

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. This interview took place in the chambers of Judge Richey in the United States Courthouse in Washington, D.C. between the hours of 4:00 p.m. and 6:00 p.m. on October 5, 1995. This is the fifth interview.

Mr. Singer: We're back in business... from last summer.

Judge Richey: All right.

Mr. Singer: And I sent you over for what I'll call for the moment a "cheat sheet."

Judge Richey: You did and I must have it on my desk at home because I asked Jeffrey to get it for me this morning and he couldn't find it.

Mr. Singer: Well, maybe I have my copy. Maybe it would be helpful if...

Judge Richey: That's all right. It was well done.

Mr. Singer: And?

Judge Richey: Could he make a copy of it?

Mr. Singer: Yeah. That's what I was going to suggest. That maybe he'd make a copy and both of us could then have something to work from.

Judge Richey: [Intercom buzzer.] "Yes?"

Mr. Singer: Would you be kind enough to come in to make a copy of something?

Judge Richey: OK.

Mr. Singer: Well, I am on the cusp of going to work for Chuck Ruff as a volunteer.

Judge Richey: My colleague, Joyce Hens Green, took senior status along with Harold Greene recently, who was kind enough to arrange a meeting with Chuck

and our entire court and even one circuit judge showed up. Most of the court came; it was in August and that's one of the very things we suggested that they both get some senior lawyers as well as the major law firms like John Payton had done to help because, goodness knows, the city needs it.

Mr. Singer: Chuck is going. I think he had intended, right from the outset, to make use of this power, this change in the Code of Professional Responsibility.

Judge Richey: I thought that was already cleared up and clarified by the D.C. Court of Appeals.

Mr. Singer: It has been. It is in place perfectly now so that law firms can keep on their payroll lawyers who are otherwise detailed for long periods of time (six months) to the Corporation Counsel without tainting the firm with the revolving door problems.

Judge Richey: Right. Right.

Mr. Singer: The individual will be tainted surely, but not the firm.

Judge Richey: Correct me if I'm wrong, but wasn't it the understanding that lawyers could work for the city even though the firm might have a claim against the city?

Mr. Singer: That's exactly what I meant. That the taint of the individual...

Judge Richey: That it's to the individual not to the law firm.

Mr. Singer: Right. And that's very important... it allows...

Judge Richey: People like you... your firm...even have active partners...

Mr. Singer: Well, I'm not an active partner which makes it easier.

Judge Richey: I know. But if you were an active partner, which I think you should be...

Mr. Singer: [Laughter] I shouldn't be.

Judge Richey: Oh, you're young, and you're vibrant, and you've got a lot of good ideas, plus experience.

Mr. Singer: But I'm going to be working with Chuck, I think at the outset, in the area of ADR, hopefully to do, in the Corporation Counsel's office, what Peter Steenland and Janet Reno are doing over in the Justice Department. Because they have kind of the same relationship to client agencies, same kinds of problems that Justice has, and I know that Chuck is interested in using this not just as a means of docket control, docket management, but as a serious way to...

Judge Richey: Resolve disputes.

Mr. Singer: ...get disputes resolved and get them resolved efficiently from both sides.

Judge Richey: There was a meeting of both over here in the Courthouse today, new Judge Jim Robertson is heading it up on a pro bono committee to encourage more law firms to volunteer their services.

Mr. Singer: To Ruff?

Judge Richey: To the Court.

Mr. Singer: To the Court?

Judge Richey: Yes. We have a Pro Bono Lawyers Committee. And, I don't know how many letters they sent out and the response was very small.

Mr. Singer: Distressingly small, I would guess, judging by...

Judge Richey: As a matter of fact they scheduled it for the ceremonial courtroom and they are going to put it our Executive Conference Room. 'Bout thirty is

all they had. And, I just sent him an e-mail to express my appreciation for...

Mr. Singer: Un huh. And this would give you a roster of people to assign in IFP cases or...

Judge Richey: IFP cases, prisoner cases, employment discrimination, civil rights. You know, the panoply.

Mr. Singer: Right.

Judge Richey: And if they have merit. On the other hand, it's unfortunate but it's the fact. You just don't find a *Gideon v. Wainwright* very often. And, you know, for the first fifteen years of my career, we didn't have any prisoner suits. We didn't have any.

Mr. Singer: No. But then we invented 2855.

Judge Richey: 2255.

Mr. Singer: 2255.28 U.S.C. 2255.

Judge Richey: And 2250 ahhhh. 54 and 2241 and all these Constitutional... 81, 83 and 85 actions. I've just finished my book. So prisoner law in the United States Courts...

Mr. Singer: I'm sure that there is a wealth of..

Judge Richey: You'd be amazed. You would be amazed. There are over a thousand footnotes. I hate footnotes; I agree with Ab Mikva and...

Mr. Singer: You agree with Fred Rodell.

Judge Richey: Yeah. But... I couldn't figure out another way to do it. I used to have [undecipherable].

Mr. Singer: Yeah. Harold Leventhal was a...became kind of an overnight scholar on 2255. A case called Roosevelt Jones or Roosevelt. Somebody Roosevelt against the United States.

Judge Richey: Awww. Harold Leventhal was a star on any subject. I tell ya.

Mr. Singer: Let me start out just by reminding you of the need at some point as we bring this to a conclusion for you to express yourself on the Deed of Gift and what kinds of restraints, if any, you want to put on that and one that will recognize the role of Case Western Reserve and is there somebody as I asked...

Judge Richey: You asked if there was somebody you could contact. You could contact the Dean.

Mr. Singer: That's the man who was here at last year's dinner?

Judge Richey: Right. Dean Peter Gerhardt. But, Peter is going to retire at the end of this academic year. He's been there ten years. I'm terribly crestfallen about it but nevertheless, you know the life expectancy of a Dean is...

Mr. Singer: Is ten years maximum. Two five-year terms and that's it.

Judge Richey: Well, I believe it's less than that. About five years at the most now.

Mr. Singer: Yeah. Certainly college presidents are out -- seven years, eight.

Judge Richey: I guess it's just a grueling job and he says he wants to teach and spend more time with his family.

Mr. Singer: Well. I'm sure he's right. Because if he is like most deans I know, virtually all of their non-contact time at the law school is out in the hustings with the begging bowl.

Judge Richey: You couldn't be more right. When I learned of this, I went to a dinner party at Professor Steve Saltzburg's house and sat next to Jack Rosenthal, Dean at G.W. and of course, all these deans know each other all over the country and I was telling him how crestfallen I was and he propped me up pretty short and said, "You know, I've got five chairs to designate. And, I've got five qualified people for each one. So, four times five, I'll make twenty new enemies as soon as I make those designations." He says, "it's really hard work, Judge."

[Laughter]

Mr. Singer: None of these people took the jobs with their eyes closed by now. They all knew what they were getting into.

Judge Richey: You mean deans and...

Mr. Singer: Sure. Sure. They know what the job is. They know how hard they will work. They know that they are not in the job to make friends. But, I think that, aside from the kind of ego trip that goes with it, they all think, and quite rightly and sincerely, that they've got something to offer. I hope they're right.

Judge Richey: So do I. You know when you and I were in school, deans stayed forever.

Mr. Singer: Yes. And college presidents stayed forever.

Judge Richey: They did.

Mr. Singer: And, the pressures on them were very, very different.

Judge Richey: Oh, I thought they were pretty difficult, having grown up in an academic family and that's all they talked about was who's going to be the head of

the X department or a member of the Board of Trustees or something like that. But the presidents pretty much stayed.

Mr. Singer: Well, the reason that academic fights are so bitter is that there is so little at stake. But now there is a lot at stake and they seem to be every bit as bitter.

Judge Richey: I don't look forward to it. I don't know whether you know it, but I've got this new anti-trust suit against the ABA...

Mr. Singer: Are you...you are sitting on that one.

Judge Richey: And I'll have to supervise that according to the terms of the decree for ten years.

Mr. Singer: I see. There's a Consent Decree that has just been entered and I...

Judge Richey: I've got to give time for comments and so forth...

Mr. Singer: Right.

Judge Richey: I just dictated an order yesterday extending the time because some law school up in New England was asked to intervene or have the status of amicus.

Mr. Singer: Laughter. Did the name begin with "H" or with "Y"?

Judge Richey: Neither. But... I read...

Mr. Singer: Do you intend to do it yourself? Or to have a master appointed, or...

Judge Richey: Well, I don't know. I'm going to wait until the hearings and see what comes in. But, I'm not going to look over the shoulders of these law schools, the accreditation process, but you know, UVA consented to a Section 1 violation; admitted it. Can you believe that?

Mr. Singer: Well, apparently there are some people on the committee who are very upset about this. I saw something in the newspaper that...

Judge Richey: Well, you say you read in the newspaper, as I did, that Pauline Schneider...

Mr. Singer: Pauline Schneider.

Judge Richey: She resigned.

Mr. Singer: Yeah. Not quietly.

Judge Richey: No. I forgot what she said her reasons were, but anyhow, she resigned. I think somebody else did too.

Mr. Singer: Yeah. I think there were three people who resigned.

Judge Richey: But this brief I read yesterday was about adjunct professors and the surveys that have been done with respect to them, how the decree is inadequate to protect the schools and adjuncts. The student evaluations ranked them better than most of the tenured professors....

Mr. Singer: They say the quality of their teaching is better than that of the tenured professors.

Judge Richey: The tenured people who run the law schools really have a fit with that, but they exercise an awful lot of power, these people who have contracts for mediocrity, as I call it.

Mr. Singer: [Laughter] Right.

Judge Richey: Maybe that's what we have as judges, but in the nineteen years I taught at Georgetown was just terribly unjust. They wouldn't allow any more than two hours' credit for a course which really was worth six.

Mr. Singer: Because it was tough financially?

Judge Richey: No, not because it was tough or adjunct. Me. But, because of the work that was involved in order to do this properly. And, every year, ya know, the school wouldn't pay attention to it. And I guess the hierarchy, the deans that they've got over there which are... they've got a dean for everything and then two assistants.

Mr. Singer: I think one of the changes in the whole academic world is the number of people who are administrators and have no teaching responsibilities. And, that's true throughout the system and part of it is that the reporting obligations, say to the federal government, are just so much greater. The whole EEO circumstance requires people...and this is...I've seen it much more closely at undergraduate institutions where that's the case. We keep... the Boards continue to bemoan the fact that they're spending all this money on non-academic things and the institution responds that they don't have a choice. They just have to.

Judge Richey: I think you'll find from Peter that if we could make a duplicate copy of our conversations available to the law school, that ought to be sufficient.

Mr. Singer: OK. I would be certainly willing to do it and then it would, in their hands, be subject to the same, whatever these constraints are that you develop as far as use and things like that.

Judge Richey: Yes. Yes.

Mr. Singer: Did you get a chance at all to ramble through the book?

Judge Richey: I did. It's well done. Except that it doesn't have enough, much detail about cases or some parts of my life that I haven't had a time...I could

show you some of the things that I have been doing this summer. This is one.

Mr. Singer: *Suggestions for Achieving Equal Justice in the Courts.* Is this an outline or is this a talk you gave? This is just yesterday you did this. Who gets copies of this?

Judge Richey: Well, I hope that everybody will get copies of it. I did this on my own without portfolio. It's an outgrowth of the Race Gender and Ethnic Bias Task Force. It's a project..

Mr. Singer: Will it endear you to your colleagues?

Judge Richey: I hope so, but don't expect it. It's toned down in terms of the binding nature of it. First, because of constitutional restrictions on like a speech code, but also to gain approval. It's an educational tool as Professor Vicki Jackson says. And it's based...this summer I read, oh, thirty-eight task force reports, state corporate reports, on this subject. Boxes and boxes and boxes full of stuff. And this is a distillation of that. I only have a couple copies of it. They ran out of paper and they don't have them in the Clerk's office. It's before Judge Norma Johnson's committee right now, the Implementation Committee. I hope she approves it but...

Mr. Singer: If you had your druthers, what would you see as the distribution of this little pamphlet?

Judge Richey: Oh, throughout the Clerk's Office, throughout the Probation Office. It would go to every lawyer who appeared in the entire Court. I would even give it to jurors. But, now, if the Court doesn't approve it and sanction it,

I'm going to do it myself anyhow. On my own. In my own Court.

Mr. Singer: Good. That's one of the things about District Judges. Nobody will say you "nay" in your own courtroom.

Judge Richey: There's also a big... I had it on the agenda for the September session of our Court but it got knocked off because I put, mistakenly, the subject of "Civility in the Practice of Law" in this and the material in that big thick green thing over there. And I put that first -- civility business. And, instead of reinventing the wheel, I just copied the report of the Seventh Circuit, the recommendations. But that was a mistake because I didn't know at the time that the Bar, headed by one of my former law clerks, was working on that project right now, and one of my senior colleagues is now liaison to that committee, and they wanted it put off until the Bar had finished its work which will be sometime in the Spring next year. And [undecipherable] said, "What's the hurry, Chuck?" and that sort of thing. The hurry is that this type of stuff has been delayed for a hundred years and it can never be too early.

Mr. Singer: True.

Judge Richey: Well you know that. But not many people do. So I'm just kind of a lonely person right now waiting hopefully to get the Implementation Committee, which I didn't know had been appointed either for our Court, to review and consider this.

Mr. Singer: Is the Committee a good one, notwithstanding this?

Judge Richey: Yes. It's a good committee. Judge Norma Johnson and Rick Urbina

and Judge James Robertson, two new judges and Norma. So I think they will receive it favorably if they can get around to it.

Mr. Singer: What about the committee that is considering the issue of civility?

Judge Richey: Well. That won't be done until after the Bar finishes. We have just finished a questionnaire...

Mr. Singer: That the Bar submitted to you and presumably to others.

Judge Richey: Oh, they did to all the Court. And they've met with the Superior Court and they've gotten their answers. That will go through I think, particularly in view of the fact the Seventh Circuit has already done all the work. Judge Marvin Aspen out there is a terrific judge. A real leader. And, it is a problem -- civility in the practice of law.

Mr. Singer: And he's had nine months to look at it every day. To get the nature of a problem very clear

Judge Richey: Well, you and I have had a lifetime to look at it.

Mr. Singer: And you've seen the kind of erosion of that.

Judge Richey: Oh, yes. I mean. You go around to the trial department in your own law firm. I'll guarantee you you'll find that your litigators have had lawyers talk to witnesses during the deposition, discuss documents, interrupt, do all kinds of things. There's more of a lack of civility in pre-trial practice than there is in the courtrooms. That's where the real problem is. You do me a favor and ask your own litigators. You'll find that. That's where it is.

Mr. Singer: I'll look up Milton Eisenberg and talk with him about it.

Judge Richey: I think Milton did mostly criminal work.

Mr. Singer: Well. He did a lot of white collar stuff. But, also a fair amount of the fraud stuff, the government contract fraud. That kind of thing.

Judge Richey: Yes. And that... he was working to prevent indictments and that sort of thing. And so I doubt if he did much civil discovery. Milton, I'm talking about.

Mr. Singer: Oh, no, I think...

Judge Richey: He may have done it earlier in his career, but at the time I got acquainted with him, he was doing all these joint defense agreements and these sophisticated, complex...

Mr. Singer: Yes. Yes. And qui tam defense and things like that.

Judge Richey: So I doubt if he was engaged in much discovery with the garden variety of these problems that come up, Dan. But, come back to your question -- if we can get these tapes and the transcripts to the law school, that's all that they would care about. That's all they're entitled to.

Mr. Singer: OK, fine. And you think it's OK then just from say me or someone from Linda Ferren's office to get in touch with him directly?

Judge Richey: Oh, sure.

Mr. Singer: OK. Now with respect to the transcripts that you've read, is there some easy mechanism by which you might comment, either sitting yourself with a Dictaphone and working through it or some other mechanism?

Judge Richey: I think I owe that to you. I haven't done it and I just...

Mr. Singer: [Laughter] One of the nice things is that you are totally in control of the

time.

Judge Richey: Well, I guess that's true. But I just always seem to have more on my plate than twenty human beings.

Mr. Singer: That's actually...

Judge Richey: It really is true. I get a lot done but I don't do as much as I should or want to do. And, this is one of the things that, by necessity, even though it's important to me, it's taken kind of a backseat.

Mr. Singer: Well, the people that are paying your salary are more interested in what you do from the bench and with regard to bench matters than this kind of thing.

Judge Richey: I might tell you I found out a couple of weeks ago that I was the most current judge in the United States.

Mr. Singer: Well, that brings me to question 5.

Judge Richey: Oh?

Mr. Singer: Or item 5 on that list.

Judge Richey: Yes. How do I keep my docket current? The most important thing is to establish deadlines. Promptly, as soon as the case is filed. Over the whole litigation process and let the lawyers know I mean business. They fill out one-page forms telling me about a number of witnesses and that sort of thing, estimated time for trial, and so on.

Mr. Singer: Right. This is all under this Rule 26.

Judge Richey: Well, that's the discovery rule -- 26 through 37. Those are the civil discovery rules. I'm doing that in criminal cases too. Just by number.

Six lay witnesses, six opinion witnesses, whatever. And then a few minutes conversation by looking at these forms. I could make a 99.9 accurate reasonable estimate... estimate of how much time it should take...

Mr. Singer: That's how much time it should take in the trial itself.

Judge Richey: Well, for discovery, for motions, pre-trial and for the trial. And you could do that promptly instead of letting it lay around here and you know the rule provides that you've got 120 days within which to answer a complaint. Why if you represent a plaintiff and file a case in my court, you'll be back here in probably ten days, and...

Mr. Singer: Filing a case in court...

Judge Richey: And, my clerk will ask you to name, to tell her who the defense counsel is. The odds are 99 out of a hundred, the plaintiff's counsel will know; been dealing with them before they filed suit.

Mr. Singer: Sure.

Judge Richey: Plaintiff's counsel will come. And, 80% of the time there won't be any question about the lack of service of process. And, while they're in my court and they sit down and fill out that form while I'm talking to the other lawyers and it's over with in ten minutes. And I'm good at computers and I've got everything computerized. I don't wait for the lawyers that draw me orders or what I say and so on. We do it right here and it's done by that night. So, that's how you keep a current docket. Do they resent my quantitative output? I think they do.

Mr. Singer: Do they resent it?

Judge Richey: Yes. I think they do. How do they show it? Oh, it's subtle, usually. Indirect, it's kind of like race discrimination. It's covert rather than overt. Sometimes it breaks out.

Mr. Singer: Do you find that some of the judges are genuinely interested in how you do it so that they would?

Judge Richey: Yes. Particularly the new ones. Go back to the time of Louis Oberdorfer. He spent three weeks here in my court. Followed me around, morning 'til night taking copious notes. Somebody must have told him I have some ability in that area. And the new judges...I've spent maybe ten percent of my time there in the last six months advising the new judges.

Mr. Singer: Like Jim Robertson and Rick Urbina.

Judge Richey: Yes. And it's a funny interesting thing. Let me tell you something. Jim and Paul Friedman seemed to be picking up the work and the art and craft of judging better than the other three who came from the Superior Court.

Mr. Singer: The two of them, I wouldn't say they're cut from the same mold, but they are head and shoulders above most practitioners when they were practicing.

Judge Richey: That's correct.

Mr. Singer: I mean, they were...

Judge Richey: But they had an exposure to the kinds of problems we have here. I guess. And, I believe more so than our local judges who have dealt with the little

and smaller disputes. You might say on a mass production basis, but when they get over here and they get into fields they've never had... I just sat on a case where the court of appeals judge and another district judge... That district judge was just absolutely overwhelmed.

Mr. Singer: Some of your new judges here on the court who came from Superior Court.

Judge Richey: Yeah. Many years of experience. I was just shocked. Just shocked. But, I had no experience with them. Now the circuit judge hadn't had any experience with that particular kind of a problem either. But it wasn't difficult for the circuit judge to master it.

Mr. Singer: Right.

Judge Richey: And so it's just a side observation that people, I guess, with the kind of backgrounds that I think are requisite to success in a federal court, are not necessarily those who come from a state court bench.

Mr. Singer: Why?

Judge Richey: Because he's just different. Night and day difference. And, it requires writing skills.

Mr. Singer: Yes.

Judge Richey: It requires a lot more management skills.

Mr. Singer: Within your own office or in the management of the cases?

Judge Richey: Both. Both.

Mr. Singer: Well, how would it require more management within your office?

Judge Richey: Because you have... that's a very intelligent question. You have to learn

how to delegate discrete problems. You can't say, "Tom, Jane" or whatever their names are.

Mr. Singer: The clerks, you are referring to.

Judge Richey: Right. Here's a case. Tell me what I ought to do with it. You can't do it that way. You've got to say, "Here is an issue, give me a memorandum on this discrete problem." Or there are two issues and I want to know what the answers are with respect to these. You've got to give them discrete assignments and know how to do that. That's the way you manage people....

Mr. Singer: Do you ever ask your clerks, "Give me the best argument on each side of this issue"?

Judge Richey: Oh, all the time. I'll call my clerks in and I'll say, "Dan", who got Jones vs. Zilch and "as you know it's an environmental case involving NEPA and I think the government is right. An environmental assessment as distinguished from an Environmental Impact Statement in these circumstances ought to be enough. Now what's wrong with that?" I don't believe that at all but I use them as a sounding board to test myself. I do it all the time. And that's one of the rationales for all this business of confidentiality. My goodness gracious, if that kind of stuff appears on the front page of a newspaper, nobody would understand it.

Mr. Singer: And this is confidentiality within the chambers.

Judge Richey: Yes. Yeah. It has to be that way and that's one of the very good reasons for it. I do that to test myself. Lots of times I do it on the bench too.

And I know the lawyers leave my courtroom very often thinking one side has lost and one side has won. What's going to turn out to be just exactly the opposite? I'm testing myself on many occasions. So, I guess that answers this fifth question. The other part of it is, I work harder than most judges, work longer hours, I spend more time here. I also am equipped with a complete library at home.

Mr. Singer: That you told us.

Judge Richey: And computer skills. That's something I do.

Mr. Singer: And you think that your facility with the computer and your ability presumably to get into Lexis on your own...

Judge Richey: And the library here. CD ROMS and...

Mr. Singer: Right. I assume all of the various computer capabilities. CD or just direct modem connect to Lexis.

Judge Richey: Right, or Westlaw.

Mr. Singer: Or Westlaw. And, I'm not selling either.

Judge Richey: No. No. Well, it doesn't make any difference.

Mr. Singer: You have both of them on your machine, I presume.

Judge Richey: Yes. We won't have Lexis though as of a couple of more weeks because West beat them out on their contract bids. So, it's just going to be Westlaw and Nexis, which is the newspaper...

Mr. Singer: Uh Uhh. The newspaper service.

Judge Richey: Even though we will have what we haven't had before from West which is their newspaper thing. I don't think that database goes back as far as

Nexis does.

Mr. Singer: Of course, Nexis has been pushing it back, I think, with some energy.

Judge Richey: I must have twenty volumes of newspaper stories right over there on the shelves from Nexis stored about me.

Mr. Singer: It's a puzzle to me as to... I mean, both, as I understand, both Nexis and Westlaw or both Meade and Westlaw give away their services to the law schools.

Judge Richey: Wouldn't you?

Mr. Singer: And my question is why they don't both give it away to the courthouse, to the judges.

Judge Richey: I don't know.

Mr. Singer: OK.

Judge Richey: I don't know whether they could do that.

Mr. Singer: I don't know why they would do this but it strikes me as having trained generations now, a full generation of law students to rely on, why they wouldn't lust after getting the judges...I mean, take away the impediment, the economic impediment.

Judge Richey: I guess it's very expensive. I have a friend in New York with whom I do a lot of work for, ALI-ABA. And I say, "Sol, punch in Lexis, or get somebody." 'Cuz he doesn't like computers. I say, "Get somebody on your staff to punch in Lexis and do a search on so and so, you'll find this." Then he goes right through the roof. He says, "Oh, Chuck, you could get that for free. My firm has to pay for that."

Mr. Singer: That's right. That's a true statement.

Judge Richey: Well, I know that. But, I forget it, you know. It's so easy for me to do it. Does that answer the fifth?

Mr. Singer: Yeah. I think that is. I'm also interested obviously in number three among other things.

Judge Richey: I see. Oh, I don't think any of the three there bother me or represent my true feelings when I got reversed. On the average, I have some resentment or disappointment, perhaps is a better word. Say, for example, my big NAFTA, North American Free Trade Agreement decision, applying the NEPA statute to that agreement. I'll go to my grave thinking I was absolutely right in applying that statute, which on the face, required an Environmental Impact Statement for every major federal action and every major legislative proposal. And they just totally ignored it and when it got to the appellate courts, they said it was a political question for the two political branches of the government and not the courts. And I thought that was an egregious mistake. But, you know what, two of my best friends in this world wrote the opinion.

Mr. Singer: [Laughter] Ok.

Judge Richey: It's just the best way I can describe it is, they were wrong. But it's a disappointment. Because I'm a person of the law.

Mr. Singer: What about the other way round, though? I mean... you are also someone who accepts the fact that there are other views...

Judge Richey: Oh, absolutely.

Mr. Singer: And that there are questions that weren't quite as easy as....

Judge Richey: Well, that *Armstrong* case I thought was a slam dunk case.

Mr. Singer: Fine.

Judge Richey: Now, I'm just trying to think right off the top of my head where others, you know, involved with... a new question unresolved area of the law; where some element of philosophical policy considerations might influence a result one way or another. I'm not expressing myself very well, but I can think of some cases where that might obtain

Mr. Singer: Where you were reversed in the... basically...

Judge Richey: That doesn't bother me. That doesn't bother me.

Mr. Singer: Which one? Can you tell?

Judge Richey: I'm just trying to think. I can't. I said I could but off the top of my head. I've been affirmed in most of the major cases.

Mr. Singer: But, I'm trying to think of whether we discussed one earlier where the Supreme Court, I guess, ended up reversing.

Judge Richey: Well, I've had eleven go to the Supreme Court. Fully briefed.

Mr. Singer: All right.

Judge Richey: And, they've adopted my view eight out of eleven times and not moss back decisions either.

Mr. Singer: What about the other three? Did you have the feeling that those guys in the majority up there just missed the point?

Judge Richey: Let me tell you one that I was affirmed in.

Mr. Singer: OK.

Judge Richey: The Celotex case. I think it was a six to three decision. Where I granted summary judgment in an asbestosis case. John Paul Stevens wrote a strong dissent in which he said, "The Trial Court never wrote an opinion." He never gave his reasons. And that was just plain flat out incorrect. And it came back on remand and the Court of Appeals intercepted it and Kenneth Starr, who was then a judge, repeated the same thing. Agreed. Totally incorrect. I don't like that.

Mr. Singer: Well, I understand that. Like, what do you do?

Judge Richey: You can't do anything about it.

Mr. Singer: Like, can you pick up the phone and say, "Hey Ken. What do you mean I didn't write an opinion?"

Judge Richey: Oh, you don't.

Mr. Singer: One doesn't do that.

Judge Richey: One doesn't do that.

Mr. Singer: One just stew about it.

Judge Richey: Yeah. That's right. Just stew and complain to your clerks and your colleagues and your friends.

Mr. Singer: But, have there been instances where you have been reversed and you've said, "Well, that's a fair reading. I happen to disagree, but that's a fair reading."

Judge Richey: Yes. Yes. I'm sure there have been. I can't say... I don't have the... they've got volumes of my opinions. I can't think of any off the top of my head. But, yes, I know that's happened.

Mr. Singer: Any in which you said, "Well gee, that's really a new insight"? [Laughter]
That's harder.

Judge Richey: It is. The trouble with appellate courts, frankly. Lots of times when you are reversed, you are reversed on the grounds that were not argued to you or even briefed and frankly, there is an element of dishonesty in that when that happens.

Mr. Singer: For lack of candor. All right.

Judge Richey: Yes. That's better. Means the same thing, but... That happens too. Now you may ask me for some specific examples, I can't remember right now off the top of my head. But, that happens around here to all of us from time to time and I think it is patently unfair. But...

Mr. Singer: Do you get the sense that your colleagues with whom you have vast philosophical differences have any different feelings when they are reversed by the Court of Appeals? Stanley Harris or Oliver Gasch... people with whom you have... your judicial focus is really quite different

Judge Richey: You know, the reaction is about the same.

Mr. Singer: That is not really surprising.

Judge Richey: Doesn't make any difference. It's about the same. Although, Stanley Harris gets reversed time and time again. He's kinda like the late Judge Harvey. It was like water running off a duck's back; it doesn't make any difference. He doesn't care.

Mr. Singer: Well, this life tenure really makes a difference. [Laughter]

Judge Richey: I guess. I guess. But, I've had about eight or nine cases argued in the

last two weeks. That many. In the Court of Appeals.

Mr. Singer: Eight or nine of your cases.

Judge Richey: My cases. Just in the last two weeks.

Mr. Singer: You're in for a lot of wonderful or perfectly awful fall season.

Judge Richey: You couldn't be more right. You couldn't be more right. Just a whole panorama of the law. Today it was the Federal Advisory Committee Act involving the United States Sentencing Commission which was back to me on remand. Or that the National Security Council is an agency...

Mr. Singer: Yeah. That is the Armstrong who works for the...

Judge Richey: That's the David Armstrong case. One of them was *Hammon v. Barry*, the case involving the D.C. Fire Department. I was just affirmed on that. They sent down an order, two and one-half pages, disposing of that case, finally. That's been to the Supreme Court twice.

Mr. Singer: You'd be surprised to learn that I read *Armstrong*.

Judge Richey: You told me on the phone you had and you'd think they would be making complex problems simple...

Mr. Singer: Well, what I really...

Judge Richey: That case is not complicated.

Mr. Singer: Well, my question really is, is the case as easy as you make it out to be?

Judge Richey: It surely is.

Mr. Singer: And that's largely because the government for so long had taken the position that it is an agency?

Judge Richey: Yes. And you know, that's something that represents something.

Mr. Singer: You seem to be angry about that.

Judge Richey: I am. Because it's not fair. I mean, I don't understand. The Federal Programs Branch of the Civil Division of the United States Justice Department. They have seventeen lawyers that have been arguing this same case since 1988 and the same people show up today that showed up in the original instance defending Ronald Reagan. They are still there and it's been kicking and dragging them into the twentieth century like pulling wisdom teeth. And I talked to a friend of mine, high official, a policy making official in the Justice Department, and I said, "What in the world...that division is an entity and an island unto itself. We just can't get control of it". I said, "Well, you proved my point. Doesn't make any difference who we elect for our President. The bureaucracy is still going to go on and the three thousand or four thousand people any President appoints are going to be governed by the bureaucracy." It just proves that J. Skelly Wright was correct when he said the regulators in this town are regulated by the regulated.

Mr. Singer: Yes.

Judge Richey: And, that to me is an atrocity. It isn't right, Dan.

Mr. Singer: Well, he's right to some extent. But take Reed Hundt, for instance, at the FCC. At least he's trying not to be regulated. Not to be regulated by the regulated people and from time to time he gets a big...surely the process within the Justice Department could, if they had time and energy and a different role [?] on somebody's radar screen. Say, stop making fools of

ourselves. But,...

Judge Richey: You read the *Armstrong* case.

Mr. Singer: Yes.

Judge Richey: What do you do about a bureaucrat who puts a memorandum in front of President Clinton declaring the National Security Council an agency and abolishing the Freedom of Information Act and the Regulations? I know, I think I know, I've never met him, this President of the United States, and he starts out the first couple of paragraphs words for openness in government, and so on and so forth. I don't think President Clinton believes one word of that memorandum except that first paragraph or two. And, I've been around government long enough to know, and you have too, that some long-time bureaucrat is the one who wrote it and caused it to get on his desk; he's got a billion and one things to do. Mr. President, this is what we think is your option...

Mr. Singer: This is not from the Justice Department. This is from the NSC.

Judge Richey: Well, I think it's from both, between you and me. Of course, they're coordinating. From the last days of the Bush Administration they were talking from my courtroom, on my telephone to Boyden Gray who was counsel to Bush, back and forth. Those were heady days.

Mr. Singer: Laughter. Right. They certainly were.

Judge Richey: So. But. You know, it accomplished a whale of a lot because now it's established that e-mail messages and electronic messages are federal records and we've got the archives, the National Archives and Records

Administration, that have adopted regulations to that effect. And that would have never happened but for this little court of mine that I run.

Mr. Singer: Oh. I think that's clear. The government's got to be sorry that...

Judge Richey: But then, do you know what? These guys will look you right in the face and smile, and say they are right.

Mr. Singer: Come on. People learn to do that in law school. It's the civility of the Bar. You're big on that.

[Laughter]

Judge Richey: Awww, I guess. I expect too much from people. Right's right and wrong is wrong. Steve Saltzburg tells me, you know, describing certain people and certain judges, lawyers. They never think about rights and remedies for the disadvantaged, certain people.

Mr. Singer: We're seeing a lot of that on the Hill these days.

Judge Richey: Boy, you could say that again. Maybe there won't be any left. I don't think it's as strong. Of course, Judge Oberdorfer today said, "I'm worried about having a constitutional convention." A lot of what's going on....

Mr. Singer: Is he seriously worried that...

Judge Richey: Oh, I think he was making a joke, but by the same token, if there was a constitutional convention, we wouldn't have the same world. I doubt if you and I would even be talking.

Mr. Singer: I wonder if there would be somebody listening.

Judge Richey: Yeah. We wouldn't have our voices heard.

Mr. Singer: Not only that, but whatever we said to one another I would think very

likely have somebody monitoring it, at least...

Judge Richey: You asked me what things cause me to lose my temper. I don't lose my temper very often. I have strong views, but I don't lose my temper and I don't necessarily expect to force my personal views except as to deadlines and accomplishing our mission.

Mr. Singer: The deadline is... what your view is that deadlines are really important?

Judge Richey: Absolutely. Essential. And I want to tell you something. It is essential in anybody's personal life and it's essential in their professional lives or business. The art and craft of judging can be summarized as follows: Judges are no more than the superintendent of construction of a job site. The lawyers constitute their work force and the end product is no better than the combination of the two working together. That's the essence of my view.

Mr. Singer: Given the opportunities, that was kind of a blend of this question and the one just before it about work load. You do some teaching of judges in various kinds of institutes that the Administrative Office or the Judicial Conference...

Judge Richey: The Federal Judicial Center.

Mr. Singer: Federal Judicial Center.

Judge Richey: Yes.

Mr. Singer: Do people just go for the vacation benefits on that kind of thing or do they...

Judge Richey: You'd be surprised. They have a school for new judges every time they

get about thirty, thirty-five, they bring them to Washington and they go to school from 8:30 in the morning until 6:00 at night, all day long, just like you would in a regular school.

Mr. Singer: They are not learning the Federal Rules at that point, are they?

Judge Richey: Oh, they're learning the whole panorama of things that perhaps many of them have never been exposed to like criminal jurisprudence.

Mr. Singer: Right. There's sentencing guidelines and things like that...

Judge Richey: Sentencing, motions to suppress, motions to dismiss, severance motions...

Mr. Singer: So it's really substantive...

Judge Richey: Substantive and procedural.

Mr. Singer: All right. It deals with the stuff of judging.

Judge Richey: Yes.

Mr. Singer: Yeah.

Judge Richey: At any rate, I don't care how long you have been a trial lawyer or what your background is. After you have the responsibility of being a judge, it is wholly new and it's unique and just requires one whale of a wrench and change in one's life if you're going to do it well. And people come to these schools. They're like babes in the woods. They just, all of... the most open minds you've ever encountered, they want to learn, really, it's wonderful.

Mr. Singer: But, you're surely the only one... I mean, there's nobody saying take it easy and relax.

Judge Richey: Except the Chief Justice, the current Chief Justice. He makes speeches

around the country to lawyers, for example, and commencement addresses to law students. "Make sure as you go through life you take time to smell the roses."

Mr. Singer: That's a different issue.

Judge Richey: You've got to find time for relaxation. You've got to find time for your family.

Mr. Singer: Right. But you can still worry about deadlines as being important and when Chuck Richey gets up, he talks about, among other things, the importance of deadlines and discipline in terms of the organization of the judging process and that the judge has a responsibility to impose that on...

Judge Richey: Himself.

Mr. Singer: Himself, and...

Judge Richey: Himself and the lawyers and his law clerks.

Mr. Singer: And, what I also hear you saying is that message doesn't get across. And, the speculation I'd invite you to engage in is why? These are all Type A people.

Judge Richey: There's another judge in my court that had a matter set down for a two-week trial this last year and he couldn't possibly get to it because he had a long criminal case. The plaintiff's lawyer complained that they had to have their day in court and it had been years since it was pending. So he finally, in response to the request, sent a letter to the chair of the Calendar Committee who in turn called me and said, "Would you possibly see what you could do about taking this case?" I said, "Yes, I'll do it, but

my yes is contingent." "What's that?" "I want to talk to the lawyers."
I talked to the lawyers and had them come in.

Mr. Singer: You settled it.

Judge Richey: No. Not that easily. It was a highly controverted case but one that I finally worked out. It would take a day and a half. I got it down to two witnesses and then on the eve of trial it went away. So, justice was done. But, you can't teach that to other people. I was telling one of the people in the Clerk's Office this morning, who was in there saying, you're always ahead of the curve, Judge, it's just amazing how much you get done, and the innovations you've established since you've been here and so on... I said, "Well, that's nice of you to say." I said, "You know, you can tell people things and if they don't want to do them they are not going to do it. And if it's not in their personal makeup, that kind of a discipline, you can't get them to change.

Mr. Singer: The one thing that you can be sure of with federal judges is, they are all Type A. They are all stand-up, ego-driven to some extent, successful in whatever they were doing, and surely they weren't successful within law firms or other contexts by being lazy.

Judge Richey: Well, I asked a colleague of mine a couple of years ago, less than a couple of years ago, do you feel pressured? Not a bit.

Mr. Singer: Then there is no internal drive.

Judge Richey: He said, "When I took this job, I decided I was going to work all day long, five days a week; I was not going to work at night, I was not going to work

on the weekends."

Mr. Singer: OK.

Judge Richey: And you know, he lets the lawyers run his court. A lawyer says I need six weeks to put on my case in chief. He'll get it without any question. The defense lawyer says I need another two months, he'll get it.

Mr. Singer: What would you do to change that? I mean, what price would you pay for doing that? Not you personally, but how would one...

Judge Richey: How would one change?

Mr. Singer: Seriously. Because, look, docket management and the kind of... if you want to think about the things that make people lose faith in the system.

Judge Richey: That's it.

Mr. Singer: That's, I mean, that's at least a part of it for sure. And with three strikes and you're in forever and other kinds of things that are destroying the civil docket in the country, it's got to be a matter of, I would think, concern even to those who are most casual in the way they view the judicial system. What would you do if you ran the zoo? What would you do to change that kind of thing?

Judge Richey: I don't know. I guess...

Mr. Singer: If you were the chief judge, what would you do?

Judge Richey: I don't...The chief judges in this country don't have any more power than I do.

Mr. Singer: That's what I thought. So, ..

Judge Richey: It's a power persuasion. I heard that nice guy who used to be with

Lyndon Johnson interviewed Burger up there at the Supreme Court before he retired and Burger described himself as the first among equals on the Supreme Court. About the only power he had was to assign majority opinions.

Mr. Singer: Well, he runs the building.

Judge Richey: And he runs the building and that kind of stuff.

Mr. Singer: But, he can tell what to serve for lunch.

Judge Richey: He can't tell a judge how to decide a case, though.

Mr. Singer: Correct.

Judge Richey: And, Jack Penn can't tell any judge on this court to expedite the process in their cases or to do it in a certain way. There are fifteen different islands here.

Mr. Singer: Is it different in any other judicial district?

Judge Richey: Yes. Yes. Yes.

Mr. Singer: Why? Why...

Judge Richey: There is more collegiality throughout the country than there is in this court. Because, as you know, this is a national court and until this President came into office, they've taken judges on both our court and the Court of Appeals from all over the nation. On our Court, they have stopped that. Maybe that will promote more collegiality, I don't know. But you take Baltimore. Ed Northrop in the District of Maryland. Those judges come from essentially the same environment. Even the minority people come from the same environment. They know each

other. They've lived with each other. They've worked with each other.
For and against. That's not true here in the nation's capital.

Mr. Singer: But how does that reflect itself in this critical area we're talking...

Judge Richey: Of management.

Mr. Singer: I mean, does it mean that the Chief Judge can put his arm around
somebody and say, "You've really got to move this thing along."

Judge Richey: Over there. Yeah. Much more so, more likely than here. Much more
so. It makes it easier. And I know the judicial system in this country
because I've traveled, speeches, and work in the workshops. For a long
time I knew every Article III judge in the United States by their first name,
97% of them.

Mr. Singer: Can the Chief Judge go to one of his colleagues and say, "Do you want
some more help because we really are getting embarrassed in the nation
and with the statistics and I'm visiting every one of the judges to see if
there are structural things we could change to get things moving."

Judge Richey: If I were Chief Judge, I would try it.

Mr. Singer: Yeah.

Judge Richey: But that's never been done with all the Chief Judges I've had. But, you're
looking at a guy who would do that if I were a Chief Judge. But you see,
when you've got Chief Judges that have big backlogs themselves, it's
pretty hard for them to go to others and say, "Get control of your act."

Mr. Singer: Right. That's true. I hadn't quite thought that. That's a serious
problem.

Judge Richey: Try Item Seven. See how...

I don't think I've missed voting since I've been an adult. I'm still a registered Republican. That's about the extent of my Republicanism. I'm much more, you ought to know by this time, issue oriented than I am party oriented. And, I think today, the Republican Party I knew as a young adult has changed 180 degrees and therefore, I am not interested in it anymore.

Mr. Singer: Who do you think... who are the Republicans with whom you do find yourself kind of intellectually or emotionally comfortable?

Judge Richey: You know that both of them are dead or retired. The Jake Javits, the John Lindsays, Clifford Case of New Jersey, the Lodges of Massachusetts and Connecticut, Saltonstalls.

Mr. Singer: Those were your seniors. Those were the people you came into government and into the public life admiring and they were seniors to you.

Judge Richey: Yes. They were my seniors but I worked with them.

Mr. Singer: But you worked with them and this was under the auspices, I guess of Mrs. Bolton and Herb Brownell and that group of people. But, take someone like John Chafee.

Judge Richey: I like him very much. I think he's a very effective senator.

Mr. Singer: Jack Heinz.

Judge Richey: We need him.

Mr. Singer: Yup.

Judge Richey: Heinz was a good senator. Too bad he died.

Mr. Singer: Yeah.

Judge Richey: The guy that succeeded him. Ho!!

Mr. Singer: [Laughter] Santorum.

Judge Richey: Right. I about had a fit. I saw Arlen Specter on some news program and he said he loaned his campaign manager to Santorum to get him elected which was a surprise to me but that's what he said.

Mr. Singer: Arlen Specter does not fill the bill.

Judge Richey: All I want to say, I keep hoping he does.

Mr. Singer: But he makes it very difficult for you.

Judge Richey: Sometimes. I like Arlen because he plays a most important role in our society today.

Mr. Singer: What is that role?

Judge Richey: Well, he represents the minority people. Which is absolutely critical and essential if we erred in our public discourse. And without men like Arlen, it won't be...and it's particularly important for somebody who is in the United States Senate, like Arlen Specter and, I think he's in his second term now, with enough seniority to be chairs on some committees or subcommittees, that his views be made known to the nation and to his colleagues. That's very very important. That woman he ran against? She would never have been able to articulate the same kind of viewpoint that Arlen does.

Mr. Singer: The same kind of viewpoint, or have the kind of hearing that derives from seniority?

Judge Richey: Both. Both.

Mr. Singer: She wasn't bright or articulate enough? Marjorie...

Judge Richey: Whatever her name was, she was the daughter of some southern Virginia Congressman. A Byrd machine politician.

Mr. Singer: Uhh Uhh. That was her father.

Judge Richey: Yes. I'm not going to visit all the sins of her father on this woman, but I remembered that. I remembered her father and I didn't have any use for him. It made it hard to like her. Made it hard for me. And besides, I'm a great fan of Arlen Specter and the Jews and I thought it was important to have a Republican Jew in a position of leadership and you can't abandon one political party over another. But, I've always worried that the United States would become like the French. A bunch of splitter parties and there's no such thing today and it's very disappointing to me as party discipline. I think there's probably more party discipline today in the House of Representatives than there's been in a long time. And I say that's good. Even though I don't like what they're doing. I'll tell you why it's good. Because at the next election, there's going to be accountability. Accountability to somebody other than the special interest groups.

Mr. Singer: From your mouth to God's ears. [Laughter] I hope you're right.

Judge Richey: I just believe it. Now, I don't think there's in the United States Senate I don't think there's near that same kind of party discipline on either side of the aisle. Certainly the minority side today doesn't have that discipline,

this Daschle from South Dakota or North Dakota, wherever he's from.

I've seen him. He's just like a kid.

Mr. Singer: Well, he is a kid. 'Cuz there's such a few Democrats left.

Judge Richey: He's spouting the party line but...

Mr. Singer: Shouldn't he do that?

Judge Richey: Sure he should. Oh, I don't... but, in terms of forming a cohesive unit like Lyndon Johnson was able to do. Oh, come on. Or a Scott Lucas or a McFarland did before that. I can name... or Everett Dirksen did on the Republican side. Hugh Scott did.

Mr. Singer: Right. Would you measure the breakdown at least on the Democratic side from 1972, the way most...I mean, the political scientists who worry about this kind of issue, have laid it at the destruction of seniority following the McGovern rules, if you will, with the changes in the rules that followed 1972. It's certainly within the Democratic party.

Judge Richey: To some extent I think that is probably right. It probably is right. And I...You know we have become a country of special interest groups. Until we get campaign finance reform really on the law of the land, it is not going to change. And that's a sad commentary on our country and in this moment here we are, October 5, 1995 talking and who knows what's going to happen next year. But, there will probably be a third party candidate and I doubt if they've got a snowball's chance in Hades of being elected.

Mr. Singer: Certainly true.

Judge Richey: And if they are elected. If the third party candidate were elected, just

think what would...How can they govern? How can that person govern?
Oh my goodness gracious! That's what's so frightening about it. And
you know, most of my friends look and tell me, "Oh, I'm an independent."
But, you know what? That offends me. I don't like that. Why aren't
you a Republican? Why aren't you a Democrat? And if you don't like
either one of them, why don't you get in one or the other and make it
better. Make it in your own image.

Mr. Singer: Sure.

Judge Richey: And that's the heart of the politics of the United States.

Mr. Singer: That's the way we all grew up believing.

Judge Richey: Sure we did. But we're getting away from it. These young people who
come in here as law clerks to work for me. They don't have that kind of a
sense or conviction.

Mr. Singer: Why don't they have it? What is there?

Judge Richey: Don't ask me why. I don't know. I've been searching for it.

Mr. Singer: Have you asked them?

Judge Richey: Well, not the new ones, they just started.

Mr. Singer: [Laughter]

Judge Richey: But, you know. I don't really know. And I never ask them their
politics.

Mr. Singer: No. No. No. But, in terms of their own commitment to some kind of
political, if you will, moral center, that they know where they are.

Judge Richey: They don't have that.

Mr. Singer: Are they introspective about it or reflecting? Do they reflect on the differences between...will they reflect with you about the differences between their general attitudes on those issues and yours?

Judge Richey: Well, I think more often than not. 98% of the time they agree with me.

Mr. Singer: There's certainly a big tendency to... [Laughter]

Judge Richey: If they don't agree with me, they don't agree with me on what we're talking about right now. Because that's not a part of their culture.

Mr. Singer: These are the best and the brightest.

Judge Richey: Unfortunately. So that doesn't make you very happy about the future of your country, does it?

Mr. Singer: No. Do many of them talk about careers, both in public life and in politics, or are they...?

Judge Richey: Let me tell you something. Most of the kids that come today have gargantuan debts. I've got a young man now who has between he and his wife \$177,000 in school debts and they are not done yet. His wife has two more years of law school.

Mr. Singer: Two hundred k after tax dollars.

Judge Richey: After tax dollars. I am glad you said that. Now is this worth it? And what can you expect. You know what that young man wants to do? He wants to be a public interest lawyer. He wants to be a public interest lawyer. That is why he sought me out. But I told him the other day that I do not know how in the world he can afford it. I asked him, Do you know what public citizen pays? What Alan Morrison or David Vladeck

will pay you? And you know what? As smart as this kid is, he really did not know. And, I just was crestfallen. There's a young man who ought to be in the public interest area.

Mr. Singer: Sure.

Judge Richey: Just an enormous capacity.

Mr. Singer: We see them in the law firm all the time and the really good ones stay until they have paid their debts and then...

Judge Richey: Good Bye.

Mr. Singer: And then good bye to the private practice and most of them will go to the Justice Department and be very good. The Justice Department and U.S. Attorney's Office, something like that, and find a career someplace in the public sector whether it be on government payroll or a public interest group of some kind, and not necessarily in the Washington area at all.

Judge Richey: That's correct.

Mr. Singer: Would your clerks... How would you change that, that is to say this phenomenon of the burden of debt? Would you have the public pick up the debt in some sense while they're in....

Judge Richey: I think there is a program started at Harvard where in exchange for public service, a large portion of the debt will be excused.

Mr. Singer: But that's debt to the school; that's not bank debt.

Judge Richey: Well, I think it encompasses student loans.

Mr. Singer: So that the school then actually pays off the loan.

Judge Richey: I think so.

Mr. Singer: Or carries...

Judge Richey: There has to be some form of subsidy for young men and women who want to be in public service in the law or similar discipline. To hand a person a degree in the left hand and a promissory note in the right is just so awful; egregious.

Mr. Singer: Do your clerks share their pain with you on this kind of issue?

Judge Richey: Not much. Not much. I have more pain than they do and I don't owe their debts. And that's another thing where I think I'm quite different than most judges. They become children of mine.

Mr. Singer: Yeah.

Judge Richey: I mean blood-like children and no fooling around about it, and I love them, I love their spouses, their children. It is just a very wholesome relationship and it is inevitable because it is such a small environment here. It is you against the world. I go out on the bench tomorrow and I have four or five cases that run the whole gamut of the law and one case in particular is pretty complicated. I don't know, but I presume there will be several lawyers on each side and it is me against the world.

Mr. Singer: But you have these smart young kids to...

Judge Richey: Yes, but they don't have the experience and...

Mr. Singer: The Yiddish word is "sechel" which I am sure you have heard.

Judge Richey: Yes. That is right.

Mr. Singer: "Understanding."

Judge Richey: They don't... you can't expect them to. And they are constantly amazed.

How does that old man know this? Only he can get to the bottom of problems. It is just amazing. We work all night writing bench memos and he can look at it for two seconds and think, oh, this is the issue, this is the problem.

Mr. Singer: It's a question of memory. I don't mean that people remember things, but just having been around.

Judge Richey: I told a judge today coming back from lunch. I said, "Do you take notes on the bench?" "Oh, yes". "Do you try to write down everything they say?" "Yeah". I said let me tell you something if I may. "If you were sick and tell your law clerks to come in court with you and write down everything anybody says. π for plaintiff, D for defendant, and J for judge, and you sit there and listen in the most intense form of concentration you possibly can bring up, you will remember more by doing it that way than by writing it down, because you will not... somebody will be saying something and you won't get it all and you will get lost for a moment. If you don't write, you will remember it better." He looked at me kind of funny and he said, "You know, Chuck, I'm gonna start trying that."

Mr. Singer: When I was practicing I used to get tired of looking at the top of kids' heads 'cuz I could tell it was going in the ear and down the arm and onto the paper and not...

Judge Richey: Oh, yeah!

Mr. Singer: Not being processed at all. [Laughter]

Judge Richey: Oh, yeah. And, did you ever see them going like this?

Mr. Singer: No.

Judge Richey: When important things were going on? I did.

Mr. Singer: That I haven't seen. But this business of looking at the top of their heads while they were writing used to drive me nuts. And, I'd say, "Look. Just listen."

Judge Richey: Yeah. Well, law clerk notes are very important to me but it is important for me to think and that's what I've learned to do. In the beginning I took copious notes.

Mr. Singer: You have the benefit of transcript. No?

Judge Richey: I don't need a transcript. It is a part of judicial management. I require the lawyers before trial... Say at a bench trial. There are proposed findings of fact and conclusions of law.

Mr. Singer: Before the trial starts.

Judge Richey: And they share them with their opponents. Then they mark up as follows. Underline that which they dispute, put in parenthesis that which they admit, leave blank that which they admit but deem irrelevant. And you know that starts seven days before the trial. By the time that process gets done, you have no idea how much of the case goes away. Half of the case is stipulated. And then they put a witness on the stand and start going with a....And I say "no, no, I've heard that. That's admitted. That's in your findings. Let's move on counsel."

Mr. Singer: Oh. Presumably the second time they are in your court it's better.

Judge Richey: Yeah.

Mr. Singer: And there must be some folklore that tells them how to try a case in front of a judge.

Judge Richey: Sure, Sure. If you had it to do all over again what would you have done differently? Goodness knows, I don't know. I love my work. I'd want to do the same thing again. I'd like to be a trial judge. I'd like to be on this court.

Mr. Singer: There has got to be a better way for me to ask that question. Given where you are sitting now and looking back, what kinds of experiences that were available to you would have enhanced your abilities, not your ability so much but your...

Judge Richey: Breadth of knowledge?

Mr. Singer: No, not breadth of knowledge but a general capacity in performing the work you love to perform which is judging, which is being a judge. Is there a different route of training of the kinds of experiences from what you had that you would seek out? If somebody came to you at the sophisticated age of 20 and said, "I really want to be a judge." And this is what happens, of course, in Europe.

Judge Richey: 'Course. And in the Far East too.

Mr. Singer: Yeah. I mean, people get on a judging track very early on.

Judge Richey: Right. Correct.

Mr. Singer: And there are a lot of things wrong with that, but with that kind of... the notion... What would you recommend to people that, in your own

experience...what would you have found useful to know about or to have done? I will give you a for instance. You were never a full-time employee of an executive agency.

Judge Richey: Except... Yes, I was. The U.S. Army Corps of Engineers. That was a full time..

Mr. Singer: All right.

Judge Richey: That was at the beginning.

Mr. Singer: But that's a little different.

Judge Richey: Yes. No. Otherwise no. That's correct.

Mr. Singer: You were never a U.S. Attorney.

Judge Richey: Correct.

Mr. Singer: And indeed you were never a Public Defender for a period of time.

Judge Richey: Oh my goodness, though. But, I did that kind of work for free.

Mr. Singer: That I know,

Judge Richey: And you know it too.

Mr. Singer: Sure. But what I am trying to get at is the kind of experience of working for the Executive Branch, state or federal.

Judge Richey: Well, don't forget I was counsel from '67 to '71 of a major public agency in the state of Maryland...

Mr. Singer: Was that a part-time job?

Judge Richey: Part time job? My goodness, Dan, I spent two and one-half days a week doing that job for the lousy sum of \$5500 a year. When I quit, it's kind of the story of my life. My successor got \$35,000. When I was a kid and

worked at nights at the B&O Railroad I got \$30.00 a month -- \$28.00 a month. My successor got \$200. I mean, that's happened all my life.

Mr. Singer: So the clue is to follow in your footsteps. [Laughter]

Judge Richey: And, when I went out to... Shortly after we moved to Maryland I became a member of the County Board of Appeals. You got \$2,000 a year and met one day a week. When I left to go to the state government my successor got I think \$10,000 or \$12,000. I mean, that's just the story of my life.

Mr. Singer: Being in the wrong place at the right time.

Judge Richey: The other way around. Let me put it this way to you. The only thing that I would perhaps like to do that I did not get to do, although it didn't make any difference, was perhaps to work in a large law firm in the private sector. And perhaps no more than a year, and maybe some office like the U.S. Attorney. But I think the tack I took which was totally unorthodox, to be able to be a federal judge in an important court like this, was the best possible training. I say that to myself all the time. I had a colleague down the hall who did nothing but work before the Federal Power Commission which does not even exist anymore. He didn't have and doesn't have to this day one-tenth of the experiences that I had and most importantly didn't have any experience with human beings, with people. I am going to say something to you that will probably shock you and shock anybody that reads this stuff. I think a political background in either political party for somebody who gets in it up to their hips...

Mr. Singer: Gets into politics.

Judge Richey: Politics is the best possible training for almost any field of endeavor. Because you are dealing with human beings and human nature. I always found that a politician's word was far better than a lawyer's word because they lived by their bond. And, it is fun to make people do things they don't want to do. That's what I loved about the practice of law. Persuading somebody to adopt something they could not see, feel, touch or smell and to accept it, which is nothing more than the best salesperson.

Mr. Singer: Yeah.

Judge Richey: And judges getting to do that too. Bringing disparate parties together. That is fun. You learn that in politics, believe it or not. You learn that in political activity. It doesn't make any difference whether it is Democrat or Republican or mugwump. You learn how to do that, and you learn something about this great country. And, my goodness gracious, people don't know it today but it is so different in Massachusetts than it is in Idaho or South Dakota or Texas or Florida, or Maine. You go right here in the state of Maryland. You've got three counties on the south, they have a culture; you've got a whole bunch of counties over on the Eastern Shore, that is a different culture similar to southern Maryland. Then you've got a northern culture. Then you've got the two counties adjoining Washington. You've got a western Maryland culture, probably two western Maryland cultures. Now, any statewide politician has got to be able to function within those different milieus and cultures in order to be successful and that is an art. If you can do that you can do almost

anything. I am not being idealistic either. It is the truth.

Mr. Singer: Let me argue just a moment and say that one of the things that you learn in addition is the grubbiness of down-to-earth politics. The kinds of compromises that, while human beings may have to make are... That's not the business of judging.

Judge Richey: No. But it gives you the skills to understand what motivates people, by and large. And, if you employ those techniques in our kind of work, and, not all of them but many of them, you get better and better at it.

Mr. Singer: Let me get back to the regrets that you articulated. One is that you wish you had had an opportunity to work in a large law firm.

Judge Richey: Yes, I said that.

Mr. Singer: And likewise to be an AUSA or something like it.

Judge Richey: In my time when I came on being an AUSA didn't appeal to me a bit because I did not have the breadth of knowledge to realize that that was a good way to get experience, and it was just kind of....

Mr. Singer: When you came on, meaning when you....

Judge Richey: Started to practice law.

Mr. Singer: Started to practice law. Right.

Judge Richey: I mean... nobody mentioned to me that that was a desirable thing to do and I watched them and tried cases against them, and I found out I was better than most of them, was able to beat them most of the time, and so, therefore, what the hell do I want to be one of them for. On the other hand, as I look back on it, it still would have been a valuable leavening

and learning experience.

Mr. Singer: And what do you think you have learned from these people whom you consistently outgunned?

Judge Richey: To outgun them better I suppose. It would have given me a different perspective. As I look back on it now I certainly didn't realize and haven't realized until recent years, say the last 5 or 10 years, it might be something that I would have liked to have done. Not for a long period of time. I am not cut out to be a partner in a big law firm like you were. I'm not really cut out for that.

Mr. Singer: What was it about the law firms? You talked first about...

Judge Richey: Well, I would like to have done it to learn how they do the discipline, of how they do things so thoroughly and well. That part I like about it.

Mr. Singer: And you think that's true...

What you're saying is that the sole practitioners by and large don't do it so well.

Judge Richey: That's right. Many of them don't, but I sure did.

Mr. Singer: And is that a function of...

Judge Richey: But you know...

Mr. Singer: ...the changing nature practice at all or not

Judge Richey: No, I had an advantage that most young people don't have. I had a kind of a mentor in the form of F. Trowbridge Vom Baur. He was the author of the first book on administrative law and for a couple of years I had lunch with him every day.

Mr. Singer: Well, I remember when Trow Vom Baur, I think, had offices in 1700 K Street, the same...

Judge Richey: Uh-huh.

Mr. Singer: ... building we were in at that time, it would have been... we were there up until about 1970, '58 to '70.

Judge Richey: This started our relationship with Trow in the spring of 1948. He's still alive by the way.

Mr. Singer: Didn't know that.

Judge Richey: Damn near 90 years old, he's down near Warrenton, Virginia with his daughter, but he had an enormous influence on me and doing things with excellence. Don't put your name on any document unless it's the very best. He is a prolific writer, he finished that two volume work with a forward by Dean Pound of Harvard Law School at age 33. He was actively in the Wilke campaign, organizing street corner speeches in New York City. I just learned an enormous amount from Trow, it was unique. I learned all about big city, big city firms like Milbank, Tweed and Hope, anecdotes from Trow about carrying a bag for some Irishman to go into court every day for the Borden Milk Company in New York City, those kinds of things that you would get if you were a part of a major law firm. I got it kind of through the backdoor but never as a real part of it and I had to learn to swim by myself but I had a lot of help through friends like Trow and many, many others, but he had a very substantial impact in my life. Intellectually.

Mr. Singer: You mentioned him several times on the course of these taping sessions. Do your clerks see that? Do they have any sense for why there might be, from their point of view, other than the money, good reasons to go either to a major law firm or without regard to the money, into the U.S. Attorney's Office?

Judge Richey: Some of them do. I've got two clerks in the U.S. Attorney's Office now. They have enjoyed it immensely. The older one...

Mr. Singer: You said they may enjoy it.

Judge Richey: They have...

Mr. Singer: They have enjoyed it.

Judge Richey: Yes. I have never had one go to the public defender. I've had some that would like to have, I've got one now that's just agreed to make an application for a vacancy in the Federal Public Defender's Office and I hope that take him because he will be an enormous person for that office and for the good of the country and everybody. I spent three or four years trying to talk him into it. Finally, and it's the right time, I think he's... he'll make it when we get through these holidays. He's orthodox and it should have been done.

Mr. Singer: He's got another two weeks to go.

Judge Richey: Yes, that's right. You know, when he was my clerk...

Mr. Singer: It must have driven you nuts.

Judge Richey: It did. I never, Dan, I never knew.

Mr. Singer: 4:00 Friday afternoon, so long, Judge.

Judge Richey: Yes. Come on, Allen. We've got to do something expert tomorrow. I'm sorry, Judge. Where are you going, son? I've got to go to the Temple. Come on, this isn't a holiday. I didn't know that this was a holiday, Allen. Well, you know it now, Judge, I am sorry. Good-bye.

Mr. Singer: It is the Sabbath.

Judge Richey: Do you know people like this?

Mr. Singer: Oh, sure, I had a partner, a wonderful partner,

Judge Richey: Well, of course, there's nobody I love more than Allen Levin. This is the guy's name, but it was a total disruption of my way of doing things. I used to tease Allen. I still do. "Do you work on Christmas now?"

Mr. Singer: He probably does.

Judge Richey: No. Those are holidays too, those are free days also, but in his case, he's very committed, and I have to respect it. I do respect it.

Mr. Singer: I would guess that your good friend who's... I'm blocking on his name, but he was with Jack Miller's firm.

Judge Richey: Oh, Nate Lewin.

Mr. Singer: Nate Lewin. I would bet 4:30 Friday afternoon, he's gone.

Judge Richey: There's no doubt about it. No doubt about it. I traveled the length and breadth of this country with Allen's father, Leo, who is a professor at Penn.

Mr. Singer: Right, from Oregon?

Judge Richey: University of Pennsylvania Law School. He was head of the Federal Judicial Center. And you know, I've known Jews all my life but I never

knew an Orthodox until I met the Lewins in an intimate sense. I remember one time in Arizona, he did not show up at a meeting at 5:00 and I got terribly worried. Where in the world... no one answered his room. I was so concerned I almost got somebody from the hotel to open his door to see if he was alright. But he was praying.

Mr. Singer: He found the synagogue in wherever you were in Arizona.

Judge Richey: And you know, you can't denigrate that; you have to respect it, at least I do. I don't know about you, but I am talking about myself.

Mr. Singer: Oh, I don't have a problem with that. On that one, I don't have a problem.

Judge Richey: Well some people do.

Mr. Singer: It's a piece of the way now....

Judge Richey: ADR the rage. Yes, you're right. I don't like it in a lot of respects. Let me tell you something. In the central district of Florida, the government court now requires every civil case, listen to me, every civil case except those raising a constitutional question, to go to ADR in the first instance. Both parties. They paid three court appointed lawyers to mediate and arbitrate these disputes. I guess it's really a form of mediation although they call it arbitration,

Mr. Singer: It's not arbitration.

Judge Richey: And the loser pays the lawyers one hundred dollars each.

Mr. Singer: The court appointed mediator?

Judge Richey: \$300 bucks. Now to me that's a serious undertaking. I know they

probably do it in part out of desperation because they have such a terrible criminal backlog in that district that they just can't get to their civil work, it is said by responsible people. But to deny the public access to a court and pile on the cost, to me just seems very unfair and if we are going to get to the point where this movement, ADR, mediation movement takes over the constitutional right of a trial by jury in civil and criminal cases will be lost and that is a sad day for America.

Mr. Singer: Let me argue that point with you.

Judge Richey: I know you are a committed ADR person.

Mr. Singer: I don't think there is any worry or ought to be any worry on anybody's part about the change in the use of ADR in criminal cases. I just don't think it's going to happen, certainly not in a way that's going to compromise principles that you and I both hold dear with respect to criminal justice. On the civil side, there is, so far as I know, no way and no movement to compel binding arbitration.

Judge Richey: No movement?

Mr. Singer: To compel binding arbitration.

Judge Richey: Yes, I heard what you said. I think there is a movement to compel it. Started in the securities industry.

Mr. Singer: Okay, if you take the contract of adhesion as a form of compulsion then I will agree with you. And now in enormous numbers of employment relationships where you have people who employ large numbers of people the part of the employment bargain, I dressed it up a little.

Judge Richey: I know what you saying.

Mr. Singer: Technically, part of the employment bargain is that you agree essentially to solve any disputes that way. And that is, it seems to me, if one had some better sense for the structuring of the agreement, in other words, if you could get away from all of the notions that go with adhesion, namely a disproportionate bargaining power which is the essence of the legal doctrines.

Judge Richey: Yes.

Mr. Singer: ... Surrounding contract negotiations.

Judge Richey: Exactly.

Mr. Singer: So that one had some sense that these things were really voluntary undertakings. I would like to put that aside. The court mediated arbitrations and ADR all came after the lawsuit was filed.

Judge Richey: Yeah. Opinions and positions are hardened and it makes it much more difficult to work.

Mr. Singer: I don't disagree with you on that. But, I don't, in those instances where the parties if you will control the results, mediation, ENE, the early neutral evaluation, even in mini trials after all the people who are judging in the mini trials are the senior officers of the parties so that it's...I would argue, that it is still very much at that point a voluntary process.

Judge Richey: What are you doing to do? Build a new building in every American city and if anybody's got a dispute, they can go down to this building and there would be a cadre of people that will represent both sides, conciliate,

mediate their disputes, help them come to a meeting of the minds.

Mr. Singer: You're tough.

Judge Richey: That's the kind of thing you are really talking about. As an alternative to the court system and clogged dockets and inefficient judges or incompetent judges and wasting money for juries, wasting money for court staff, that's the alternative. Because, you say, mediation, early neutral evaluation, arbitration, nonbinding or compulsory is most difficult and does not have the success it would have because it comes now in the modern day practice after the lawsuit is filed. That's true, so what is the alternative to that? I suppose, like the Civil Rights Act of 1964, it provided for a mediation process, conciliation process, as soon as a dispute arises, and it's a prerequisite that you have to go through that process. Has it worked? The answer is a loud, resounding NO. A loud resounding NO. And if you don't believe me, look at the statistics.

Mr. Singer: I'm prepared to believe you.

Judge Richey: And so, you see, you are dealing with human beings.

Mr. Singer: Well.

Judge Richey: I want to say it works and it's something we ought to try. Hell, I've got all kinds of books around here on this whole subject of what you are such a wonderful part. And I wish you the very best.

Mr. Singer: No you don't.

Judge Richey: Yes, I do, because it will be good for our country if it could be made to work. Philosophically I like it. But in practice I just don't see from my

experience as a long-time observer, that it's going to bring about the change we want, the results we want.

Mr. Singer: You, in the last, say, four years, three years, you've been present at the birth of a large number of lawsuits. Complaint answer, complaint motion and those cases that are assigned to you presumably you filter in some way, either in your mind or in a disciplined fashion, you ask yourself the question, is this an appropriate case for Nancy Stanley's shop to handle. Let's probe that if I may. How do you... it's not the seat of your pants, you don't. That's not your style.

Judge Richey: Correct. It's de minimis, not because I don't respect Nancy and Mike, it's just, frankly, I can do a better job.

Mr. Singer: Of?

Judge Richey: Mediating disputes. For example, suppose you file a lawsuit on behalf of a plaintiff and the U.S. Attorney comes in here and says, "Your Honor, Singer's client didn't get a right-to-sue letter." Oh, is that right? Do you have it Mr. Singer? Nope. Well, I am going to tell you what I'm going to do, counsel, I'm going to dismiss this case without prejudice and we will give the plaintiff 60 days in which to get a right-to-sue letter and failure to do so within 60 days shall result in dismissal of this case with prejudice. End of inquiry. All right. Another case, Singer, U.S. Attorney again. Government says, you're going to file a motion for summary judgment. Oh, how much time do you need? Oh, we would like a month, 6-weeks. What's the issue you want me to decide as a

matter of law? Well, the plaintiff didn't exhaust her administrative remedies within 180 days. Is that so? The statute of limitations has run. Is that so? Interesting. Mr. Singer, are you familiar with the doctrine of equitable tolling? Whether you are or not, you are obviously going to say yes and I assume the client didn't file a suit within the statute of limitations period or the 180 days. But there may have been reasons for it: Was she sick, or something like that? And that begins to give you a message, doesn't it?

Mr. Singer: Yes.

Judge Richey: And then I'll turn back to the other side and I'll say, "You know, I'm going to let Mr. Singer tell me in a five-page memorandum, within the next 10 days. "Oh, by the way, I never say 10 days or 20 days, I always say I look at my calendar and by date certain by 4 p.m. October 13.

Mr. Singer: I know.

Judge Richey: And then we will decide about your motion, but I want to tell you something, counsel, the Civil Rights Act of 1991 proscribes intentional discrimination. Intent to me is a question of fact. I have never seen a motion for summary judgment where intent can be decided on a motion for summary judgment. I just haven't had that experience yet. Maybe you can educate me, but I don't think we need it, unless this doctrine of equitable tolling does not apply, then we don't want to waste much time with this. You would just be amazed at that kind of discussion, it keeps lawyers on their toes

Mr. Singer: Shakes up the game.

Judge Richey: It does. Instead of a judge saying "What do you want?" "What do you want?" "How much time do you want to do it?" Okay.

Mr. Singer: No, but I'm asking the question.

Judge Richey: When I refer cases to Nancy Stanley, maybe an insurance coverage case, maybe, if the lawyers are halfway reasonable. They say on a scale of one to ten they only... one's a 6 being close to a settlement and another one's 5. Yeah, I'll tell you what. I'm going to establish a discovery deadline, a motion deadline and pre-trial and trial date, and you can go down to Ms. Stanley's office and they will appoint an evaluator and my order will provide that this is their action, with you is not to interfere with the completion of my trial schedule and if you succeed, God bless you. And if you don't, I'm sorry you'll be in my court.

Mr. Singer: Yeah, that gives them an incentive to...

Judge Richey: To bargain. It helps Nancy, I think.

Mr. Singer: Well that's fine. No. But I suppose what I am saying to you and this is maybe not really part of this interview process, is why don't you do that more often?

Judge Richey: I just don't need them. If I'm good at anything, I'm good at resolving people's disputes, really, if I'm good at anything

Mr. Singer: That's what judges are supposed to do.

Judge Richey: We resolve disputes. And I can do that better than the Nancy Stanleys of the world and I have nothing but the highest respect for Nancy.

Mr. Singer: I know you are not knocking her.

Judge Richey: Please don't say that.

Mr. Singer: That's not what is happening here.

Judge Richey: But, I just am good at it. I really am. I can do it better. You come and watch me.

Mr. Singer: I will do that at some point I might actually do that, but that would be out of personal interest not out of this project. If I am following your logic, and this is without knocking your colleagues, that those who aren't adept or as adept as you in finding these solutions either consensual or by order, they ought to be making much greater use of Nancy's facilities, I guess, question mark.

Judge Richey: You're right and you know it's catching on. Those who don't have the skills are beginning to use them and the lawyers are using them as a matter of last resort because they don't like delay and their clients are beating on them.

Mr. Singer: One of the reasons the clients are beating on them is the costs that are inherent just in the delays on both sides. Not that these things are annuity policies...

Judge Richey: I spoke on your subject to the Florida employment law section in Florida this last fall.

Mr. Singer: What did you say to them, given your views?

Judge Richey: I said several things and I was rated the best speaker at the whole damn convention. Among other things, I said, "You are going to have to go to

this mediation process down here, and I recommend the following: if you can, take your client with you, take a court reporter with you, if you reach an agreement, I hope you take a portable computer and a printer so that you can write it up then and there. Do it now, not tomorrow, because people change their minds. If you can't have your client there, make sure that he or she or it is available by telephone to freely and openly consult with you about this matter, don't have any interruptions; make this your 100% focus of what you're doing.

Mr. Singer: You're giving my lecture at this point.

Judge Richey: I just... I've got an outline.

Mr. Singer: Have you made a text of this speech?

Judge Richey: I don't think I made a text, but I have an outline of this thing.

Mr. Singer: Would you share that with me?

Judge Richey: Oh sure, sometime, if I can find it.

Mr. Singer: That's always a problem.

Judge Richey: But, you know Dave Bazelon, behind that picture there are a whole lot of open things, Dave taught me that, for speeches... anymore I don't write them out. I may scratch out something...

Mr. Singer: But the notion of client presence and...

Judge Richey: Memorializing the agreement right then and there....

Mr. Singer: And also of making no interruptions. The only interruption is that the mediator will frequently want to meet with one side and then the other, privately.

Judge Richey: Yes. But don't blow it and don't let it be overnight.

Mr. Singer: No, sometimes you need, sometimes people have to think about what they are doing and frequently what I do is make sure, try to make sure that the lawyers are giving their clients some good sense of the cost of not settling.

Judge Richey: Oh, that's very important. You know you got to have with you the present value of a dollar. Today against two years from now.

Mr. Singer: Or the probability of the two years from now.

Judge Richey: There are all kinds of things, in other words, you've got to be prepared to go to a successful arbitration or mediation session and if you're not, it won't work, it really won't work. You can't expect a mediator to do all the calculations. Say it's a personal injury case with a large substantial amount of damage, medical expense, now, past and in the future. You have got to have all that arithmetic done in advance.

Mr. Singer: Have you followed at all the stuff that a guy named Mike Horowitz and others have been doing on contingent fees in PI cases? Does it appeal to you?

Judge Richey: Yes, to a large extent it does.

Mr. Singer: You know, whether you have a first offer and the compensation of the lawyers is based as it is in condemnation cases routinely on how much you improve the first offer.

Judge Richey: Right, right. I think Mike's on the right track.

Mr. Singer: I think he is too.

Judge Richey: But you know something that is a minority view.

Mr. Singer: I know that. I know that.

Judge Richey: But, I happen to agree with that.

Mr. Singer: It's visionary.

Judge Richey: You're right. So am I. I think that is...

Mr. Singer: To get the early offers.

Judge Richey: Fairness.

Mr. Singer: But the American Trial Lawyers Association thinks...

Judge Richey: Oh no, they will never buy that.

Mr. Singer: Off the charts.

Judge Richey: Yeah, well...

Mr. Singer: And our President is, after all, in the thrall of those people I am afraid.

Judge Richey: They were the main contributors to his election.

Mr. Singer: It's time to reform the campaign finance laws.

Judge Richey: I don't understand the Supreme Court. Just every time I go back to read it, I forget the name of the case. I should know it like I know my own name, where in the securities field with compulsory arbitration there was an arbitration and there was an award of punitive damages...

Mr. Singer: This past term.

Judge Richey: Supreme Court upheld that. I was shocked, stunned, dumbfounded and still am. But there it is.

Mr. Singer: Pleased or upset by it?

Judge Richey: Well, I don't know, I don't know. I don't know if I like that decision or not, I can't make up my mind but it's shocking because I never expected I'd see

the day when that would be upheld by this Supreme Court.

Mr. Singer: You mean, with private persons somehow empowered to punish.

Judge Richey: Exactly. I just didn't think it would happen. That's what's so stunning about it. There's another case...

Mr. Singer: The next case, of course, will be one in which the agreement, securities agreement to arbitrate says, but no punitive damages may be awarded by the arbitrator. I think the really interesting questions about adhesion contracts is how far they go.

Judge Richey: You ought to do a survey of some of your friends and ask them what a contract of adhesion is. I've done this. I'll guarantee you only 2 out of 10 will even know. Don't care where they went to law school.

Mr. Singer: Really?

Judge Richey: I've just done this. It absolutely astounds me.

Mr. Singer: Doesn't rise to the level of black letter law kind of thing. I mean something I call black letter law.

Judge Richey: It is black letter law, but I'll guarantee it. I want you to do it just as a personal favor to me, just for the heck of it.

Mr. Singer: I'll walk up and down the hall with my young colleagues at Fried Frank...

Judge Richey: Yes. Yes. Take a couple out of the 10 senior colleagues and ask them to explain the doctrine. They'll flunk.

Mr. Singer: I hope not.

Judge Richey: Liss says I'm impatient to do justice. He's absolutely right.

Mr. Singer: Well, no. I think, I must say I thought the second part was the interesting

one. I think that the impatience with ineffective remedies...

Judge Richey: Well, you heard the story. You read the story that Jeff told. Honest to God little truth sitting right over there at that table. And you know I was upheld.

Mr. Singer: I still want you.

Judge Richey: You know I want to tell you a story. In December 1971, the Department of Interior was headed by a fellow named Rogers C. B. Morton.

Mr. Singer: Right. He was from Maryland.

Judge Richey: Eastern Shore of Maryland, originally from Kentucky.

Mr. Singer: I thought it was Thruston Morton, is that right?

Judge Richey: Yes, his brother was a United States Senator from Kentucky.

Mr. Singer: Brother.

Judge Richey: But, Morton entered into these leases, multi, multi millions of dollars for oil and gas off the continental shelf down in Louisiana and I didn't even know there was a NEPA statute then, to be honest with you, but I just looked at the statute and this great big Environmental Impact Statement allegedly and sitting on the bench we had so many cases that we didn't have time to really think about them but I noticed out of the 300 or 400 hundred pages, or however long it was that they only had three triple spaced lines on three pages of alternatives to that leasing program, so I issued an injunction, oh my goodness, all heck broke loose and then the next day was textbooks all over this country, there was a public interest group that prevailed so the question was what kind of bond should I fix.

So I decided these big oil companies don't have to worry about themselves but this public interest group does and they don't have any money, so that became the rationale for a \$100 surety bond, which cost them \$10 bucks. I didn't realize how important that was but then the late Judge Hart used to have a Christmas party and it was also a command performance, everybody had to go. So I go in there late, and was there no more than two or three minutes than my friend, Harold Leventhal walks in and goes like this, points his finger over to the corner. Chuck, do you know what I have been doing all afternoon? No. I've been in the ceremonial courtroom listening to a bunch of oil and gas lawyers. Oh, and it immediately hit me. Oh, I know what you're talking about. Do you know what he said? He turned to me and said all I've got to say to you Chuck is that sure got a lot of courage and walked away. What conclusion would you draw from that?

Mr. Singer: You mean as to whether you were going to uphold or reverse? I think I know the outcome.

Judge Richey: Well, let's unthink. But wouldn't you think it would be rational? I thought, sure as heck he... I'm going to be reversed. Isn't that a rational...?

Mr. Singer: Yes.

Judge Richey: No.

Mr. Singer: But you may not have known, maybe you didn't know who the panel was or whoever.

Judge Richey: Well I did. I didn't know that it was that quickly. But the next morning I sure found out, it was Leventhal, McKinnon and McGowan.

McKinnon dissented.

Mr. Singer: I'm sure. He was from New Mexico?

Judge Richey: Minnesota.

Mr. Singer: McKinnon?

Judge Richey: I became more fond of him in the latter days of his career. He just died about six or seven months ago. I learned a lot from him. I didn't expect to in the beginning. Jake Stein, my dear friend, said that he first came here and had an argument before George; he thought he was talking to a man that had sawdust between his ears. But that old guy was smart as a fox; he taught me a lot.

Mr. Singer: They're all, I mean you're all Type A. I mean...

Judge Richey: Yeah, most of them, but you can't say all.

Mr. Singer: Well, they have certainly been around the track.

Judge Richey: Anyhow, that was a shock to this courthouse. I could tell you other stories where... Take for example the *Nader v. Allegheny Airlines* case.

Mr. Singer: One of the great triumphs.

Judge Richey: Yeah, people now all over the United States can get access to public accommodations if they ask for a reservation.

Mr. Singer: Well not only that, but there is a whole other bidding war.

Judge Richey: They have a cause of action in contract or torts.

Mr. Singer: There's a bidding war that goes on when they're oversold.

Judge Richey: Well.

Mr. Singer: My kids used to love it.

Judge Richey: I've had more fun. I've been in airports all over this country. I never will forget one time I was down in Texas and some band leader was just fussing and fussing right after that decision had been handed down and saying you've got to give me a place on that plane, there is a judge in Washington...I was standing three feet away from him. I just let him go. I didn't let him know who I was. But, you know, those kinds of things have been wholesome and good.

Mr. Singer: Oh sure, no, those are wonderful things, those are real gems.

Judge Richey: Bazelon said, after that case. You know, I had a big problem, a big fight with the lawyers on both sides. One public citizen didn't want to waive a jury. The airline readily agreed.

Mr. Singer: I'm sure.

Judge Richey: You know what David said to me, when I told him that? He said, neither one knew you did they? David could put it like nobody else could. Neither one of them knew you, did they?

Mr. Singer: Okay.

Judge Richey: Alright.

Mr. Singer: We'll see you on the twenty-fifth of October. I think it's still on the calendar.

Judge Richey: That's right it is

Mr. Singer: And, that probably would be a good occasion to talk about at least number

eight. And we can talk about eight and two together. That is to say the big cases and maybe the scrapbooks as well. And think about some of the questions in the scrapbook issue.

Judge Richey: We're going to have to really, I'm going to have to get those out. They're supposed to be working on bringing these things up to date. There was an outfit, I don't know the name of it, Dan, that did a breakdown from '71 to 1980 and I think '81 to '84, and then they stopped.

Mr. Singer: What is in, so what...

Judge Richey: It's a digest.

Mr. Singer: West.

Judge Richey: No. It's not West, it's some... I don't know the name.

Mr. Singer: You sent it to me, I have it. You sent it when you sent your c.v.

Judge Richey: I did?

Mr. Singer: Yeah. It was a digest of every case.

Judge Richey: Well, I had it brought up to date this summer.

Mr. Singer: Uh huh, that I haven't seen.

Judge Richey: And, I'm about up to twelve hundred published opinions, I just can't believe it, but...

Mr. Singer: You can believe it.

Judge Richey: I can't believe it myself. Joe Burgess, who spent 14 and a half years, stopped in today, he is with Jim Robertson, and he said I just constantly am amazed at you. I just don't understand how you do it. You've run rings around all of us. And you're twice our age.

Mr. Singer: Who is it that said that?

Judge Richey: My courtroom clerk of 14 and a half years, Joe Burgess. He said...

Mr. Singer: Alright.

Judge Richey: And of course, he looked at page 11. I watched him read this, and his eyes lit up like a damn Christmas tree, Dan.

Mr. Singer: Uh.

Judge Richey: Yeah, I'm going to give it to you. But it's not a public...

Mr. Singer: It's not a public document.

Judge Richey: No it's not a public document.

Mr. Singer: Okay, I will treat it...

Judge Richey: It's just a proposal.

Mr. Singer: Right.

Judge Richey: It's not the way I would do it, but it's... I wouldn't call it suggestions. I would call it guidelines or rules, but, you know, shit.

Mr. Singer: Did one of your clerks...

Judge Richey: What do you want? Bring me such and such a case, you know what they do? They go on Westlaw.

Mr. Singer: And they bring it to you and print it out that way.

Judge Richey: Yeah. But I didn't know this. I've always had, last couple of years, it has become so prevalent, it's not the same form, with the same kind of headnotes that you find in the bound volumes.

Mr. Singer: Yeah, that I didn't know.

Judge Richey: Right. I read this damn thing twice. I said, Tommy this isn't correct.

Here is a mistake and here's another one. Bring me the original bound volume of my opinion. It was right in the bound volume. I said you go right in there to your computer and write a letter for my signature to the West Publishing Company. 'Cause they should know that these damn things are coming off Westlaw. So I went upstairs and asked my colleagues. What do you folks do when you ask your clerk for an opinion? Do you want the books, or do you want it off the computer? And they told me that they wanted it out of the books if they have them in chambers. But I'm here to tell you, I had the sad experience this week involving a major case being argued in the court of appeals where the damn Westlaw thing was just flat out dead wrong. Two critical words, in two different parts of the opinion.

Mr. Singer: I had heard...

Judge Richey: You know what makes me nervous?

Mr. Singer: I had heard, I think it's true.

Judge Richey: It's a fact.

Mr. Singer: As to how these opinions go from your signed hard copy into the computer. And I think that the scanning techniques may have become much better now, but I was told that they just shipped this stuff off to people who were very good at copying but were basically illiterate in English and, whether that's good or bad,

Judge Richey: That probably is correct.

Mr. Singer: In low wage countries, you have people who sit down and just copy.

Now, what the redactory process was, I don't know.

Judge Richey: Well, that's how Nexis did their stuff. They'd go over to China. I'm going to find out about West.

Mr. Singer: Okay.