two juries, based on your representations that this statement was made out of the presence of Defendant A and Defendant B implicating Defendant A and B and as to that witness and to the defendant, if he takes a stand, Jury A will hear it; Jury B will hear the rest of the evidence and the instructions and the opening statements will, by and large, be the same. If there's any difference, we'll excuse the jury." Turns out, everything was the same. All the prosecutor had to do was make two back to back opening statements and the instructions, I just made them to both juries at the same time. Everybody thought I was nuts in this courthouse. Crazy to do this. Never been done before.

Mr. Singer: Yeah. It's a pity that people think that something that has never been done

before is...

Judge Richey: Well, that's part of the law as I told you earlier today.

Mr. Singer: There's a whole community of people in the world who think that this is the first time...

Judge Richey: It was a marvelous innovation and it worked. I had to get a couple extra marshals and an extra ju1ry room. I remember Judge Gesell, my old friend, was up here one night at some moot court meeting and I said, "Gerry, do you want to... let me show the way I've got the courtroom set up". "I don't want to have a thing to do with it". I mean, it was just terrible, criticism and resistance to it.

Mr. Singer: But how do you...

Judge Richey: And you just have to put up with it.

Mr. Singer: Is there a money problem in doing something like that? Do you have to find money to do that?

Judge Richey: No. I just order it. A little extra money for a marshal to attend the extra jury. But supposing I'd had two trials.

Mr. Singer: But who is it that makes... Is that something that Linda does as Circuit Executive?

Judge Richey: No, she doesn't have anything to do with that. I would call the marshal and tell him. Sure I did it in that case. "I need some extra marshals because I'm going to impanel two juries." "What's that Judge?"

Mr. Singer: You need more money for juries.

Judge Richey: You know. No. Well, it's...

Mr. Singer: If it's a money problem, nobody ever mentioned it.

Judge Richey: No. Nobody ever mentioned it. I told the Clerk. Of course it got in the newspapers and everything else. People came from far and wide. When I tried Rayful Edmond, my goodness, I had seven judges.

Mr. Singer: That's the one I mentioned before, and...

Judge Richey: That had never been done before either.

Mr. Singer: What did you do with Rayful?

Judge Richey: I ordered it... I had developed a questionnaire where all kinds of threats, and so on, murders, drugs. Millions of dollars and kilograms of cocaine being transferred, transported across the country and sold on the streets of Washington. I determined it was absolutely essential, not only to protect the jury, but witnesses and a whole host of things to have an anonymous sequestered jury. Anonymous sequestered jury. Nobody liked that in the beginning. That had never been done before. And, you're only allowed under criminal rules to have six alternates which has got to be a subject of a change because if you have a long trial or a trial like that, you'd be very lucky to complete it without running out of jurors. And, it was a very difficult case because the lawyers were not there to try the case, they were there to obstruct the process. That was their whole focus. I probably had fifty or sixty motions for a mistrial, everything. Nobody did anything right. They put their food at noon in the johns and flooded the basement of this courthouse. The marshal came to me one day said, "You're going to have a strike; they're not going to come in the courtroom." Might as well just put TV cameras in

the cell block where we can watch it. We didn't have the strike, but you know, bomb threats all the time here in the building against me. I was in protective custody, as they call it, for a year and a half. No fun.

Mr. Singer: Any cops sitting outside your house at night?

Judge Richey: Oh, yeah. Yeah.

Mr. Singer: The whole drill.

Judge Richey: It's no fun. That's not the first time, but I've had other, two or three, two other experiences. And you know, you go to bed at night. Oh, my goodness how many motions am I going to have. As you know, I'm interested in history so I remembered that Jerome Frank. It was Frank and Medina. Medina.

Mr. Singer: Medina. Right.

Judge Richey: Tried the Communists in the '40's. Had the same situation. Some of them were jumping up all the time, making speaking objections in front of the jury and so on and I had an ex-judge, one of the defense counsel and even though I admonished him that he was not to tell the jury he was an ex-judge because that's a violation...

Mr. Singer: Who's that?

Judge Richey: A fellow named Murphy from Baltimore, and African-American. Very articulate. Smart guy. But he, nevertheless went right ahead and told them he was an ex-judge. But, I've forgotten the point for a minute. Oh, I go to bed at night and I think, "What can I do? I'm going to have six motions when I get up in the morning." And they'd be coming in during the day.

"May we caucus, Your Honor?" All kinds of things. So I developed the Medina technique. "You got any more motions you want to make during the day, we'll take them up during the recesses. I'm not going to impair this jury. It's not to your benefit nor your clients'. Either side. You put them in writing." Oh, they screamed like stuck pigs.

Mr. Singer: [Laughter]

Judge Richey: But that's what Medina did.

Mr. Singer: Yeah.

Judge Richey: And I don't know how I found out but I knew it. And thank goodness it worked and it's been approved.

Mr. Singer: Uh, huh. What were the other two protective custody cases? That's serious stuff.

Judge Richey: Oh, the IRS brought a case against a Synanon group. A religious cult.

Mr. Singer: In California.

Judge Richey: And they had put a bomb and a snake in somebody's mail box out there. Prosecutor's mail box. I was under threats at the time.

Mr. Singer: Prosecutor's mail box.

Judge Richey: I had a lot of threats during that case. Another religious group, Scientologists.

Mr. Singer: Threats from the Scientologists, really.

Judge Richey: Ohhhhh.

Mr. Singer: I mean...

Judge Richey: Well, I don't... they...

Mr. Singer: They're real nut cases in my book, but...

Judge Richey: I tried nine of them. Put a sentence on...

Mr. Singer: Ron Hubbard. Not surprised.

Judge Richey: Right. His wife was a lead defendant. Very contentious. They ended up pleading guilty but, oh, it was an enormous amount of work. Every motion known to human kind.

Mr. Singer: Let me ask you about sentencing which is an area in which I have no experience at all, but it's just as a kind of casual leader of both legal and lay press, one gets the sense that there have been significant changes in sentencing practices over the course of at least my legal career.

Judge Richey: That's right. Starting in November 1, 1987, as a result of the, which Sentencing Reform Act of 1984 was Title II of the Comprehensive Crime Control Act which should never have been allowed to pass, but nevertheless it did. It did away with all my good work with Dave Bazelon on the Youth Corrections Act and Narcotic Addict Rehabilitation Act, both of which were repealed and they set up this structure to establish a commission, nothing more than a regulatory commission to develop guidelines to promote uniformity and sentencing. That was the rationale. My friends Ken Feinberg and Steve Breyer were the promoters of that in the Senate Judiciary Committee and they got my friend Ted Kennedy to join Strom Thurmond in sponsoring it.

Mr. Singer: A marriage made in hell. [Laughter]

Judge Richey: Well, I want to tell you, you know what happened? When he signed off...

Mr. Singer: When Ted Kennedy signed off?

Judge Richey: When Ted Kennedy signed on at their behest, as a matter of public record, it went through the United States Senate like greased lightning. And you know what? They never had as much as a hearing in the House of Representatives. It was adopted in haec verba. I'm telling you the facts.

Mr. Singer: That's a little frightening for a major piece of legislation.

Judge Richey: But that's what happened. And, it has changed. It's put a lot of structure into the subject matter of sentencing. Judge Harold Greene calls it "vending machine justice". But I was more fortunate than most judges because right after the statute was passed in '84, I decided that I wanted to be on a judicial conference committee and if I was on one, I would want to be on what was then the most powerful important committee namely, what was then called the Committee on Court Administration. And I'd...

Mr. Singer: The most powerful what?

Judge Richey: Well, they ran the Judiciary.

Mr. Singer: OK. I mean that's where they're...

Judge Richey: Yeah. At that time that was where the power was vested. Under the aegis, of course, of the Chief Justice.

Mr. Singer: Uh huh.

Judge Richey: So I asked for an appointment with the Chief Justice. Got up there, he gave me an appointment; took a little doing to get it and I thought that was mostly what it was about. Instead, when I got there, it was supposed to be ten minutes, we never talked about the Committee on Court Administration but

the GD crime bill and how the Judicial Conference of the United States had never been asked for one word or comment by the House of Representatives and how tragic it was to change the law of sentencing in such a draconian manner, without any input from the judges and the Judicial Conference. And so I left there. They had to buzz him and tell him what we want. There a half hour. Warren Burger just couldn't get over this. I thought I was talking to Bazelon.

Mr. Singer: [Laughter]

Judge Richey: Well, he had a tremendous interest and still does, I guess. I don't know. I haven't seen him for years, but in corrections and so forth. And a... very interesting.

Mr. Singer: He's had an interest, I think in administration...

Judge Richey: I got a letter about a week later signed from W.E.B...The development of the first draft of the first guidelines of the staff from Justice and I attended all of those meetings here and all...

Mr. Singer: Essentially a labor to which you were hostile. He didn't want the guidelines.

Judge Richey: No, but, I had to make them work.

Mr. Singer: I understand.

Judge Richey: And that's how I got to know Steve Breyer, Ken Feinberg. I knew who they were but I didn't know them until then. They were very much a part of it. Ken was on the commission. I mean Steve was on the commission. I remember being out West with Feinberg some place, I guess it was San Francisco, and I said, "Ken, let's stay over the next day with Dave Shapiro and

have some fun." "No, Chuck, I've got to go back tonight on the red-eye." "Why?" "Well, you know, the guidelines become effective tomorrow and I had a great deal to do with that and I think I ought to be around. So I'm going back tonight". Anyhow, that six years was a.... and I did a lot of teaching about that too because I learned. What demand, how we were supposed to operate? It has diminished the discretion of a District Court Judge but you know something, I read. My colleagues are so angry. Many of them haven't read it yet. They are still here.

Mr. Singer: Those are the...

Judge Richey: Sentencing guidelines. It's nothing more than what's in the CFR as those are by the FCC or Federal Power Commission, what have you. And if you do that, then you can do things.

Mr. Singer: Right.

Judge Richey: And I haven't liked some of the mandatory minimums. I think they are an egregious abuse of discretion on the part of Congress, but the Supreme Court agreed with the Administration in the Tenth Amendment, you know...

Mr. Singer: In the sense that they are taking from you, from the District Judges, a discretion which, at least has historically has been with the judges.

Judge Richey: Exactly. And they can't possibly legislate across the board for every particularized case, because every human being is different, the facts are always different, some of them develop into patterns. But… The first guidelines were, the first edition were not mandatory, statutory mandatorily driven. Then the Congress got up on its hind legs and passed all these drug

laws, Anti-drug Abuse Act of 1988 and that skewed the guidelines and the Commission had to change course. That did put us in a legal strait jacket. And of course you know there've been years of litigation all over the country. Judges have even resigned because they wouldn't put up with this stuff.

Mr. Singer: I was unaware of that. Who was the...

Judge Richey: Oh, a judge in San Diego resigned over it, public statement. There are other judges around the country who have done it. Judge Sweet in the Southern District of New York has gone on television. A lot of...

Mr. Singer: Bob Sweet.

Judge Richey: Whatever his name is. Judge Sweet.

Mr. Singer: Let me ask you. Again in this kind of retrospective look at a rich and rewarding career. Certainly on the bench. Not economically you didn't get to be Croesus on the bench, but rich certainly in terms of all the other kinds of professional rewards and personal rewards. But on looking back, what kinds of things look different to you now. What kinds of things about the practice, about the people, about the process, about the plantation...

Judge Richey: What are different now than what they were when I was practicing or when I began?

Mr. Singer: No. Not only... I'm interested something a little different. That your perceptions of...were there kind of big changes from your perceptions of things ten and fifteen years ago than there are now of those same events. In other words, in some sense, have you changed your mind, but I recognize...

Judge Richey: Yes. Yes. I have changed my mind very substantially. A. The size of the

Judiciary is getting too large. Congress has imposed, without regard to a Judicial Impact Statement, like an Environmental Impact Statement and the rest, they passed too many laws giving us jurisdiction over matters that really are the province of the states. When I came to the court, for example, I said I thought lawyers should be able to do voir dire. That took me a month but I saw how terrible lawyers did it, unlike I used to do it. And so I reverted to doing it because I could do it better and more fair.

Mr. Singer: And faster I suspect.

Judge Richey: Pardon.

Mr. Singer: And a lot faster.

Judge Richey: And a lot faster. But better, more fairly. I also was a great believer in diversity of citizenship. Even though that's inconsistent with what I just said about the enhancement of jurisdiction.

Mr. Singer: Diversity jurisdiction.

Judge Richey: Yes. I now think that that's probably wrong. Why was I wrong about that? Because I think the state courts are not quite as politically infected as they used to be, they're more professional and we just have so much on our plate we shouldn't be trying an auto accident case or even a medical malpractice case or a product liability case. That's for the states. I totally, you ask someone...

Mr. Singer: This is for somebody else, whether it's for the states or some new kind of process, would you...

Judge Richey: I don't know about that. You see, when I started to teach in 1976, I think it

was, the EEOC law to my colleagues, I never will forget the first speech I made, the first workshop was in Chicago and all these great judges, Hubert Will, Bill Campbell, Pren Marshall, I remember at the question and comment period Hubert Will said, "Oh, Chuck, isn't it a fact that this ought to be for a specialized court, this kind of stuff you're talking to us about?" "No, Hubert. That's what courts of general jurisdiction are for and this involves one of the most important sacred rights that anybody has ever had. It goes back to the Civil War post reconstruction era statutes. This is not new, we just haven't had the lawyers bring the cases and we have a duty now that is made applicable to both the public and private sector. To learn how to do it, that's why I'm here. It's not a specialized quote problem. That's not an answer, Hubert." It is not an answer to do specialized court for medical malpractice cases either, or anything else. I'm sorry.

Mr. Singer: Well, no, but I mean, that's one of... let me just follow through with regard to specialized courts in the area in which you've indicated you changed your perception.

Judge Richey: I have.

Mr. Singer: How do you feel about the... I mean if... everybody who now has an account with a brokerage firm agrees...

Judge Richey: Arbitration.

Mr. Singer: Arbitration. Right.

Judge Richey: Well, the Supreme Court just upheld a punitive damage award in an arbitral proceeding.

Mr. Singer: Right.

Judge Richey: And I'm very disturbed about that.

Mr. Singer: OK.

Judge Richey: I resented that compulsory type of arbitration. As I told you I think the last time, I just spoke to the Florida Bar and I was told that Middle District of Florida has got a compulsory arbitration procedure in all civil cases except those which involve constitutional questions and the losing party has to pay a fee to the three lawyer appointed arbitrators of $100 apiece. So, that's not right. I think it's wrong. I oppose it. I don't want anybody to be denied access to the federal courts. I think mediation is a good wholesome thing. ENE like you're doing, but when it becomes binding? No way. If it impairs the ability of a litigant in his or her or its access to the courts later on, I'm against that too.

Mr. Singer: But if you believe that the Judiciary is too large and there's too much federal jurisdiction and somebody tries to develop a mechanism to address those issues in securities cases under the Federal Securities Act, that I mean there are just too many of them, they're requiring us to have too many judges in place, we can't duck the fact that there's a federal question in every one of these Securities Act cases, unless, it seems to me, you find a way to get some of those cases by class, not by one at a time. Let's say, "OK, look, Securities cases...

Judge Richey: Go to arbitration.

Mr. Singer: Go to arbitration.

Judge Richey: I guess that's all right because you know what, that really only involves money.

Mr. Singer: Only money. Absolutely.

Judge Richey: That's why I say I could probably accept it.

Mr. Singer: OK.

Judge Richey: But when you're talking about an employment discrimination claim, whether you know it or not, I can tell you, most employers in the United States now have not only employee/employer handbooks, but they also have forms in their hiring plans that many employees in some industries have to sign to agree to arbitrate their disputes by...

Mr. Singer: That's certainly the wave of the future.

Judge Richey: Well.

Mr. Singer: [Laughter] Your facial expression tells me you're agin it.

Judge Richey: Yup.

Mr. Singer: Big time

Judge Richey: You're correct. You know me.

Mr. Singer: Naw. I'm learning.

Judge Richey: You're against it too, Singer.

Mr. Singer: [Laughter] Well...

Judge Richey: Goddamn it. You're against it too because it isn't right.

Mr. Singer: Wrong... on the employment issue...

Judge Richey: This is the only area... first of all, it's the most important area involved in anybody's life in America today.

Mr. Singer: A new job.

Judge Richey: Well, wait a minute. You just stop and go through a scenario and think about it. You spend six or eight hours a night sleeping. But if you add up all of the hours, eating, traveling to and from work, the majority of any American's time is spent in the work place. Therefore, borrowing the phrase from the Civil Rights Act of 1964 which I witnessed passage in the gallery of the Senate, affects the terms and conditions of an American's employment. And since that time, lawyers, the workers, rather, of America all workers, no one could rely on unions, collective bargaining agreements to resolve their employee/employer disputes. The focus of that is now in the courts of the United States, both state and federal. And I'm not going to be a part, and I'm going to resist any effort to deny those human beings access to the courts whether it be by way of a class or individuals. It's wrong to do otherwise.

Mr. Singer: Do you think you can draw lines so that some kinds of employment disputes can stay or get out of the courts?

Judge Richey: I have thought about that a lot. As you know, I've written a book...

Mr. Singer: You know more about this than almost anybody, so...

Judge Richey: Well, there isn't... I can't figure out a way to have a termination case, a retaliation case, or a common law pendant claim that provides the same or similar relief. I can't find a way to do that whereby the courts would not be burdened with these claims. The problem with it is this, Dan. Lawyers are not the most skillful people and most knowledgeable, unfortunately. They draw a complaint and assert a federal claim under 42 USC 1983 or Title VII.

OK? And then they attach ten common law pendant claims. That's not uncommon. When I call them in for a status call, I say, "Mr. Singer, you represent the plaintiff?"

"Yes, sir, Your Honor, I do."

"What are you here for?"

"Money."

"What is your best shot? Which one of these twelve claims you have asserted represent your strongest case? Tell me. I'll give you two."

"Well, Your Honor, my 1983 claim and my Title VII claim."

"Oh. You know you now have a right to a trial by jury?"

"Yes, I'm aware of that, Your Honor."

"All right, under Rule 42B, except I haven't talked to the defendant yet but I think that I'm going to separate those out."

Those are the words of Art. "Separate". In criminal law we would sever, severance.

"Any objection on the part of the defendant?"

"No, Your Honor."

They go to trial; verdict one way or the other; the rest of the claims go away. Why should I spend my time boring a jury spending two days instructing on the elements of each one of those claims. Ridiculous. Now that's the only way you can narrow that down.

Mr. Singer: You know, one of the areas that occupy some role in the federal judicial system is tax litigation. And for sure the only issue in virtually all tax cases

is money. How do you feel about taking...

Judge Richey: That's why we have a Tax Court in the United States.

Mr. Singer: Yeah, well people...

Judge Richey: Well we shouldn't have the right of them. The taxpayers shouldn't have the right to appeal to our court. They've got a court over there. It's not a jury issue.

Mr. Singer: Right. OK.

Judge Richey: You got the All Writs Act.

Mr. Singer: Right.

Judge Richey: We shouldn't interfere with tax laws except in the rarest of examples. That's about all they need. There is possibly one exception to what I've said and that's the area of patents. Which, I don't... there are a few judges like them... I don't. It involves hard science, the lawyers are difficult to manage; the reason they're difficult is they don't know what they're doing in the litigation setting and they're very contentious.

Mr. Singer: And, well and you have a...well, there is a lot at stake but you have an administrative agency that, at least in my experience, is not the shining example of...

Judge Richey: You know who I'd like to have come down here and put on a robe next, is your partner Milton Eisenberg. The reason I'd like to do it is because Milton would do a good job, but more importantly, because they would be put through the hoops by my friend and your partner. He wouldn't tolerate them for five minutes. But I have to and so...

Mr. Singer: That goes with the territory.

Judge Richey: With the territory.

Mr. Singer: Are there classes of cases from which you routinely recuse yourself?

Judge Richey: No.

Mr. Singer: Are there judges, I mean I know of one judge in the Superior Court who works very hard but takes no criminal cases.

Judge Richey: What? Wow. I couldn't do that. We would... I'd have my colleagues on neck.

Mr. Singer: Well, he's obviously made a deal with his colleagues somehow. He takes all of the... controls an enormous docket and he's immensely efficient in disposing of them. My sense is he's made a deal with his colleagues.

Judge Richey: I would think he'd had to. I look at every case criminal and civil. Jeffrey makes a file the minute it comes in. I read it for recusal purposes. Secondly, I read it for management purposes.

Mr. Singer: What does that mean? To read it for management purposes.

Judge Richey: You don't have any idea?

Mr. Singer: Well, I'd kind of like to preserve your view of that.

[Laughter]

Judge Richey: All right. Excuse me. I apologize.

Mr. Singer: On tape. [Laughter]

Judge Richey: If it's a criminal case? I write a note like that follows: "Debbie: arraign ASAP. CRR. If it's a civil case...

Mr. Singer: Debbie's one of your clerks.

Judge Richey: Court room deputy.

Mr. Singer: Court room deputy. Ummhmm.

Judge Richey: She'd done the cassette, follows down to her, either that night or that morning, the next morning. It's the first thing she does, calls the lawyers. Judge wants you to come in for arraignment or whatever it is. Civil case. Call the lawyers. Rule 16 status conference. ASAP. She knows my calendar, when I'm going to be available. She'll have them in here and then when they come in, they fill out two little forms. If it's an employment discrimination case, you fill out two forms. What we call a trial certification sheet, one page. Example: Number of witnesses. Lay and opinion. Not expert. Lay and opinion. And estimated time for trial. Waiver of trial by jury. Yes or No. On an employment discrimination case, in addition, they have to label the kind of case. Disparate impact, disparate treatment, pattern and practice, so on and so forth. Pin people down. I can look at that in two seconds because of my knowledge and experience and I can get that case on track immediately.

Mr. Singer: What do you do? How is it that you deal with the fact that through the discovery process, for instance, which has not yet begun at the point of which you are looking at these?

Judge Richey: Right. I get them in. Maybe there'll be in a week in my court and you know, the local rules provide for a tracking system and all that, of which I say is developed. And I was on the committee. Designed for the lowest common denominator of the bench and the bar. I'm the highest. I don't need that. And I mean it in all seriousness. If Eddie Weinfeld were here he would tell you the same identical thing. And all good judges would. When they're here, I can look at that in two seconds. I could see what the nature of the claim is. If it was one of these stupid diversity cases or something like that, a breach of contract case, say a breach of contract case, then they got a big long pile full of witnesses, lay and opinion. I said, "You must have a weak claim. You need all these witnesses? You want to depose all of them?" Well. I talk about 42B and blah, blah, blah. Before you know it, it's down to seven or eight.

"And how long are these depositions supposed to take?"

"Oh, maybe three hours a piece."

"Well, three times seven is twenty-one days, right?"

"Yeah."

"We ought to be able to do that in sixty days. Put your shoulder to the wheel. Your client came to you because he or she wants some money. Right?"

"Oh, yeah. Your Honor, I've got a big trial schedule."

"I know, but your client thinks this is the most important case in his life."

"All right, the defendant. How many witnesses you got?"

"Oh, we've got 42 witnesses, too, Your Honor."

"Well you must have a weak defense."

Then you go through this litany and before you know it as Bill Schwartz says, "You shape the case." And you can make a rational decision as to how much is a reasonable time, putting the lawyer's shoulder to the wheel to engage in discovery, file dispositive motions, set a pre-trial date, firm, with all the requirements and a trial date.

Mr. Singer: When do you acknowledge the existence of Linda Ferren's office? The mediation or Nancy Stanley's office?

Judge Richey: Oh, I always acknowledge her...

Mr. Singer: No, I mean but in...

Judge Richey: I know but they seldom ask me. They do occasionally. But you know what I do? I say well, "That's fine." We've got a marvelous office down there and they have taken the trouble to train the Bar with experienced mediators. I'll tell you what I'll do. You've got sixty days or ninety days to complete your discovery.

Mr. Singer: Correct.

Judge Richey: You've got ninety days to complete your mediation.

Mr. Singer: Right. Right.

Judge Richey By that time we've also got to do your discovery and have it over with. Then you've got X days thereafter to file your motions, if there are going to be any motions. And then you've got a pre-trial and a trial date. I'm not going to change that date to accommodate them. You've got to accommodate this

schedule because that's all the time I have. Here's my calendar.

Mr. Singer: But when you set your... I want to be just a little bit of a missionary.

Judge Richey: Sure. You're going to have to be for them.

Mr. Singer: But, in almost all diversity cases, certainly in the contract cases...

Judge Richey: They could be of enormous help. That's where they're good at it.

Mr. Singer: That's right.

Judge Richey: But if you get a case like the one I had today involving the Office of the President of the United States, the National Security Council...

Mr. Singer: It's not going to be mediated.

Judge Richey: No.

Mr. Singer: But for instance. Funny things happen. Supreme Court yesterday. Ruth Ginsburg decided this case on zoning law, the zoning case.

Judge Richey: Oh, yes. Good decision.

Mr. Singer: I think so. I've got it on my desk and I...

Judge Richey: Well, I haven't read it but the result is right.

Mr. Singer: I think that is true. But all over the country there're cases, at least one of which in this district, is in the active mediation process. But for the fact that the outfit on the other side of the Corporation Counsel's office, it seems to me, that case ought to mediate the conclusion very quickly.

Judge Richey: If you've got good lawyers it should be. You're right.

Mr. Singer: I'm not... well... it's Oxford House and it's the same lawyers that did...

Judge Richey: I know Oxford House. I know all about it.

Mr. Singer: Those people are dandy.

Judge Richey: No question about it.

Mr. Singer: On the Oxford House side it's the other folks that are going to give me a problem.

Judge Richey: Well. I'll tell you something.

Mr. Singer: I assume you…

Judge Richey: You couldn't be more right there that that case is the appropriate case in the light of the Supreme Court.

Mr. Singer: That's the Supreme Court decision.

Judge Richey: For mediation. And if the judge has got any brains, whoever he or she or it is, if it were my case on my calendar, you know what?

Mr. Singer: You'd send it back.

Judge Richey: I would call them up and, "How're you getting along in mediation?"

"Well, Your Honor, the other side is not cooperating."

"That's the Corporation Counsel," you'd say.

And I'd say, "Wait a minute. Get Mr. whatever his name is, the head of it. Bring him over here tomorrow. I'll see you at 2:00. Tell him I'm serious about this."

Mr. Singer: Yeah.

Judge Richey: I wouldn't bring the mediator because I don't know who it is. "Now look, you've got this new decision. This is something you've got to deal with one way or another. I don't think you've got a leg to stand on in the light of the Supreme Court precedent. Now why don't you do something about it? It isn't going to cost you any money."

Mr. Singer: Sure. This one doesn't cost them any money.

Judge Richey: This is something you could do some good about.

Mr. Singer: Right.

Judge Richey: Now let's do it tomorrow. Or the end of this week.

Mr. Singer: Right. I quite agree. But in my own view...

Judge Richey: That's what you call judicial management.

Mr. Singer: OK.

Mr. Singer: That's what you call judicial management.

Mr. Singer: Right. And I gather that you view your use of your management skills as somewhat unique among your colleagues.

Judge Richey: I do.

Mr. Singer: I think I stated it correctly.

Judge Richey: You did.

Mr. Singer: I want to ask a couple of questions. Why should that be? Do you think you could change it? Should the Administrative Office...

Judge Richey: No. I can't change it. Neither can the Administrative Office or anybody else. The only person that can change it is the President of the United States, whomever it may be.

Mr. Singer: Right. But he changes it only by changing the appointments.

Judge Richey: Correct.

Mr. Singer: He gets one bite out of each guy.

Judge Richey: And that person ought to have, as I told you before, the number one requisite for being a good judge is management ability and if they can't do that, they're

going to be a failure as a judge.

Mr. Singer: Even at the Circuit Court level. Yeah.

Judge Richey: There's a truth. Here is the latest statistics of my court. Civil and criminal.

Mr. Singer: That's the embarrassment list where they list them by name that you know the state of each of the judges.

Judge Richey: And the manner by which they were terminated. Wait a minute. Tell them by month, by year. January through April, 1995. They're together. I've had more filing or as many filings as any other judge in this court.

Mr. Singer: That's right.

Judge Richey: Look at the terminations. More than any other judge of the court. Total terminations. Now...

Mr. Singer: Then you get this court order.

Judge Richey: Now wait a minute, wait a minute. I want to show you something else. Something else. In court time, who had the least...and the second... this is a brand new judge we would not...

Mr. Singer: Right.

Judge Richey: I only had two more hours, roughly speaking, than this new judge, also a new judge. So you take theirs off and look at the difference between me on the bench and my colleagues. Up to 353. Now just take that person over here. It says... this proves my point if anything ever does. Here are the cases pending at the end of the month. He had 145 cases, your buddy had 41. He had the most time on the bench.

Mr. Singer: This one was the one.

Judge Richey: Yes.

Mr. Singer: It's really interesting what the...

Judge Richey: You see. Look at all these judges and how much time they spent on the bench as against how many cases they've terminated.

Mr. Singer: That's so that you're sure that...

Judge Richey: You know, it just doesn't make me popular.

Mr. Singer: I can understand that. But what I think...

Judge Richey: But you know, I don't have to care.

Mr. Singer: Yeah.

Judge Richey: And I don't. 'Cause I'm here to do a job.

Mr. Singer: I'm going to say that we've been at it two hours.

Judge Richey: We have?

Mr. Singer: It's been a wonderful two hours for me. [Laughter]

Judge Richey: Oh, bless your heart, Dan.

Mr. Singer: And, I will call Jeff tomorrow and try to continue this...

Judge Richey: I'm at your disposal. I committed myself to do this and I haven't been able to prepare for... I'm just trusting...

Mr. Singer: I don't know how you're supposed to prepare for it.

Judge Richey: I don't know what I'm supposed to do.

Mr. Singer: Well, you always do what you're told, don't you?

Judge Richey: I try.

Mr. Singer: [Laughter]

Judge Richey: In appropriate authority I am very deferential to my chief judges, my wife.

Mr. Singer: The important people...

Judge Richey: The important people. You. Linda.

Mr. Singer: Well, I must say that the whole notion of the importance of administration is one with which I was really...largely unfamiliar.

Judge Richey: If that doesn't prove it to you...

Mr. Singer: Are those data... public data?

Judge Richey: No. But under the Civil Justice Reform Act, they're now supposed to be. The *Washington Post* six months ago did a study and they'll do it again very soon. As soon as they get that out of the AO.

Mr. Singer: Right.

Judge Richey: But you know, they don't... newspapers haven't yet become sophisticated about this stuff...

Mr. Singer: They may not know what they're looking for which is...

Judge Richey: They haven't learned... They don't look at total terminations. They look at how many cases are more than three years old. How many motions have been pending for more sixty days?

Mr. Singer: But they don't understand it. I didn't understand 'til it kind of clicked when you pointed it out that spending a lot of time in court is not productive. I mean, I'd always thought as a practitioner, the kind of law I practiced, that every minute I was in court was a disaster.

Judge Richey: Well you were right, weren't you?

Mr. Singer: Well.

Judge Richey: Didn't that prove it?

Mr. Singer: I feel better about it now but people, my litigating partners thought I was...

Judge Richey: Well, those litigators, unfortunately, didn't know what they were talking about.

Mr. Singer: I always thought they spent too much time polishing the benches at the expense of the clients, but...

Judge Richey: You couldn't be more right. You're absolutely right. I wish, well, you're retired now unfortunately or I wouldn't know you, but that would be my terrible loss. But I wish to hell you were, guys like you should have been litigators rather than a financial transaction lawyer, real estate lawyer. You obviously understand it and you were right. But your partners don't understand this. The litigator.

Mr. Singer: Oh. The American College of Trial Lawyers.

Judge Richey: They don't understand it either.

Mr. Singer: Yeah. And I've got a lot of those people in my law firm.

Judge Richey: Of course you do.

Mr. Singer: Not just ATLA. Not just the American Trial Lawyers. The college people.

Judge Richey: College of Trial Lawyers. Well, that's a little bit better.

Mr. Singer:: Well, they have fancier clients. OK, I'm going to turn this... Telescopes.

Judge Richey: Telescopes of the world. And there was a man named Bob Robnikoff. A Russian who was head of the astronomy department and ran that whatever you call it.

Mr. Singer:: Uh huh. Telescope.

Judge Richey: But that isn't the name of it. That's what was in it. But big round building,

huge

Mr. Singer:: A dome.

Judge Richey: Dome.

Mr. Singer:: Observatory.

Judge Richey: Observatory. That's it. Now you're helping me, for a change, you rascal. And, you know, it seemed to me a tragedy, I don't know anything about astronomy, I knew Mr. Bob Robnikoff, imposing, big, tall man, Russian. God.

Mr. Singer:: Did he have a great beard too?

Judge Richey: Yes. Yes. This was back in the 30's and 40's. And you know, years later they gave that darn thing because of economics to Ohio State University. It was out on the edge of town, but I don't know, it's probably still there, but it's kind of come into disrepair at last I heard many years ago. But I just happen to think about that in connection with what your wife is doing tonight.

Mr. Singer:: She is actually building, she is part of a joint venture that's trying to build a very major telescope in the northern Chilean dessert. Actually two of them in northern Chile and Ohio State at one point was a potential partner in all of this.

Judge Richey: Do you know that could be because they may have rejuvenated that?

Mr. Singer:: No. We've talking six and one-half meters.

Judge Richey: I don't know what you're talking about.

Mr. Singer:: Twenty feet across.

Judge Richey: Oh, this was huge. This was huge.

Mr. Singer:: Twenty feet.

Judge Richey: Oh, I don't know how big it was. It looked like it...the building...

Mr. Singer:: The building, but the mirror was just a piece of glass.

Judge Richey: I probably was in it. Probably was forced to go in it but I was so young I don't remember. But boy, it was big. It was big. It was either the third largest in the world.

Mr. Singer:: When you were smaller, it looked bigger.

Judge Richey: Maybe so.

Mr. Singer:: OK.

Judge Richey: My recollection is the size of the building was darn big, Dan.

Mr. Singer:: The buildings were always big and as the techniques...

Judge Richey: I know nothing about them.

Mr. Singer:: As the techniques of building mirrors for building telescopes improved, one of the ways they improved was to make...

Judge Richey: Smaller. Smaller buildings.

Mr. Singer:: Well. They made a smaller building because they were able to fold the light.

Judge Richey: Basically. Awww, well.

Mr. Singer:: As a kid. Enough.