THE HONORABLE CHARLES RICHEY

Oral History Project
The Historical Society of the District of Columbia Circuit
THE HONORABLE CHARLES RICHEY

Interviews conducted by:
Daniel Singer, Esquire
April 10, 13 and 25, 1995, May 9, 1995, October 5, 1995
January 1996, February 19, 1996
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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were recorded digitally or on cassette tape, and the interviewee and the interviewer have been afforded an opportunity to review and edit the transcript.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

All rights reserved.
PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges of the Courts of the District of Columbia Circuit and lawyers, court staff, and others who played important roles in the history of the Circuit. The Project began in 1991. Oral history interviews are conducted by volunteer attorneys who are trained by the Society. Before donating the oral history to the Society, both the subject of the history and the interviewer have had an opportunity to review and edit the transcripts.


With the permission of the person being interviewed, oral histories are also available on the Internet through the Society's Web site, www.dcchs.org. Audio recordings of most interviews, as well as electronic versions of the transcripts, are in the custody of the Society.
Historical Society of the District of Columbia Circuit

Interviewee Oral History Agreement

1. In consideration of the recording and preservation of my oral history memoir by
the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees
and agents (hereinafter “the Society”), I, Charles R. Richey, except as otherwise provided herein
and in Schedule B attached hereto, do hereby grant and convey to the Society and its successors
and assigns all of my rights, title, and interest in the tape recordings and transcripts of interviews
of me as described in Schedule A hereto, including literary rights and copyrights. All copies of
the tapes and transcripts are subject to the same restrictions, herein provided.

2. The foregoing transfer is subject to the exception specified in Schedule B hereto.

3. I reserve the right to use the tapes and transcripts and their content as a resource
for any book, pamphlet, article or other writing of which I am an author or co-author.

4. I authorize the Society, subject to the exception in Schedule B attached hereto, to
duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner
that the Society considers appropriate, and I waive any claims I may have or acquire to any
royalties from such use.

5. It is my intention to donate a copy of the tapes and transcripts described on
Schedule A hereto as additional gifts under Paragraph 3 of my Deed of Gift to Case Western
Reserve University dated December 1, 1992. (For information, a copy of the Deed of Gift is
attached as Schedule C. The terms of that Deed of Gift shall apply exclusively to such tapes and
transcripts as I may donate to Case Western Reserve University and shall not otherwise affect
this grant and conveyance to the Society.) Accordingly, upon my request, the Society shall
deliver to Case Western Reserve University one set of the materials described on Schedule A
hereto.

Charles R. Richey

SWORN TO AND SUBSCRIBED before me this 10th day of
March 1997

Notary Public

My Commission expires

ACCEPTED this 5th day of December, 1997, by Daniel M. Gribbin, President of
the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbin

Witnessed by
Joseph W. Sellers

10/10/97
Schedule A

Tapes recordings, digital recordings, transcripts, computer diskettes and electronic media resulting from four interviews of Charles Richey, conducted on the following dates:

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<th>Interview No. and Date</th>
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The transcripts of the seven interviews are contained on one CD.
Schedule B

Exception to Oral History Agreement

The materials described in Schedule A shall at all times be available to the Circuit Executive of the United States Courts for the District of Columbia Circuit, and members of his/her staff working on the Oral History Project. Until December 1, 2017, access to such materials is restricted to me and to others only with my written permission or, in the event of my death, to my son, Charles R. Richey, Jr., Esquire, or his designee, and to others only with the written permission of my son, Charles R. Richey, Jr., or his designee. This exception shall be of no effect on and after December 1, 2017.
Instrument of Gift from the Honorable Charles R. Richey to the Case Western Reserve University School of Law

I, Charles R. Richey (hereafter: Donor), hereby give, grant, convey on this 1st day of December, 1992, title in, and set over to the Case Western Reserve University for inclusion in the collections of all the Library of the School of Law (hereinafter: Library) and for administration therein, a collection of all my papers, including all books and framed awards, and all records and papers from the time I was in law school throughout my adult life. This includes files pertaining to my work as a judge, copies of speeches and other writings in connection with professional activity and service on various boards and commissions in city, county, and state government, and in law practice as well as Federal Judge under Article III of the Constitution of the United States.

I hereby dedicate to the public all rights, including copyrights throughout the world, in this property.

The papers constituting this gift shall be subject to the conditions hereinafter enumerated:

1. Access. With the exception that the entire collection shall at all times be available to the staff of the Library for administrative purposes, and that published and unpublished opinions, books, scrapbooks, and photographs and awards may be available to the public immediately, access to the collections for the next twenty-five years is restricted to me and to others only with my written permission, or, in the event of my death, to my son, Charles R. Richey, Jr., Esquire or his designee. Thereafter,
the collection shall be made available to the public at the
discretion of the Library.

2. Reproduction. Persons granted access to the collection
may procure at their own expense single-copy reproductions of the
unpublished writings contained in the collection. Subject to the
restrictions in paragraph 1, for reasons of security, preservation,
or service, the Library, when consistent with its policies, may
reproduce, transcribe, transmit, copy and/or publicly display or
exhibit all or parts of the collection.

3. Additions. Such other and related materials as the Donor
may from time to time donate to the library for inclusion in the
collections of the Library shall be governed by the terms of this
Instrument of Gift or such written amendments as may hereafter be
agreed upon between the Donor and said Library.

4. Disposal. It is agreed that should any part of the
collection donated to the Library for inclusion in the collections
of the Library be found to include printed or other materials which
the Library deems inappropriate for permanent retention with the
collection or for transfer to other collections at Case Western
Reserve, the Library may dispose of said materials in accordance
with its procedures for the disposition of material not needed for
its collections.

5. Room Dedication. Upon receipt of the proceeds of the
Donor’s Charitable Gift and Trust to the Case Western Reserve
University Law School, the Library shall construct and dedicate,
in perpetuity, the Honorable Charles R. Richey Rare Book Room on
the third floor of Gund Hall. This room will serve as the rare
book room for the Library and as a permanent display area for pictures, awards and mementoes of Judge Richey. The designation of the room as the Honorable Charles R. Richey Room will be above the door and a plaque on the wall will give a brief biography of Judge Richey. The room will be at least 500 square feet and will be handsomely decorated and furnished to serve as a location within the library for scholarly inquiry and quiet contemplation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of December, 1992, in the City of Washington, D.C. to this Deed of Gift which has been executed in duplicate by each of the undersigned on behalf of themselves, their representatives, heirs and assigns as well as their agents, servants and employees.

DONOR

[Signature]

CHARLES R. RICHEY (Seal)

Accepted for the Case Western Reserve University and its School of Law by:

[Signature]
PETER M. GERHART, DEAN (Seal)

Date

March 10, 1997

Witnessed by

[Signature]

JOSEPH M. SELLECK

March 10, 1997
Interviewer Form

Historical Society of the District of Columbia Circuit

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with Hon. Charles R. Richsey for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Daniel M. Gribbon, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings and transcripts of interviews, as described in Schedule A hereto, including literary rights and copyrights.

2. I authorize the Society, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.

Signature of Interviewer

Date

SWORN TO AND SUBSCRIBED before me this 10th day of April, 1994.

Notary Public

Barbara M. Backus


ACCEPTED this 14th day of August, 1994 by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.
Schedule A

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The transcripts of the seven interviews are contained on one CD.
I have the tape recorder on, by the way.

OK.

And this thing with the red hat on, the microphone.

I thought that on that subject you sent me that memo and I've only had a chance to skim it, but it occurred to me, Dan, that the best way to do it, since I had made a Deed of Gift to the University in my law school, maybe we ought to make arrangements, subject to your approval and Lou's approval where there'd be a joint ownership and title to this. Do you have any objection to that?

I have no objection to that whatever.

That's... I didn't see that in the cursory glance of it.

I don't think they tried to deal with anything other than the notion that there should be some depository that there should be some way for some.....

Well, these diskettes and whatever we're going to do here can be made available in full fashion.

Actually, they can be copied. They'll be transcribed in any event.

Surely, you told me that.

And, that transcript will be available to you, I would hope actually
rather quickly so that you can have an opportunity while things are
reasonably fresh to say, "That's not quite the slant I wanted to put on it"
and "really what I meant to say, and so on." I'm sure you'll
understand. But what I would like to do in our first interview is to try
and talk about those things that precede your public persona, really
going back as far as you care to go back into your boyhood in Logan
County in Ohio, what it was like during the time you were growing up
after all the time of enormous change within the country. I don't know
whether your background is rural or urban. You surely have both in
Ohio.

Judge Richey: Logan County is an area that is mostly rural and I've only been there
once since I've been on the Court, and that was before my mother died,
to try to find the house in which I was born. And it was torn down.
That was in a little town called North Lewisburg, Ohio where my father
was the high school principal and basketball coach. And that is the
only memory I have of that little community. We did drive by the
school where Dad was principal and coach and it was a two-story
building and the weeds and trees were the size of the building. We
couldn't find the house. Then they moved to Middleburg, Ohio,
where Dad did the same thing. Mother also taught, I don't know what
she taught at the moment. And from there, at the age of whatever it
was when I started school in the first grade they moved to Delaware
which is a university college town.
Mr. Singer: Which university is that?

Judge Richey: Ohio Wesleyan.

Mr. Singer: That is where you ultimately went to?

Judge Richey: Because I had to because in those days they weren't as advanced as they became because professors' kids could only go to the school where their parents taught without paying tuition. They didn't have reciprocal arrangements in those days. So that was the only way I was able to go to college.

Mr. Singer: And that tuition payment was of some importance to your family?

Judge Richey: Oh absolutely. My parents never owned a home. The only thing they ever owned was the furniture in their house and an automobile, period. That is all - dirt poor. I remember during the Depression when my parents' combined income was $70 a month, a month. That is hard for my clerks and young people to understand but it's the truth.

Mr. Singer: Something like what they are making per day. It is that kind of change that I think would be of great interest - the changes over time. But in order to lay the kind of foundation for that, did your parents themselves grow up in Ohio?

Judge Richey: Yes. My father was one of five children, every one of whom became teachers and, as a matter of act, my dad's brother, who is now deceased, became a principal of a major high school in Youngstown, Ohio which is named after him. The others all became teachers as well. But that was kind of the idea of the day. His father was a country doctor.
Mr. Singer: That would be your grandfather.

Judge Richey: My grandfather. And then my mother's father was an engineer and she had one sister and four children all of whom got advanced degrees. But my mother and her sister also had advanced degrees, too.

Mr. Singer: Advanced degrees beyond the BA?

Judge Richey: Yes. And an engineer in those days was really something. Particularly a person who got elected county engineer and did the land surveying and that sort of thing. That was probably the most politically powerful position in even a small county.

Mr. Singer: Why would that be?

Judge Richey: Be darned if I know. That is a good question. But I know that that was correct. In those days you go in any courthouse they had the biggest offices and the most people working for them. I guess maybe it is partly because all the lands in that vast expanse of farm land hadn't been surveyed, I don't know. I have no idea.

Singer: Were these partisan political positions?

Judge Richey: Yes. My mother's father was a rabid Republican and so was her mother. My dad's father, the physician doctor, was a rabid Democrat. Schizophrenic in a political sense.

Mr. Singer: But through the Depression years teachers remained employed.

Judge Richey: Generally speaking that's right. There was a time when my dad was without employment, a couple of years. But other than that they were employed.
Mr. Singer: In the school system?

Judge Richey: Didn't mean much, but they were employed. In terms of economics it didn't mean much.

Mr. Singer: Did you start work during this period?

Judge Richey: I certainly did. I must have begun work in seventh grade - about 1936 and I have essentially supported myself ever since, believe it or not. Several years ago I called up Social Security. I'd be glad to share that with you, it's around some place. But, my goodness gracious the jobs I held I'd forgotten about.

Mr. Singer: Perhaps in a later interview you could look at that and speak from it.

Judge Richey: I'd be delighted to share it with you. I could remember a lot of it. I started selling Collier's magazines, the American magazine. I remember that was 50 cents. Boy, that was a big deal. This was a little town called Delaware and I figured I could make more money by selling the Cleveland Plain Dealer, which was kind of like the New York Times living in Washington DC. And I got them to deliver by bus at 5:30 in the morning to my town that paper and I walked eight miles a day carrying that paper. In those days geography was a little bit different than it is today in that, maybe geography isn't quite the right word, but there was a lot more snow in central Ohio than there is now and I could remember my dad thinking that it was a good lesson in teaching not to help a kid he had to learn to deal with adversity. So he only helped me deliver those papers twice since I say I walked eight
miles a day with a school radio announcer from junior high school, seventh grade clear to high school graduation.

Mr. Singer: You did this paper route with someone else? One of your friends?

Judge Richey: No, I did it all by myself. I also worked in a restaurant, this is a morning paper and a magazine, but I also sold another newspaper, I can't even remember what it was, some evening newspaper. I worked in two restaurants. By the time of high school I worked for a funeral home which I continued to do throughout college. Then when I went to law school I continued to work in a funeral home in Cleveland. I had five jobs my first year in law school. Those days we went to law school from 8:00 in the morning until, I think, 12:00. I had a job waiting table at the undergraduate men's school. I had a job as an executive secretary to the University Center Board of Commerce, which was headquartered around a 105th and Euclid where Bob Hope got his start after coming over from England selling newspapers and all the small merchants were on percentage leases. So I went around and sold them on the idea that they would profit from central advertising in one of the major papers in Cleveland called the Cleveland Press at the time. And developed a logo in the center of the page that would enhance their business. It is all a rubble today. But we had a couple of department stores. I did that in the afternoon. In the evening, I got my meal by waiting table at the undergraduate women's dormitory. Then I worked in the funeral home at night. I didn't get home until
midnight.

Mr. Singer: Where were you living?

Judge Richey: Lived in a rooming house. All students lived in rooming houses in those days.

Mr. Singer: The family was still in Delaware and you and they went to Cleveland.

Judge Richey: Yeah. 150 miles north which is long ways off, but that's what you do... what I did.

Mr. Singer: Is the name Richey or "Rishay" - where does that name come from?

Judge Richey: I'm really not very good at that. I don't know. I think my dad told me one time it was Irish and Scotch. I don't know whether that is correct or not. I have no idea.

Mr. Singer: As far as you know your parents and their parents and their parents were centered in Ohio for as long as anybody can remember?

Judge Richey: As far as I know, yes. Some lawyer here at Crowell & Moring sent me a little piece from the Delaware, Ohio Historical Society. Apparently the Richeys at least were from pretty good stock around there. I know my mother's side over in the adjoining county were from good stock, too. Well educated, highly political in both sides. You kind of think they would be on the reverse side but they weren't. But because of the Depression that is all that people talked about was politics in those days. Who's going to be the next congressman, who is going to be the next governor, who is going to be the next senator? Why...
Mr. Singer: When you say in those days.

Judge Richey: When I was a little kid in the elementary grades.

Mr. Singer: This is the 1930's?

Judge Richey: Yes and you would go to one grandparent one Sunday and the other the next Sunday. And that was the only recreation we got. My mother's parents were very, very strict, particularly her mother.

Mr. Singer: Was it a religious kind of...

Judge Richey: Oh, yeah. Yeah. They were strict Methodists. And young people were not allowed to speak, they were only to listen, spoke when asked and you just had to sit in the corner of the living room after dinner and listen. I remember one time my dad took me out in the backyard to play catch with me and he was in the dog house with his in-laws and so was I. That was a terrible thing to do.

Mr. Singer: What would have provoked his being in the dog house?

Judge Richey: Well, you're not supposed to do that on Sundays, you see, the Sabbath, you see. You'd go to Sunday school, church, eat, talk or I mean listen and then some kind of young people's organization Epworth League or something like that in the evenings. I resented it. It turned me off on religion.

Mr. Singer: But religion then played a significant role in your life?

Judge Richey: Not in my life, no. I guess it did in my parents. But not in me. I didn't like it.

Mr. Singer: Was there discussion of national politics as well?
Judge Richey: Oh yes, yes. Very much so. And the way people advertised in the... they'd have radios in those days... they had newspapers. But...

Mr. Singer: They had lots of newspapers.

Judge Richey: The way people would campaign they'd put the picture of their candidate in the living room window so people walking up and down the street would see it; they'd advertise it. I could see Herbert Hoover and Roosevelt's pictures in the living room of my grandparents homes yet, and hearing them talk about it.

Mr. Singer: By and large your mother's family were Roosevelt people?

Judge Richey: No, the other way around, Republicans. And my dad's family were Democrats. And I started out as a Democrat and cast my first vote for FDR. As a matter of fact, I was 20 years old at the time but old enough to vote under the Ohio election law. They made me acting Democratic County Chairman. And I reduced the Republican margin in that county from 15-1 to either 7 or 8-1. I got reams of publicity; that was quite an accomplishment.

Mr. Singer: It sounds like it was a great accomplishment. When did you start in college?

Judge Richey: Well, in 1941 and I thought I was pretty well cheated because I didn't get to go away to school.

Mr. Singer: Were there other places that you knew of that were interesting to you?

Judge Richey: Well, in a sense. I didn't know much about any other school in the country because every meal you talked about who was going to be head
of the English Department or Geography or who was going to be the
new president or what this board member's particular agenda was and
so on.

Mr. Singer: All in respect to Ohio Wesleyan.

Judge Richey: Yes. In those days, well, a few years... ten years before that Ohio
Wesleyan was quite an athletic force. They used to play Pittsburgh,
Michigan, Ohio State and so on. I remember there was a shoe shine
person on the main street there; he had pictures like I do of all the
athletes, football players, basketball players and going into barber
shops and places like that, that is all they talked about. The whole
focus was on the university in that little community. They had a
couple of small manufacturing facilities like a stove company, a chair
company, but college and university was the focus. So I didn't know a
heck of a lot about other schools.

Mr. Singer: Had you traveled at all or had the opportunity to travel?

Judge Richey: Oh goodness, no. There wasn't any money, Dan. First of all, when
my parents would drive to get peaches. When do you get peaches, in
the fall? I guess you go out and pick peaches in the fall and then go
up to Lake Erie. That would be a one day drive. I couldn't go
because in those days you had to collect for your papers. You'd start
at 8:00 in the morning and work all day walking all over town.

Mr. Singer: Did you participate... you said your father was the basketball coach?

Judge Richey: Yeah. Yeah.
Mr. Singer: Were you an athlete in those days?

Judge Richey: No, no, no. I never had time to be an athlete. I was a debater, orator that sort of thing. But, I didn't have time to be an athlete. Wasn't good enough either. Not really, didn't have time.

Mr. Singer: When you started in college, in the fall of '41, what were you aiming for anything other than ultimately to get out of college?

Judge Richey: That's a fair and reasonable question. Because of the abject poverty and the narrow focus of the politics of higher academics of that one university, pretty internecine to be honest with you, I determined that I was going to do everything I could to get out of there and as quickly as possible. I loved college after the first few weeks I forgot that my parents were associated with the university and we didn't cross paths much. And as I look back on it, that little community was a marvelous place to grow up and to be reared in because it was 40% minority.

Mr. Singer: Which minority? Black?

Judge Richey: Black. A small percentage of Jews, mostly merchants and landowners but mostly merchants. And I never heard until I went to law school, believe it or not, an anti-Black remark, or an anti-Semitic remark. Not once. Didn't know that it exists. Now, there was another 40% that were Roman Catholics and they had migrated to that community to work on what was known as the Big Four Railroad. And they were over on the other side of town, I guess the east side, yes, east. And
occasionally you'd hear some anti-Catholic remark.

Mr. Singer: That would have been from within the group that you spent most of your time?

Judge Richey: Not my friends but I knew it existed. There was an element of anti-Catholicism. The way I learned it was when I was working for the funeral home and the one I worked for there were, I think, four in the town. And they got their business through the churches. One was a big Presbyterian, one was a big Methodist, one was a Roman Catholic, and, therefore, we got all the Roman Catholic business and that's where I learned about some of the anti-Catholicism, I think. Certainly never heard it at my home; there was one thing about my parents they taught tolerance in every respect. That's ingrained in me from my earliest days. You were never to talk about race, ethnicity or even politics and use that against anybody. You were to judge people by their conduct not by who they were. It was kind of curious just a few years ago my friend Ab Mikva who is now counsel to the President, wrote an opinion reversing Judge Gasch in a case, and he sat down the hall. He said that very thing that I'd heard a hundred times from my dad. I twitted Ab about it; that it wasn't original. He said we judge people by their conduct not by who they are. That is exactly what my parents said, I've heard that a million times. I really believe that to the bottom of my bones.

Mr. Singer: It sounds like they were an extraordinarily religious.
Judge Richey: They were. I wasn't. They mistakenly, without any intention, forced it on us or tried to. I just rebelled.

Mr. Singer: You just said no.

Judge Richey: Yeah. That's it. I did, I rebelled by refusing to go to church as soon as I got old enough, what today you would call middle school I just wouldn't do it.

Mr. Singer: You were pretty young. I mean at that point you were what, thirteen, fourteen years old?

Judge Richey: I wouldn't go, didn't like it and wouldn't have anything to do with it.

Mr. Singer: I'm tempted to ask how your parents reacted to that.

Judge Richey: Oh, you can ask anything you want. Oh, they didn't like that but they didn't punish me for it. I knew they didn't like it but they didn't punish me.

Mr. Singer: Did the family as a unit... I didn't ask you whether you had siblings.

Judge Richey: No, I was the only child unfortunately. Only child. I had cousins.

Mr. Singer: But there was a group of people in the Richey family and your …then your mother's family that were close?

Judge Richey: Oh, yes, very close in spite of their divergent views about politics they were very close friends.

Mr. Singer: Were there family celebrations?

Judge Richey: Oh, yes all the time and family reunions and all that business. Picnics, that sort of things. I think African-American people are about the only ones I know of today that do that.
Mr. Singer: That's the kind of thing many of us have forgotten how to do.

Judge Richey: I wouldn't know how to do it today nor would I care. But I do care about my friends. But I wouldn't want to go to a reunion of my relatives.

Mr. Singer: But Christmas was celebrated, and Thanksgiving and both secular holidays and religious holidays as well.

Judge Richey: I guess they were they didn't mean much to me. One thing, they didn't have any money to buy presents. What they'd do is go to the coach and get a basketball that was no good anymore and that would be my Christmas present. That sort of thing. One time I got a, what do you call things on Christmas trees, one of those things in my eye and that scared my parents so we never had a real Christmas tree thereafter. At a very young age. There was always something they folded up and put in the attic. I remember that. I didn't care for that kind of stuff.

Mr. Singer: What about the public communal celebrations of Decoration Day. Where they called then Decoration and Memorial Day, or July 4th, celebrations that certainly weren't religious, weren't family celebrations but were communal events.

Judge Richey: Unless it had something to do with the university like an opera or a play, I didn't pay much attention to that.

Mr. Singer: Did you take an interest in the arts that were going on and made available through the university?

Judge Richey: A little bit, but... You probably don't understand, I don't know how old
you are, Dan, but...

Mr. Singer: I'm seven years younger than you are.

Judge Richey: That makes a difference. It makes a whale of a difference. Because during the time that I was growing up the Depression was so terrible I can see grown men eight feet deep two and a half long city blocks, twice as long as this block in the courthouse, crying like babies when Roosevelt closed the banks because they couldn't get their money out.

Mr. Singer: You were ten years old then.

Judge Richey: That's right and I can still remember it. Still remember it. So, when you see things like that, it inevitably leads to an indelible impression and so we talk about going to the Kennedy Center and seeing the opera and the ballet or something, to me I can say what difference does it make? Does that really advance your knowledge or your ability to get forward and help humankind? And to me it didn't. It had no relevance - none. It was no way of getting out of that community and extricating myself from the intellectual poverty that was extant there. So I try to repress it. I don't even want to think about it.

Mr. Singer: I'm sorry to put you in that pain...

Judge Richey: No. No. It's the truth and that seven-year difference in our age makes... it is an important difference. Because you saw all of that going up around you. I remember my folks drove down and we watched the people trying to get in the banks and you know what you'd do on Saturday night for recreation? Drive downtown, six, seven,
eight year old kid on the main street. An uncle of mine, as far as I know a successful farmer, was a director of one of the local banks, and ice cream cones were 5 cents. They would get me an ice cream cone, sit there and talk about their usual things and I would sit in the back seat and just watch people walk up and down the street. Kind of a parade on Saturday night.

Mr. Singer: Were things getting better by the time you went to college?

Judge Richey: A little bit but not a hell of a lot. The War soon came on in December and I remember going in a fraternity house. I think December 7 was on a Sunday.

Mr. Singer: It was indeed. I remember that.

Judge Richey: And some fellow was sitting in front of the fireplace and said "Pearl Harbor was just attacked." I said, "Where the heck is that and by whom?" and he said, "The Japanese." I barely knew we were at war at that point. I'm not sure many others did either except in the sophisticated areas of say, New York, Washington, etc. Well, that is the answer to that question.

Mr. Singer: You went to college in 1941 and your degree is in '45?

Judge Richey: Yes, but I didn't stay there until 1945. I left in early 1944 because I went in the summer time and I had 7 hours necessary to get a degree before I left. But I left to go in the Army Corps of Engineers without getting a degree it was a terrible distress to my parents because I had a deferment.
Mr. Singer: Why would you have had a deferment?

Judge Richey: I was born with a leg one-half inch shorter than the other. It was a kind of temporary deferment and my folks thought I should finish school but I decided I wanted to be a lawyer and that I needed some money to go to law school and so this was one means of doing it. In those days you could transfer back depending upon your academic achievements and average your first semester in law school or first year for that matter. So, after the first half year in law school I got my degree in the mail. I haven't graduated from anything since high school in a formal academic procession or setting.

Mr. Singer: That's really interesting. And you went essentially directly from the Corps... What did you do in the Corps of Engineers?

Judge Richey: Nothing really. I was a procurement analyst for a half a year. The other half of the year I became a contract personnel specialist that did grade classification for civilians and never got any further than Fort Hays in Columbus, Ohio, 23 miles south. And commuted most of the time from Delaware to Columbus. That was my service. And then when that was over, I went up to Cleveland to go to law school.

Mr. Singer: And Cleveland is how far from Delaware?

Judge Richey: About 150 miles. Delaware is the exact center of the state. The birth place of Rutherford B. Hayes. Most people think he was born in Freemont, Ohio but he was born there and, you know, the place where he was born has a filling station on it and there is just a little plaque,
flag up above it saying birthplace of Rutherford B. Hayes, Governor of Ohio, x years, President of the United States, x years. But he was the father of the indeterminate sentence.

Mr. Singer: That I didn't know. I guess that very few...In his capacity as...

Judge Richey: As Governor of Ohio. He called the first National Prison Conference in Cincinnati. He was a famous man. I learned this from Jim Bennett's book. I don't know whether you knew Jim Bennett or not...

Mr. Singer: I didn't know... I know certainly who he was, but I didn't know...

Judge Richey: Great mind, great man. And it says in his book, *I Chose Prison*. And, in that, he tells about that first National Prison Conference to do something about sentencing to bring it back to what the founders of this republic wanted.

Mr. Singer: About when was that? Did that conference take place? Do you recall?

Judge Richey: No, I don't know.

Mr. Singer: Before or after...

Judge Richey: When he was governor, whenever that was. And, there was a famous prison administrator from Detroit named Zebulon Brockway, sounds like a name about that generation, and he offered a resolution calling for an indeterminate sentence which meant that if you behaved yourself in prison and "rehabilitated yourself" you would get out sooner. That's what we had until 1984 when the Congress changed the sentencing laws.
Mr. Singer: We'll get to that. I would guess that you have very well-developed views on matters relating to sentencing. Staying in the immediate post-war period, were your parents, I assume they are no longer living, but, did they live through?

Judge Richey: Yes, they both are deceased. My dad only lived until 61 years old and he died of Parkinson's disease. My mother lived to be 88 and she died essentially of old age. She had some cancer and the usual things but just essentially of old age.

Mr. Singer: Did you enjoy going to law school?

Judge Richey: No, I hated it.

Mr. Singer: Why is the obvious next question.

Judge Richey: Sure, it's an obvious question. I hated law school because I had to work in order to eat and stay there. Tuition was only, I think, $150 a semester. And after the first year I got a scholarship so I didn't have to pay tuition but it was expensive to live and buy books.

Mr. Singer: You're now living in Cleveland?

Judge Richey: Right. Yes. Yes. And, those were tough days. You go to school in the morning, work until midnight and then try to study.

Mr. Singer: What kinds of jobs did you have?

Judge Richey: Well, I told you of three of them...four of them. I waited table at noon for my lunch at the boys' undergraduate men's school; worked at the University Center Board of Commerce which I organized; lobbied Monday night in the City Council for their interests. They gave me a
telephone, too. I had a telephone in my room. Then I came back, waited table at the undergraduate girls' school, Forest Stone Manor; then went to the funeral home until midnight.

Mr. Singer: See, those were not college jobs. Those were law school jobs. I see.

Judge Richey: And then on Saturdays I was a guard at the Carnegie Medical Library, which had a lot of rare books --- the only job in my life I was ever fired from, but in the spring of that first year you sat on a straight back chair which was uncomfortable as heck at the door to check people out with their books and I went to sleep sitting straight up and I got fired.

Mr. Singer: Something must have been driving you.

Judge Richey: Well, of course. It was driving me. I wanted to get through. After the first semester I had saved enough money to buy books but they were expensive and, nevertheless, there were many courses I didn't even have the money to buy the books. And it was the first post-World War II class after World War II in October of 1945, but God, many people were in uniform, still hadn't had time to get civilian clothes, the law schools all over the United States didn't have their faculty back in many instances. It was a horrendous mess. Of course, working as hard as I had to my competitors and good friends would go have a leisurely lunch, stay in the library until 10:30 or 11:00, however late it was open, (not open all night like some of them are today) and go to school the next morning. I couldn't do that. And so, I had to crib, you know. But, it wasn't that difficult for me. In
Criminal Law for example I never went to one class. It is a shame, I hate to admit this, but it is an absolute fact. I never went to one class and didn't own a book, I stayed up all night the night before the exam and got a B+ by reading two student college friends' notes.

Mr. Singer: Are these men still your friends?

Judge Richey: One is deceased but the then young woman is still alive. She was married to a very successful communications lawyer with Baker Hostetler. She's still alive.

Mr. Singer: Baker Hostetler...

Judge Richey: It was then called Baker Hostetler and Patterson. I saw her a few years ago at some law school function but her name was Betty Ann Meyers in those days, Reeskin now. In any event, I didn't like law school but I made some wonderful friends. It's amazing, I think six of them became judges. One on the Sixth Circuit.

Mr. Singer: Who's that?

Judge Richey: Bob Krupansky. Three on the District Court for the Northern District of Ohio, one Chief Justice of the Ohio Supreme Court, a woman - Bob Krupansky's sister, Blanche, other lower court judges in the state court system. Quite a few.

Mr. Singer: Let me make an observation, which is something I'm not supposed to do generally, but it is an interesting train of thought that gets suggested. You've mentioned each time when it became appropriate that you were either associated professionally with women or, in the case of your
mother, she was herself a professional. That was hardly common. Indeed, one would have to suggest it was very uncommon in the late 30's through much later.

Judge Richey: You couldn't be more right.

Mr. Singer: And it continues because something we will get to is your decision to come to Washington and work for a distinguished Congresswoman from Ohio. So let's kind of put that in the...

Judge Richey: What influences have women had on my life?

Mr. Singer: No. You're clearly able to, and in your own right in the issue of discrimination, to deal with these kinds of issues that arise out of a professional equality or parity with great ease and confidence and comfort.

Judge Richey: Correct.

Mr. Singer: Yeah. But most unusual. Certainly in your times and indeed in my times.

Judge Richey: Well, you've forgotten something. You've forgotten Franklin D. Roosevelt and Eleanor Roosevelt. And there was a man in New York, I forget the exact title he had, but he operated out of New York City named Sidney Hillman. When I was a young man I heard about Congressional pages and I thought that that would be a way for me to go to law school or maybe even college. So as a young Democrat, I found out who the chairman of the patronage committee was in the House of Representatives, I wrote letter after letter after letter, never
got an answer. The man's name was Andrew May of Kentucky, later went to jail for contract fraud or something. Sidney Hillman of New York was the only one who would answer my letters.

Mr. Singer: He wasn't a Congressman.

Judge Richey: No. But he was a political director of the labor movement.

Mr. Singer: Absolutely correct.

Judge Richey: I don't know whether I still have any of those letters or not, but he used to send me booklets, pamphlets on how to organize political stuff, campaigns, literature. I don't know whether he wrote them or not but he must have had a heck of a staff if he didn't. They looked like they were personal. I'll never forget him. He had a big influence on my life.

Mr. Singer: Did you ever meet him?

Judge Richey: Never got to meet him.

Mr. Singer: He plays a role in the McCullough biography of Truman.

Judge Richey: Is that so?

Mr. Singer: Yes, because...

Judge Richey: Well, I have that book. The trouble is, my wife has taken forever to read it. She has had it for a year and a half.

Mr. Singer: It will take forever to read it. But, I'm now half way through and it returns great returns for the effort involved in reading it. Without question. But, in it, if I recall correctly, is a discussion of how Truman got the Vice Presidential nomination for the campaign in '44
which, if I recall correctly, gave rise to how they worked out these elaborate politics of the selection of the Vice President for Roosevelt's fourth term and the catch phrase was Roosevelt saying to his own immediate political family who were bothering him about the selection of the Vice Presidency, "whatever it is, clear it with Sidney" meaning...

Judge Richey: Sidney Hillman.

Mr. Singer: Sidney Hillman. And if it's OK...

Judge Richey: That's right, I'd forgotten that!! You're absolutely right!! "Clear it with Sidney"!!

Mr. Singer: "Clear it with Sidney" was with the labor movement.

Judge Richey: Exactly.

Mr. Singer: We got to get somebody, we the Democrats then, who will bring the labor movement; solidify the support in the Labor movement.

Judge Richey: That's exactly right. I'd forgotten it. You couldn't be more right. I know it.

Mr. Singer: That's the same Sidney Hillman. And I think it was either the Amalgamated Clothing Workers or the Ladies Garment Workers.


Mr. Singer: They came out of...

Judge Richey: He did.

Mr. Singer: Which was...

Judge Richey: Fascinating.

Mr. Singer: That's my history.
Judge Richey: That's right. You're absolutely correct. Wallace was his... Truman's opponent from Iowa, Geneticist. Henry Wallace came to my college campus in about 1943 or '42 before I left and made one of the most famous speeches of all time entitled "The Century of the Common Man". I have it some place among my papers at home. But it is a great, great speech. In my home community there weren't any Democrats. It is reversed today. But on that campus there must have been 5 maybe 2 or 3 Democrat members of the faculty. All the rest were Republicans. Just the opposite today. If they got any Republicans they would be lucky, I guess. I mean, you know, they would be lucky to find a Republican. Just the opposite in those days. But my mother, who was in the President's office, and she was close to the President, she got an audience with the Democratic County Chairman, he brought me along and I got to meet the Vice President, Henry A. Wallace, who was Truman's opponent in that election and he made a big fight about it. I think Truman later appointed him Secretary of Commerce, though.

Mr. Singer: I think that's true and then he, of course, ran against... he was one of four candidates in 1948.

Judge Richey: That's correct. Didn't he run with Glenn Taylor?

Mr. Singer: Idaho. Guitar player from Idaho. That was the...

Judge Richey: It was Wallace and Taylor. One ticket, the Progressive Party or something like that.
Mr. Singer: And the American Labor Party supported them.

Judge Richey: They did. And then you had Strom Thurmond and I don't know who ran with him.

Mr. Singer: I don't have any recollection of who ran with him.

Judge Richey: I don't either.

Mr. Singer: But it was Dewey and

Judge Richey: And Warren.

Mr. Singer: Right. And then Truman and Barkley.

Judge Richey: Truman and Alban Barkley. That's right. 29,000 votes would have thrown that election in the House of Representatives. Can you believe that?

Mr. Singer: I can believe it. Yes. I remember the cliff-hanger. I remember the headlines the next day in the…

Judge Richey: Chicago Tribune.

Mr. Singer: Those were heady times. I was in college at that point.

Judge Richey: Were ya?

Mr. Singer: It was the last election in which I didn't vote.

Judge Richey: Is that right?

Mr. Singer: Yeah. Because I was not yet twenty... when I voted. I cast my first presidential ballot for Stevenson.

Judge Richey: I voted for Adlai Stevenson twice because I did not like Eisenhower. Couldn't stand him. Admired him...

Mr. Singer: Why?
Judge Richey: Why? Because I didn't think a military person should be president of the United States. It was inconsistent with my view of the Constitution. Right or wrong that was my view. I thought Robert A. Taft was one of the greatest men I'd ever known. And, goodness gracious, I was just a young kid, wet under the ears even though I was just out of law school.

Mr. Singer: But by that time you were...

Judge Richey: Here in Washington with Mrs. Bolton, and she was from Ohio and Taft was from Ohio and everybody was for Taft from the political establishment, so to speak. But I got on my own to know him and he impressed the heck out of me in the terms of his honesty and his intellect. The only thing I ever disagreed with him about was his position on the Nuremberg Trials.

Mr. Singer: I don't remember that.

Judge Richey: Well, he took a position that that was unconstitutional and therefore should be opposed. And I was one of 26 people who sat in his office with a fellow named Isaac Jack Martin who was his long time administrative assistant and principal aide.

Mr. Singer: Do you think that Justice Jackson's appearance was...

Judge Richey: Oh, this was before Jackson. See, legislation had to be, or a treaty or something has to be approved in the Senate in order for that to take place and he opposed it at that time. He was running for president again and as I say I was one of 26 people in his office sitting in the
back of the room, all of his advisors saying “Senator you can't be president you are going to lose the Jewish vote.” I remember very distinctly and clearly I'd rather be right than president. And I also remember another time a year or so later I was in the Senate Dining Room with old Alex Wiley who was chairman of the Finance Committee (three term Senator from Wisconsin) and old Andy Schoeppel who had been President of the American Legion from Kansas came up to him and said "Alex, you got to get out of here. Bob Taft just took the floor". And, Dan, within less than 60 seconds there wasn't anybody in the whole Senate Dining Room. They were all upstairs. When Taft spoke people listened. He's the only U.S. Senator that has a memorial erected to his memory on the capital grounds. People don't know that. It's right up the street here.

Mr. Singer: It's that lovely Bell Tower.

Judge Richey: Yeah. People don't know that. It's written up in John F. Kennedy...

Mr. Singer: People know it.

Judge Richey: Well, not very many. I love to drive by there with prominent people and they don't even know what it is.

Mr. Singer: Let's get back to law school, I mean, eventually obviously you suffered the pain.

Judge Richey: I liked the law but I didn't like law school. It was kind of like college. I didn't like things unless I had some capacity to see how it was going to be relevant to making a living. That was my primary focus.
When I was in college, let me tell you a story. In my day you had to take the humanities which meant the *Iliad* and the *Odyssey*, nine hours of hard sciences.

Which hard sciences did you do?

Judge Richey: I took a course called Chemistry in the Modern World which I hated with a passion, Geography in the Modern World, I don't know what the other one was. You had to take an Art Appreciation, Music Appreciation, all this kind of stuff. Well, when I became a junior I decided without my parents' knowledge I was going to file a petition with the Registrar of the University to get out of a lot of this stuff such as Music Appreciation, three hours of Science so forth I don't know what all they were, including Humanities, because that had no relevance to making a living. And I proposed alternatives of other things that I would like to do that I thought I was good at and would help me. And you know what, they called me in and granted it. It had never been done before and I betcha, 'course they've modified it, but...

Mr. Singer: Have you though back as to...

Judge Richey: That was the first time that I knew I was going to be a lawyer, I knew somehow or other I would make it as a lawyer. That was totally against the grain.

Mr. Singer: Do you ever look back at that and say how could have done such a thing? What is it that gave the confidence, the brass, the whatever, to
go up against this institution which in a way clearly was very important to you, your family and you are not quite thumbing your nose at it but you are certainly challenging a kind of root concept.

Judge Richey: You could not be more right. You couldn't be more right, you must have been one whale of a lawyer. I did. I don't know how to explain it except I wanted to do things that I felt would extricate myself from the abject poverty and would enable myself to get where I wanted to get. If you look back on the history of all the people who have been successful in public life, most have had (a) good health, (b) tremendous drive, (3) a pretty high level of intelligence. And I've had all three of those.

Mr. Singer: But, what passes in the phrase, "Type A"?

Judge Richey: I guess. I guess.

Mr. Singer: Did you have a chance for any kind of social life during this period?

Judge Richey: I did in college a little bit.

Mr. Singer: And you said you were a member of a fraternity.

Judge Richey: Yes, I was. Everybody did in those days. But I was a maverick there, too. You know, they ran the school, well, when I was a freshman they had airplanes and major national dance bands come to the university to hold teas for candidate for president of the student party and they would all be fraternity men. Well, I was persuasive and able to get my fraternity to endorse an independent and you know what? We won!
Mr. Singer: By independent you mean not a member of a fraternity.

Judge Richey: Right. And boy, that caused a whale of a stink! But you know what? We won. The poor guy died in the Korean War but he was a son of a missionary. I wrote his speech. I'll never forget it in front of the whole student body in those days you had compulsory chapel every day.

Mr. Singer: That must have been a real strain.

Judge Richey: It was for me. But they did have outstanding speakers of national stature. I wrote his speech and he was kind of a sullen sort of a guy.

Bill Shaw was his name I'll never forget him. He was very sullen and the first line of his speech was, "Who said Bill Shaw couldn't smile?"

and he grins. It just broke the place right open.

Mr. Singer: And how was his reign as president of the student body?


Mr. Singer: How fortunate for you having gone way out on this limb.


Hell, I helped integrate Phi Delta Phi, the law fraternity.

Mr. Singer: What were you integrating? I mean, at that point?

Judge Richey: The law fraternity in law school.

Mr. Singer: I know but...

Judge Richey: They didn't have any African-Americans, or anything. I did that.

Later helped them get my college fraternity to take Blacks, Jews.

Mr. Singer: Good. I remember when I was in college which was when you were
in law school, the issue was, I remember at Amherst, was the integration of one of the undergraduate fraternities and the issue filtered onto a lot of other campuses. This was now racial integration.

Judge Richey: That's right. It was. Yeah. I helped take the Phi Gamma Delta chapter away from Amherst and drove up there to get the ritual materials from Amherst Phi Gamma Delta House at Amherst College which Calvin Coolidge belonged to because it refused to accept a Black. I did. That was in the '50s. I did it in Phi Delta Phi we got women in there. It's ridiculous, isn't it?

Mr. Singer: If you think about it in terms of the exercise we're going with, to try to find out what...

Judge Richey: What motivated me to do all this? Because it was right.

Mr. Singer: Yeah. But that didn't just... You just didn't wake up one morning and say...

Judge Richey: I can't explain it except that... Like, yes, well, I don't know. I can't offer an explanation. It's just the right thing to do. My parents taught tolerance and my grandparents believed in tolerance. My grandparents on my mother's side didn't like Democrats but it was not an intolerant dislike.

Mr. Singer: They were wrong. Misguided.

Judge Richey: Yeah, they were wrong. The other way around too. They didn't like Republicans.

Mr. Singer: They weren't immoral. They were just misguided.
Judge Richey: Yeah. The other way around too. They were misguided too. When I came to Washington I had this friend of mine, Ollie Bolton, who later came to Congress with his mother, asked me what I was going to do and I said I was going to go with a firm downtown in Cleveland - a big firm.

Mr. Singer: Can you put that in a time frame at this point?

Judge Richey: This is late 1944 -- I mean 1947.

Mr. Singer: Right. OK. In the beginning of your time when you were in law school.

Judge Richey: And he said, "Well, how would you like to go down to Washington with my mother. She's looking for a young lawyer to be her legislative counsel. I said, "Well, Ollie that would be very nice but your mother is a Republican and I'm a Democrat." And he says, "Aw, Chuck that wouldn't make any difference at all. The only thing you would have to do is change your party registration but I can assure you wouldn't have to change your principles because everybody around here knows you are a man of principle." I thought about it for about 24 hours and said I'd do it. Best decision I ever made. I got here and I was so glad and grateful for having made that decision, not because I got to come to Washington which I'd wanted to do since I was a kid.

Mr. Singer: You'd never had the opportunity to visit here.

Judge Richey: Five years old my parents were able to scrape enough money somehow or other to...
Mr. Singer: Those were your good days. I mean those were your good times. In 1928. That was before the bad times.

Judge Richey: Right. In any event, all the committees were dominated by the Southern Democrats. Don't forget John Rankin was in his heyday, Senator Bilbo of Mississippi, Russell of Georgia, George of Georgia, Hoey of North Carolina, Harry Byrd of Virginia, I could go on, I don't know, who the two Senators were before Bobby Byrd of West Virginia. But my goodness gracious, it was the worst awful time. Matter of fact, we kids used to go to the House as the clock struck 12 every noon to hear John Rankin and Vito Marcantionio debate. They each had three minutes. That is the way the House of Representatives opened in the second session of the 80th Congress every day. I'll never forget Marcantionio saying "If the gentleman from Mississippi doesn't get off my back, I shall go to his district in Mississippi in the next campaign and I shall campaign for him." I can hear it yet.

Mr. Singer: That's wonderful. That's really wonderful. But you must have had a relationship with the Bolton family in some sense.

Judge Richey: Her son. Her son, Ollie was a classmate. And, Mardelle and I thought we were going to make him president.

Mr. Singer: Now Mardelle is in the picture at this point?

Judge Richey: No. No. No. She was after I got to Washington. But not until I came to Washington. I met her on the Hill. She worked for Bill Stratton.

Mr. Singer: From Pennsylvania?
Judge Richey: Illinois. He became governor.

Mr. Singer: Right.

Judge Richey: He was a Congressman-at-large. And, my law school roommate had a high school friend from Gary, Indiana who worked for Ray Madden who was the ranking Democrat on the Rules Committee and he called her up and introduced me by telephone the night before I left.

Mr. Singer: To take the job?

Judge Richey: No, just to introduce me to some woman. I could have cared less. But, in any event, soon thereafter, she and three roommates invited me to their apartment...

Mr. Singer: Now you're not talking about Mardelle.

Judge Richey: No. Well, this is leading up to Mardelle. And so I went to this lovely dinner and I was so goddam gung-ho in trying to earn a living and get started I could have cared less about anything except work. But, about two months went by and I decided there was elemental politeness and decency and I ought to call Shirley and ask her to go to dinner or something even though I only earned a gross of $300 a month and so I did and she said she had something else to do and couldn't do it but she had a friend and it turned out to be Mardelle. So that's how I met my wife.

Mr. Singer: Wonderful, wonderful accidents.

Judge Richey: We finished 45 years of marriage March 25, just a few weeks ago. 45 years. That's a long time!
Mr. Singer: I can relate to that because I've been married... it will be in June it will be 43 years.

Judge Richey: Good. Bless your heart, Dan! Well, you're already my friend.

Mr. Singer: I'm one of a monogamous generation. With stability somehow built in in many of those relationships. Basically, the first job you ever had as a lawyer, then, was with Congresswoman Bolton. You couldn't have known very much with all due respect.

Judge Richey: I didn't know a darn thing. Even though she called me in after I got here she told me you go over there to the Dodge Hotel and get a room and see me in 45 minutes in the office.

Mr. Singer: She had been a Congresswoman for how long at that point.

Judge Richey: Oh, at least 20 years by that time and her husband 20 years before that. She served a total of 39 years. Ollie, I think, served 3 terms.

Mr. Singer: That's her son.

Judge Richey: Right.

Mr. Singer: They were a dynasty.

Judge Richey: Yeah. The only mother and son team to ever in history serve in the House of Representatives together. She was the ranking person on the Foreign Affairs Committee. Very prominent... well, the ten wealthiest people in the United States. I was never on the government payroll; I was on her personal payroll.

Mr. Singer: That's interesting. What was the source of the wealth?

Judge Richey: I think there was a hardware company called Paine Webber out of New
York, Buffalo or someplace.

Mr. Singer: That's a brokerage house. Paine Webber.

Judge Richey: Well, Paine Webber. But, no, Payne. It was the Frances Payne Bolton. The Payne for hardware people, I think. Don't hold me to this.

Mr. Singer: Paynes and Whitneys and it's a good old….

Judge Richey: They had lots of money. I mean she had a big home in Maine, Palm Beach, next to the Kennedy estate, and Palm Beach, Florida. She had a big home on Wyoming Avenue here in Washington and one in Cleveland. They had enormous, enormous wealth.

Mr. Singer: And Bolton was...

Judge Richey: I don't know where Chester, her husband, got his money but he wasn't poor either - they were very wealthy people. And like the Kennedys, they never had a dime in their pocket. I'll never forget one time she said she was going to take me to dinner. We went to a restaurant called the Ugly Duckling where I met all of Lyndon Johnson's people because they used to frequent that place. Like Walter Jenkins and the others who followed him to the House, the Senate and the White House. But we went to dinner and came time to pay the bill and she didn't have a cent. She said, "I'll reimburse you in the morning." But, she never did. I never got it. But that's all right. You know those kinds.

Mr. Singer: I have a partner whose name is Shriver who absolutely fits that bill
perfectly.

Judge Richey: Is that right? Is he very wealthy too?

Mr. Singer: Shriver, Sarge?

Judge Richey: Oh, Sargent Shriver.

Mr. Singer: Oh, sure.

Judge Richey: He's been nice as heck to me over the years.

Mr. Singer: He's a wonderful man. Just extraordinary. Extraordinary man.

Judge Richey: He's a decent man. I remember when I first came down here. I saw him going across the Georgetown Bridge. He was in a convertible.

Mr. Singer: He loves convertibles.

Judge Richey: And he stuck his head over the window and said "Judge, keep writing those wonderful opinions."[unclear] Pardon?

Mr. Singer: It had to do with the Nixon?

Judge Richey: I don't know, early in my career. I remember. Just crossing the bridge, over there by the, I remember exactly where it was, right next to the old transit company building.

Mr. Singer: Across Key Bridge.

Judge Richey: Yeah, Key Bridge. That's it.

Mr. Singer: That's where the car barn used to be. Some of us have very fond memories of that kind of facility. Many of us wish that Georgetown hadn't opposed the Metro the way they did and had taken it right out to the amusement park.

Judge Richey: Glen Echo. That's absolutely right!
Mr. Singer: It's one of the great local tragedies.

Judge Richey: It is. You couldn't be more right. You should have been one of my law partners. God, we'd have gotten along beautifully.

Mr. Singer: I want to get back to the service on the Hill.

Judge Richey: All right.

Mr. Singer: You say you were on her payroll?

Judge Richey: Right. And the first thing when I got there 45 minutes after getting off the train. I ought to first tell you that I raced up to my room, dumped my foot locker and a suitcase, maybe two. And went down the elevator. She told me to go to the cafeteria and get something to eat. When I got on the elevator there was Justice and Mrs. Harold Burton.

Mr. Singer: Also from Cleveland.

Judge Richey: Former mayor, U.S. Senator, Truman put him on the Supreme Court as a Republican. In fact I have his award. In any event I thought I was going to faint seeing Justice Burton on the elevator.

Mr. Singer: You thought he really didn't have to take up the elevator to get up to his room. That would have been my attitude. Some of those people just...

Judge Richey: Well it was quite a shock - the cultural shock for a kid with my background. And then I walk over the Hill and find her office. They showed me, her secretary showed me my desk which was out in the center of a room; we had the largest staff of anybody on the Hill except Lyndon B. Johnson, seven people. But as I say, I wasn't on any
Congressional or public payroll, but the buzzer rang and she called me in. "Charles, I want you to represent me this morning before the House Armed Services Committee on the WAC Bill."

Mr. Singer: Women's Army Corps.

Judge Richey: To make women a permanent part of the Armed Services. Well, I didn't know what "represent me" meant. And she says, "it begins at 10:00. Now I have got to go to another meeting. Good-bye."

That's all the instruction I had. So I started out about 10 minutes of 10 and I got lost. I was late. So that I got to these huge, big doors. I don't know whether you can remember them, but they're black-plated handles so I got there finally about 10 minutes late. Started to put my hand on the door and both of them opened and guess who I collided with literally and figuratively, face-to-face, nose-to-nose, but none other than Dwight D. Eisenhower. Because he was just leaving the witness stand and his big entourage, he was then head of NATO.

That was my first morning. I sat there and took notes, and so on. I didn't know what the hell to do. I came back and she asked me about a lot of question about who testified, fortunately I...

Mr. Singer: You'd taken good notes.

Judge Richey: I'd taken good notes. Got by that. Basically the thing that I did most while I was there with her was to write the arguments pro and con on every issue before the 80th Congress. It ended up with two big long files. And she was great of friend of Jim Forrestal, who was the
first Secretary of Defense and he had a theory that he wouldn't read
anything that was in excess of one page.  And neither would she.  No
more than one page.  If you couldn't say it in a page it wasn't worth
saying.  She didn't have time to read it.  So I remember the first
assignment she gave me.  I don't know what the heck it was about but
something about housing.  And it was about 3-1/2 pages single
spaced.  She called me in and wouldn't read it and then gave me the
Forrestal lecture.  Another thing she did was while we were talking
about that subject I had another classmate who was a law clerk to
Harold Burton.

Mr. Singer:  On the Supreme Court?

Judge Richey:  On the Supreme Court.  And, of course, we all lived in rooming
houses in Washington in those days too.  So she wanted me to go over
and talk to Justice Burton, who was her friend of course, about this and
I said Ms. Bolton, I can't do that, that's improper.  There's the same
issue as before the Court.  She couldn't understand that at all.  And
she was very, very distressed with me.  As a result, it was so bad, that
I had to call her son, and say, "Look, Ollie, for Christ sake, get your
mother straightened out here.  I can't do that."

Mr. Singer:  She wouldn't hesitate a minute, I suppose, to pick up the phone call
Burton.

Judge Richey:  Years later I heard Warren Burger, not talking to me, but I was in his
presence telling somebody about how a governor was calling him
asking him something about some Voting Rights Act case or something like that and, he said "Governor, you're a lawyer, do you want me to recuse myself. I can't talk to you about this case." "Oh, thank you very much, Mr. Chief Justice, I've got my attorney general on the phone with two other justices right now." It's a [garbled] you know, the mentality of some people, outside of Washington is very de minimis. But in any event...

Mr. Singer: But in terms of the career on the Hill, what was your view, as a staff person.

Judge Richey: The best thing I ever did, I still use it, because I started to say I had to summarize all the issues with back-up papers that consisted of two files when I got done, aside from write thousands of form letters.

Mr. Singer: You did constituent work also?

Judge Richey: Yeah. And drafting of some amendments to bills and things like that. But boy I worked too. I was the first one in the office except for her secretary and the last one to leave. 12, 15 hour days. But it was an enormous experience. I still draw on the issues about public housing, federal aid to education, all the stuff that Gingrich and company want to do away with today. But the hell with it!

Mr. Singer: How long did you work for her? You left sometime in '49?

Judge Richey: No. Let's see. One afternoon in the late Spring, I came February 5, 1948. I had worked for her in her Cleveland office before I came down here.
Mr. Singer: While you were in law school?

Judge Richey: Right. And so all told I worked for her for just about 15 months.

But in the spring of that year after I got here, some kid comes in the office one day and said he's a representative of the Republican National Committee and wanted to know, he was canvassing the Ohio delegation, wanted to know if they had any volunteers for the national campaign, and they said no. Her secretary.

Mr. Singer: This is now the '48 election.

Judge Richey: And I followed him out in the hall and introduced myself and asked him if I could come and it was up here at 1337 Connecticut Avenue at the time. I went. Sat in the back of the room. By the time the meeting was over I was in the front row. And there was a fellow named Ralph Becker who was National Chairman at the time.

Mr. Singer: Oh sure. He's the man who was...

Judge Richey: He just died.

Mr. Singer: Active in the Kennedy Center.

Judge Richey: Correct. You're absolutely right.

Mr. Singer: He used to have offices in the same building where we did at 1700 K.

Judge Richey: Is that right? Ralph was very, very nice to me. I later became his assistant. In any event there was another fellow who was a law partner of Ralph's named F. Trowbridge vom Baur.

Mr. Singer: Absolutely.

Judge Richey: He wrote the first book on administrative law. It's over there on my
Mr. Singer:  Great government contracts lawyer.

Judge Richey:  Correct.

Mr. Singer:  He had some wonderful partners along the way.  He bounced in and out of various law firms.

Judge Richey:  Struve Hensel was really his benefactor.

Mr. Singer:  That's exactly right, you took the words out of my mouth.

Judge Richey:  Struve got him the job in the general counsel in the Navy.  In any event, he took… Mardelle's father was ill, skip a couple of years, when we were married, and Trow took the place of my father-in-law because of his illness when we were married.  He's now 85, 88 living in Warrenton.  We saw him about eight months ago and we're going to go back soon on a Saturday for lunch.  We're very fond of Trow, he's kind of stiff.  He never made any money.  Never knew how to make money, but, God, is he smart.

Mr. Singer:  He was a very important person in the whole development of the government contracts bar law.

Judge Richey:  Oh, no question about it.  No question about it.  Terrific writer, organizer.  Got his start in the Wilke campaign in 1940 in New York.  In addition to writing that book at age 33 with a forward by Roscoe Pound.  He taught me.  I had lunch every day with him after I went to the National Committee.  But, in any event, that led to a volunteer committee to write the literature for the '48 campaign.  Trow was
chairman and I became his assistant and then it became time for his
evocation, it wasn't going to be done and I was the only one who knew
enough to finish it. And so, somehow or other, it got to the attention
of Herb Brownell, probably through Ralph Becker.

Mr. Singer: That makes sense.

Judge Richey: That I was kinda of indispensable to their efforts and I was all set, and
had packed, moved out of my rooming house over there on Maryland
Avenue and taken my foot locker and a couple of suitcases to put them
in the locker at the Union Station to go home. To help her in the
campaign and the buzzer rang, I clicked my heels and saluted and went
in and there was Herbert Brownell. She said "Charles, Herb tells me
you've done a great job at nights up at the National Committee and he
wants to know whether I'll loan you to them for the balance of the
campaign. Would you like to go with him or do you want to go back
to Cleveland with me?" Well, shit I didn't know how to answer that
question. I wanted to stay here so badly. And I hemmed and hawed,
she said "Well, I'll keep you on my payroll and loan you to Herb if you
don't have any objections." She made it easier.

Mr. Singer: That's really very easy. Particularly since it was her personal payroll.

Judge Richey: That's right. So she did. And Ralph had a, I don't know how the hell
he did it, but a room at the Mayflower. A suite. And we essentially
lived there. Except when Ralph was on the road. And that was the
time they were building DuPont Circle. You know.
Mr. Singer: I remember that. I remember the street cars.

Judge Richey: The riveting, oh my God, it was so hot, we were in the DuPont Circle Building during the campaign itself. But I got to go to Philadelphia to the convention and got to go meet Dewey at his first public appearance after the campaign, or after the convention, and then at an office right next to John Danaher, who later became a circuit judge here.

Mr. Singer: I know John Danaher. When I was a law clerk he was a judge; when I worked for George Washington he was a judge. They actually had adjoining chambers.

Judge Richey: Is that so? Well George Washington was a great man.

Mr. Singer: And Milt Eisenberg was with Danaher.

Judge Richey: He was.

Mr. Singer: Milt Eisenberg was a law clerk to John Danaher.

Judge Richey: He was. I never knew that. Judas Priest, how in the hell could he have stood that goddamn... John Danaher in those days was an ex-U.S. senator, as you probably know.

Mr. Singer: I do know.

Judge Richey: And he was as nice as he could be but God when he became a judge, oh what a son of a bitch.

Mr. Singer: You are in charge of what happens to this tape.

Judge Richey: He was very nice to me though. We organized a... when Ralph Becker got word that down in Tennessee, Roy Acuff, a famous singer, a Republic candidate for governor, was going to win and Carroll Reece
also was a candidate for the U.S. Senate. Chairman of the Republican National Committee. Had been. Long time, 30 plus years member of Congress. And they both were drawing crowds up to 75,000 people. Acuff singing and Reece playing the Jew’s harp on the back of these trucks. But the trick was to prevent, cut down the Dixiecrat vote, and, more importantly, to prevent Boss Crump from stealing the election in Memphis. And he was at the height of his power.

Mr. Singer: These were called the good old days, I think.

Judge Richey: So, Becker went to Trow and in turn came to me and said we've got to organize a vote fraud campaign in Tennessee. And it fell in my lot to call on all these bright young lawyers, mostly from New York, to go to Tennessee and I was able to persuade John Danaher to come up with the money to finance it. And you know we did that and it was really working beautifully. Had those guys, the Dixiecrats, Strom Thurmond scared to death and the Truman people scared to death because they knew they could win if they got Memphis and we were going to prevent it.

Mr. Singer: And Gore's father and Estes Kefauver were then Senators from Tennessee? Or not yet?

Judge Richey: He wasn't around then. Kefauver was. But I think at that time Kefauver was still a member of the House. But in any event, two weeks before the election, Dewey got the idea, Paul Lockwood called me from Albany; he gave me this direction. "Call off those vote fraud
young Republicans in Tennessee and tell them to come home. And we want no literature with the candidate. Revercomb in West Virginia and Humphrey in Minnesota are running against Joe Ball, who's been Chairman of the Labor Committee. All that literature was to be destroyed. And there was also no literature to be distributed in support of the Taft Hartley Act in New Jersey. And Danaher told me when I went to him afterwards that he said that no, I can't fund this anymore. So they did the destroy the literature for Revercomb and for Humphrey but a couple of us saved all the literature that had been preprinted for New Jersey and distributed it at the factory gates all throughout New Jersey. And you know what we lost Tennessee, Humphrey got elected, Joe Ball defeated, Revercomb defeated, we won in New Jersey by 75,000 votes.

Mr. Singer: You must have felt very good about that.

Judge Richey: Screw those guys! Let me just have one second to relieve my kidneys.

Mr. Singer: You had just won New Jersey by 75,000 votes and that felt pretty good. How did you feel about the Dewey loss of the presidency?

Judge Richey: Herb Brownell called me in before the election and, bear in mind, I graduated February 4, 1948 from law school. I left that night to come to Washington. I hadn't taken -- the bar was given in March. I was so hell bent to get to Washington I didn't even get to take the bar. So, Herb Brownell called me in about 10 days before the election and he
said, "Chuck, what do you want when we win?" I hadn't even thought about it.

Mr. Singer: At this point you're 25 years old.

Judge Richey: Right.

Mr. Singer: Not quite, you're born in, well October, you would have been just 25 years.

Judge Richey: I said I'd like to be assistant press secretary to the president. I don't why, just out of the blue. A cousin who was like an uncle to me always used to talk about Stephen Early who had been the press secretary to Roosevelt so that must have come to my mind in the recesses. I knew I couldn't be press secretary at that age, so I said I'd like to be assistant. Herb says, "You got it." Then a couple of days before the election he said we're going to have a party for the staff at the Balalaika Restaurant down there at Connecticut and whatever it was. And I want you to go down and make arrangements for it. I did and of course we lost and that was the only time I was in Drew Pearson's column or anything like that until I became a judge, I think, as far as I know. But anyhow he had a line in there the Republicans hastily cancelled the victory celebration at the Balalaika Restaurant immediately after the returns came in.

Mr. Singer: So your career as an impresario was short lived.

Judge Richey: I can't believe Milton Eisenberg clerked for John Danaher.

Mr. Singer: Milt had come...
Judge Richey: He worked for Ken Keating in the U.S. Senate, did you know that?

Mr. Singer: Oh sure, Milton has been my partner since 1965.

Judge Richey: I love Milton Eisenberg, don't misunderstand me one bit. I'd do anything for him, including probably steal, if I had to, but he is one of the toughest guys, you know what I call him. Judge. And not in a laudatory sense because he's so tough.

Mr. Singer: He's very tough.

Judge Richey: We were in a, he organized the first Inn of Court on white collar crime and I'll never forget I was sitting over there, it was my turn to run a program one evening and of course you've learned that I'm pretty independent and Milton was president of the Inn and he decided he was going to come down here and see what we were going to do. What do you think, what do you think? And Milton was kinda of sitting back there. I really didn't consult him. I think Milton was a little bit offended. So finally he expressed himself, and I said “Now listen Judge Eisenberg -- this is the way we are going to do it.” And then I started to call him Judge ever since. He's a magnificent guy.

Mr. Singer: So Milton and I were law clerks.

Judge Richey: That's probably how you became friends.

Mr. Singer: It was the first time we met actually. He then went to work in the U.S. Attorney's office.

Judge Richey: Here?

Mr. Singer: Yeah. When Gasch was U.S. Attorney then.
Judge Richey: Jesus.

Mr. Singer: And then he went to the NLRB and then he went to Keating.

Judge Richey: I see.

Mr. Singer: And when he left Keating in '65 he came to the firm. I'd gone to the firm in '58.

Judge Richey: He's a hell of a man. One great...

Mr. Singer: He and I really have been together a very long time.

Judge Richey: Well don't misunderstand me, I love him, but...

Mr. Singer: You're right, he's tough.

Judge Richey: He's tough as nails.

Mr. Singer: In this period after the defeat of Dewey you then, I assume, Mrs. Bolton was reelected and you went back.

Judge Richey: Mrs. Bolton was reelected of course, served for many, many years thereafter. What happened? Oh, because of Dewey's defeat, was the best thing that ever happened to me personally and professionally.

Because I hadn't taken the bar, so I decided I better do that.

Mr. Singer: Before you forget everything.

Judge Richey: So I went back and studied for the bar and she was kind enough to keep me on her payroll. The first time in my life I'd ever had a chance to relax, study. And, while I was back in Cleveland, I get a call from Ralph Becker one time and he said when the bar is over how would you like to come back to Washington and be my assistant and help make the arrangements for the YR National Convention that is going to
be out in Salt Lake City in June.

Mr. Singer: June of ’49?

Judge Richey: Right. And I said, "Oh, I'd love it, you know that." He said, "Well, I've got Hugh Scott and whoever else's approval and I don't like the guy who's got the job now so if you're willing it's all set."

Mr. Singer: You know who the guy was who had the job?

Judge Richey: Some guy named Vetter, I've never seen him since. I don't know what the hell ever happened to him. And Ralph and I hit it off beautifully and Mrs. Bolton let me do it, and that was the end of my association with her in terms of employment and I wrote speeches for Ralph and the chairman, Hugh Scott was then chairman.

Mr. Singer: From Pennsylvania, great collector of Chinese art and antiquities of all kinds.

Judge Richey: Incidentally, he was a young congressman who had two members in his staff right across the hall from Mrs. Bolton. An old man and an old woman, both had worked for the Philadelphia Daily News and when he got elected they came with him. His two men and they hunt-and-peck typed and then he was thrust out of nowhere to be Republican National Chairman. And he and Ralph Becker got in a terrible fight. It pitted me against Hugh Scott.

Mr. Singer: This is now?

Judge Richey: Spring of 1949. And so he picked out a candidate.

Mr. Singer: Which one, Becker or Scott?
Judge Richey: Becker is still there even though he's over-age he still had the title of Chairman of the Young Republicans nationally. Young Republican National Federation, precise title. Got a candidate named John Walter, Scott did, to be Chairman and Becker picked a fellow from Detroit named John Tope. And of course that meant I was ipso facto for Tope. And we beat them.

Mr. Singer: It was actually contested.

Judge Richey: Oh boy, goodness, contested, my goodness, gracious, you have no idea. And that was a major fight and also the first test of racial discrimination that I had to deal with face to face. And this has a great deal to do with modern history. They called me up.

Mr. Singer: This is Becker?

Judge Richey: No, the hotel at 2:30 in the morning, I don't know where Becker was, in Salt Lake City. They told me that there were 29 delegates from Oregon, four or five of whom were black and that they wouldn't honor their reservations. Well after some expletives that didn't do any good so I immediately got dressed and went down to the desk; they wouldn't budge. I demanded to see the manager who didn't live there, Hotel Salt Lake City, then the biggest hotel in Salt Lake, and he explained to me that man was colored for his sins and that it was a part of the Mormon religion.

Mr. Singer: You certainly had heard that from your friends Rankin and Bilbo.

Judge Richey: No, I really hadn't. The worst thing that I had ever heard as far as I
can remember. We just treated Bilbo and Rankin with such a grain of salt you didn't really pay attention to what they were saying, because it was just dead wrong. But this was serious stuff. And no matter what demands I made they wouldn't budge and said they couldn't. So, I did make arrangements to get them rooms in nice homes but they couldn't stay in the hotel, they learned to their regret. So, I made a speech the next morning on the floor of the convention that got nationwide headlines, that the Republican Party would never hold a convention where there was any discriminatory conduct.

Mr. Singer: That was taking a big…

Judge Richey: And that was in June of 1949.

Mr. Singer: That was before the world changed.

Judge Richey: And I've got those clippings someplace, during that era. Oh, the Mormons were livid. And I remember years later watching George Romney. I didn't have anything to do with it at that time, run for president, and of course they had arranged to change their dogma or whatever you call it, so that that principle was no longer extant, allegedly. But, then it came time to elect the chairman, as I said John Walter, who later became U.S. Attorney and a federal judge. He's still sitting. He's retired but he's still sitting in Los Angeles. We beat him but he was the candidate of Hugh Scott, the National Chairman. They always tried to control the Young Republicans by all kinds of means, by money and other means. Becker and I were too goddamned
independent for that. We beat their tails and as a result the headlines all across the country, "Young GOPs Spank Scott".

Mr. Singer: He could not have liked that very much.

Judge Richey: No. And as a result, this was in June, by August he was deposed as Republican National Chairman. And a fellow named Guy George Gabrielson from New Jersey was made chairman. And he picked as his top aide a fellow name Ab Hermann from New Jersey. He hit that National Committee like dynamite. And fortunately for me he was married to a Jew and was very tolerant of young people and people of my views and so we hit it off just beautifully. And Mardelle and I still see Sylvia. He died. I thought he'd live forever. He'd been a Boston Braves baseball player, third baseman. Major league baseball player. Fantastic guy. And he spent the rest of his life there at the National Committee running campaigns. But that was a great, a very big experience in my life.

Mr. Singer: Why don't we bring this to an end? You've been at it enthusiastically for almost two hours. That's kind of a break in the action in any event in the life of Charles Richey and we'll pick it up on Thursday when we renew.
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 Thursday, April 13, 1995. This is the second interview.

Judge Richey: As you know, Jews were chased out of Egypt, if you know anything about history.

Mr. Singer: That's a history I know something about.

Judge Richey: And they have been chased all over the world ever since. And yet our new and current President of the United States laudably said he wanted an administration that reflected diversity, which is being construed as minorities. And the only minorities he talks about are African Americans.

Mr. Singer: And women.

Judge Richey: And women. That's right. African Americans and women. I happen to have had a very unexpected casual conversation at the beginning of the administration with Joe Biden, the Chairman of the Judiciary Committee. And the opportunity presented itself, and so I mentioned one of my former law clerks as a possible nominee for being on the court. He said he wouldn't meet the qualifications. That made me very angry.

Mr. Singer: On religious grounds or racial grounds -- or just being white?

Judge Richey: Just being white! I said, Joe, you have to understand something. He is a Jew, and that qualifies him as a minority, and don't you ever forget it.
Whereupon the Chairman says, "Judge, I knew you were smart, but I never thought of that." Here is the Chairman of the United States Senate Committee on the Judiciary -- that's you know, been there, in his third term at least -- that didn't even recognize that fundamental principle. It angers me. It angers me, Dan.

Mr. Singer: I find myself being very uneasy with Mr. Biden.

Judge Richey: Well, I could tell you a lot of things about Mr. Biden, and his crime position, and so on, but here's a man that didn't even recognize that. And, I don't think the administration recognizes it. And I don't think it's fair. I don't think it is right. And the only thing you could say is it has a lot of historical precedent even though the history is wrong. I am sorry. I am sorry I'm in the minority again.

Mr. Singer: [Laughter.] In the minority, again.

Judge Richey: I apologize to you.

Mr. Singer: First of all, let me tell you I listened to the tapes of the first session.

Judge Richey: Yes.

Mr. Singer: They're excellent! I mean excellent in terms of the mechanics, the electronics. It works.

Judge Richey: All right. Okay.

Mr. Singer: And I could hear the noises, the words came though quite clearly. For that I was immensely grateful.

Judge Richey: All right.

Mr. Singer: The other thing is toward the end of the session I mentioned that Mickey
Bazelon had married.

Judge Richey: Oh, yes.

Mr. Singer: And, I bring to you the announcement that we received of her wedding. I wrote to her for my wife and me at the Watergate West address which I believe is where she still lives. Where she and David lived.

Judge Richey: Oh yes, we were there, at the, you know -- whatever you call it after somebody dies.

Mr. Singer: Yeah, you go to pay a condolence call. We were there at that point. We had known the two boys, Ricky and Jim, when they were growing up. I guess Ab Mikva was there the night we went. But, I think she now spends a lot of time in Florida.

Judge Richey: St. Petersburg or Sarasota.

Mr. Singer: They had a place down there.

Judge Richey: I think it was in Sarasota. Mickey -- somebody was teasing her that night. I forget who it was, who was there. Mickey typically was running the place and so on.

Mr. Singer: [Laughter.] That's what I said -- you'd like to keep that….

Judge Richey: I do want to and I know Mardelle will too. I hope Mr. Knox is a good guy because he is getting a great quality lady. He is. She's quite a lady.

Mr. Singer: The other thing that we talked about was you said you would offer me a copy of *Judicial Council Report on Gender and Race in the Courthouse*.

Judge Richey: Oh, I sure will. Yes, I will get it.

Mr. Singer: Now, this wonderful book you gave me on Judaism and ecology…
Judge Richey: Yes.

Mr. Singer: …is actually one of a series in which each of the world's major religions is allowed and encouraged basically to write down how within its own tradition they were ecologically correct over the years. That's basically it, is a kind of a search for quotable material and important considerations.

Judge Richey: That's correct. It is a series, but to me it helped prove where the so-called modern day environmental movement began and had its foundation or genesis. And, it does come from the Talmud.

Mr. Singer: That the Talmud supports it for sure. And, indeed, I have been part of -- this is an interview of you not me -- but, I was one of the founders of an American support group for something called the Society for the Preservation of Nature in Israel.

Judge Richey: Bless your heart.

Mr. Singer: The Nature Protection Society. It's an organization that has done some really wonderful things and also runs wonderful tours in Israel. You're out there walking. Actually the American group actually was founded by me and Sam Lewis in 1985. Right after his term as Ambassador.

Judge Richey: I see.

Mr. Singer: Or, his second term as Ambassador. He then retired from the State Department and then started this group.

Judge Richey: Interesting, I never knew how it started.

Mr. Singer: Oh, I will have to send you some information.

Judge Richey: Wow, if there's anything I can do to help; I am an easy touch for the state
of Israel.

Mr. Singer: Good.

Judge Richey: Easy touch.

Mr. Singer: That's not easy so I won't return this to you. But thanks.

Judge Richey: All right. Well, that's one of my favorite books. And Aubrey Rose called me the other day and I was unavailable and didn't get a chance to take the call. So, I don't know what he's got on his mind. I like the man very much.

Mr. Singer: Well, I think it's important to develop as large a constituency as possible for protecting the environment. Obviously, one of the biggest and most difficult of these issues has to do with population.

Judge Richey: It sure does.

Mr. Singer: Which is right at the heart of the...

Judge Richey: Well, you know Dan, one of the troubles with Israel -- I get into trouble with some of my dear friends when I say this, but I think it is the truth, or correct, is more appropriate -- that when the state of Israel was founded in 1948 they allowed a lot of Arabs to live there too.

Mr. Singer: That's for sure.

Judge Richey: I argued in the beginning they should be excluded. Of course, now that is not a very humanitarian thing to say, I guess, but it is a practical thing.

Mr. Singer: It's becoming the policy of the state of Israel. The separation - a serious separation.

Judge Richey: It should be. For their own good. You see, people have spent their lives
seeking this out. After we get it, 50 years later, the Arabs are going to take us over.

Mr. Singer: The problem as I see it is slightly different in emphasis and that is while the Arabs are prolific, and the Jews have responded to that by at least the current government's willingness to give back territory.

Judge Richey: Oh, yes. An accommodation type of thing.

Mr. Singer: But what is much more distressing in the long run, to me -- and I have a daughter who has emigrated to Israel and another one who is about to return from a year and one-half from teaching there, my wife is on the Board of the Weizmann Institute for Israel. We are probably in Israel at least once a year -- is that as prolific as Arab families are the Orthodox Jews are every bit as prolific, and from my point of view the shift within the state of Israel with its 1946...

Judge Richey: 1948.

Mr. Singer: 1948 boundaries toward an Orthodox community as opposed to an accommodating community within the Jewish community is really bad news, both for the state of Israel and, I think, for its neighbors as well. Whereas the more liberal end of Judaism and the more liberal political policies within Judaism are toward attempts to make peace within the state, within the area, whereas the Orthodox have a different set of priorities which I think are not promoting peace in the region.

Judge Richey: That may be true, I don't know that.

Mr. Singer: Well, I have had my turn at being interviewed today.
Judge Richey: You have caused me to think a lot. I had one Orthodox young man who was a law clerk. His father was the Director of the Federal Judicial Center, Leo Levin. I will never forget. During the holidays he would take eight days off from work. I said one day, "Allen, we've got an awful lot of work to do here at the court. You should be in the temple on the holy days, but my goodness gracious we have work to do. I didn't know that you have all these days off. Are you sure you are telling me the truth?" I didn't know this.

Mr. Singer: [Laughter.]

Judge Richey: "Well, you know it now Judge." Okay.

Mr. Singer: That's pretty straight forward.

Judge Richey: Well, you know it now Judge.

Mr. Singer: Toward the end of our first session we were talking about your work with Frances Bolton.

Judge Richey: Oh, yes.

Mr. Singer: And then your work with the National Committee and your escapades in Salt Lake City at the Young Republicans Convention and how you engineered a minor revolution, particularly, in response to this episode in Salt Lake City being unable to house in public accommodations your colleagues from the Northwest. And how you basically engineered a declaration on the part of the Republican National Committee that they would not hold any more conventions in any place where...

Judge Richey: Every American wouldn't be accepted.
Mr. Singer: Right. That must have been pretty heady stuff at the age of twenty-five, twenty-six years old.

Judge Richey: Well, you know, it may have been. In retrospect seems that way, but at that time, it was just a natural thing to do.

Mr. Singer: It seemed like the right thing to do?

Judge Richey: The right thing to do. And it was easy. I don't claim any big credit for it. It was easy to do because it was right. But, I haven't changed one whit since then.

Mr. Singer: You've gotten older, that's for sure. [Laughter.]

Judge Richey: Well, I've gotten a lot older, but, you know, I haven't changed a whit.

Some youngster came in here from Williams & Connolly a few years ago and sat over there at the other end of this room at my desk and he said, "I've finally figured you out, Judge." I said, "Oh. What's that Martin?"

He said, "You're going to do what's fundamentally fair. No matter what's involved -- in every decision you make." I said, "Martin, that's about right. I've never heard it put that way." But, that's the way you approach problems and life. So, I don't know.

Mr. Singer: But shortly after that set of episodes you left Congress.

Judge Richey: I did.

Mr. Singer: And it's that transition that has got to be of interest in a variety of ways. By that time you had met Mardelle?

Judge Richey: Yes. Yes, I hadn't married her yet. But, yes, I had met Mardelle. We met in the spring of 1948 before that episode in Salt Lake City, which was
in June of '48, '49. We were married in March of 1950. Dan, after
Ms. Bolton let me work for the national campaign. I think I told you.

Mr. Singer: Right.

Judge Richey: Dan, then since they lost I had to study for the bar. I went back and did
dan that. While I was there, I told you, they called and asked me to head up
the arrangements for the convention. That's how I got into that skirmish
with the Mormons. And then, I came back here or at the Convention was
elected -- head of the Young Republicans of the country.

Mr. Singer: You were the number one. You were the youngest of them.

Judge Richey: Right.

Mr. Singer: The number one Republican.

Judge Richey: Of the nation. Yes. Which would have never happened had I stayed a
Democrat.

Mr. Singer: Sure.

Judge Richey: There was just more opportunities for young Turks which we were called
at that time.

Mr. Singer: And your mentors?

Judge Richey: I'll tell you another little side thing that you might historically find
interesting and of significance. Sometime shortly after I was there at the
Committee, somebody, I don't know who now, brought to my attention that
the employment application form for jobs at the National Committee asked
the question about race and religion. And they brought it to my attention.
I said, "For goodness sakes, a modern-day political party asking these
kinds of questions. What difference does that make?" So, I called up and asked then Chairman Carol Reece of Tennessee for an appointment. I was told in advance. So, I told some of my friends what I was going to do. They said, "You will be fired." I said, "That's all right." I didn't have a dime anyhow when I came here. So, what the hell difference does it make? So, I got the appointment. It lasted less than three minutes. I said, "Mr. Chairman, I have been given this application and I think these two questions are just absolutely abominable, and wrong. I can't understand why we would have them. And I'm here to ask you to take them out." He said, "You're absolutely right. We will." I was stunned because here was a man who had served in Congress for about 30 years. east Tennessee, I think it was east, there were two Republican districts: his and Howard Baker's. Howard Baker, Sr.

Mr. Singer: Right.

Judge Richey: That were solidly hill country Republican. But he agreed with me. Right off the top of the bat. I expected resistance. Didn't get a single, solitary thing. It was changed which I have never forgotten.

Mr. Singer: Oh, I would think not.

Judge Richey: But, I did that.

Mr. Singer: Who were your mentors, the people to whom you looked up within the framework line of the party?

Judge Richey: Of the party at that time?

Mr. Singer: The party and otherwise.
Judge Richey: Well, I looked up to men like Ralph Becker at the Committee, Ab Hermann who Davidson brought in as the executive director, both enormously honest, liberal, sensitive human beings. On the Hill, the liberal way in the party, there were lots of them then in influential positions. John Lindsay, a young member of the House; Margaret Chase Smith, I was a great admirer of hers. Clifford Case of New Jersey, John Lodge of Connecticut; Saltonstall of Massachusetts; his older brother; Bob Smylie of Idaho; Gordon Allott of Colorado; Pat Hillings who succeeded Nixon out in California; John Walter. Even though I opposed his election as National Chairman, I became very fond of him.

Mr. Singer: But as Chairman of the Young Republicans, you moved your base of operations off the Hill.

Judge Richey: Yes.

Mr. Singer: I mean, is that correct?

Judge Richey: Oh, that's absolutely right. That's absolutely right. And at that time, and to that work, I probably knew on a first name basis 95 percent of the Republican members of the House and Senate. It was through that that I was able in 1950 to begin the practice of law. Because when, for example, H. Alexander Smith, liberal Republican Senator from New Jersey, Ab Herman was his Executive Director. And people from an industrial state like New Jersey would write to their Senator and say we have this problem with this government contract or this immigration problem. Would you help us? And in the same way on the House side
with many others and because they knew me -- they'd refer them to me. That was a reference point. I met lots of people from all over the country. There was a leading Chinese American in New York City that sent me hundreds of Chinese American claimants to Chinese American citizenship -- derivative citizenship. Until the McCarran Act came along, whenever that was passed, near the mid-50's, we were making a fortune here in the courthouse.

Mr. Singer: But, you thought of yourself as a Maryland practitioner?

Judge Richey: In, D.C. at that time.

Mr. Singer: And you were alone in the practice?

Judge Richey: Yes, started out all alone. Totally unorthodox way of going about being a judge.

Mr. Singer: That's right.

Judge Richey: But, I always wanted to work for myself. And I like to be the beneficiary of my own rewards for my own efforts. I didn't want to be in a firm. I wanted to start my own. And I did. There was a book that had a lot of influence, entitled _Never Plead Guilty_. Have you ever read it?

Mr. Singer: No, but it certainly…

Judge Richey: It's out of print. It was written by a fellow named Jake Ehrlich.

Mr. Singer: That's a name I know.

Judge Richey: Well, Jake was a brother of Myron Ehrlich, a prominent criminal lawyer here in town who became friendly with me. Or, I became friendly with him in the practice of law. Both of those boys grew up as Jews in
Rockville, Maryland. Jake went to San Francisco and he described in the book how he knew that because of his background, lack of money, and so forth that he would never be able to represent the DuPonts and General Motors so he cast his lot with the little people. Basically, that's what I did, based on that book.

Mr. Singer: That book will have a rebirth with three strikes and you're out. Well, it already is in California. Crowding dockets, unbelievable criminal law there.

Judge Richey: Well, sure.

Mr. Singer: Predicable outcomes.

Judge Richey: Of course it's true. He became a millionaire in San Francisco.

Mr. Singer: Jake?

Judge Richey: Yes, Jake Ehrlich did, very successful.

Mr. Singer: Did Charles Richey become a millionaire in Washington with the same philosophy?

Judge Richey: Charles Richey was on his way to becoming a millionaire. I could have been in another four or five years.

Mr. Singer: Another four or five years?


Mr. Singer: Okay, by that time. By that time you had been in practice almost 22 years and you've got the world by the tail at that point.

Judge Richey: Yes, I did. I was very lucky.

Mr. Singer: But, you made your political bed in Maryland?
Judge Richey: I did and that was a very interesting piece of luck. I don't know if you remember, but Dan, there was a parochial war that started in the Montgomery County Bar and then spread to the State Bar -- that D.C. lawyers could not probate estates or practice in Maryland unless they lived there and had a full-time office.

Mr. Singer: I should remind you that one of my partners at Fried, Frank was Dick Schifter.

Judge Richey: Oh, I love Dick.

Mr. Singer: You must remember him. Oh yes, from the political wars in Montgomery County.

Judge Richey: I do. I do. He and his wife, who is on the Public Service Commission.

Mr. Singer: Lilo, I think she is now a consultant to the Commission. She is no longer a member.

Judge Richey: Oh, this must be very recent.

Mr. Singer: Oh, it is very recent. I think she and the present Governor I gather are not as friendly as she was with his predecessor.

Judge Richey: Oh, that's too bad. That's too bad. They are appointed for terms or at least there used to be. I don't know. Six-year terms. Dick told me at their house a few years ago that he got his wife the appointment because he met Schaefer through the Sickles campaign. Carlton Sickles.

Mr. Singer: Right.

Judge Richey: And they have been on good terms since then. You know, Dick, to everybody's surprise, became Reagan's representative during the 1980
campaign.

Mr. Singer: I know; I lost a partner. I know that. I mean Dick was basically moving away from the traditional Democratic party where he would say that the traditional Democratic party had abandoned him beginning in 1972. He was certainly disillusioned with Carter; the McGovern people, notwithstanding our other partner, Shriver, was the Vice presidential candidate. [Laughter.] But they, Max Kampelman, Dick Schifter, and many others became the core of the neo-conservative and so-called neocons in the Democratic establishment. Basically, they were Henry Jackson Democrats and they liked that. We know that they were very proud of that status. And that they were domestic liberals, serious domestic liberals.

Judge Richey: But how could they support Ronald Reagan? I don't understand that.

Mr. Singer: Well, that's something you are going to have to talk to them about because I will not be an adequate interpreter of their views.

Judge Richey: I will never understand.

Mr. Singer: If I have one epigram that describes it -- in Dick's case, and also somewhat in Max's case, and that's somewhat more complicated. Dick was born in Vienna, came to the United States toward the end of the '30's, mid to end '30's. He went to City College and fought those, in the kind of you are either a Stalinist or a Trotskyite, or you are a classical Socialist in political terms. Dick was with the conservatives, but they fought like crazy at City College. That experience, I think, is very much at the heart of a really
intense anti-Communist sentiment that Dick shared with this whole group
-- Jeanne Kirkpatrick, and Gene Rostow, and the guy who ran commentary
for so many years, I have cheerfully blocked it out, Norman Podhoretz.

Judge Richey: I see.

Mr. Singer: And that group. Notwithstanding their very strong support certainly
beginning either in 1948 or shortly thereafter, for the state of Israel. They
really have defined the world as Communists and those who were not
Communists and this was an equal... If you were against the Soviet Union
that was sufficient. Defined epigrammatically is "the enemy of my enemy
is my friend." And Jeanne Kirkpatrick actually articulated that when she
was Ambassador to the United Nations. Dick very much shared that view
and, I think, Max shared it partially also.

Judge Richey: They must have shared it because they sure worked like the devil for
Ronald Reagan.

Mr. Singer: And that was -- put in context, they were both real admirers of George
Schultz. I think they probably felt somewhat less kindly toward Jim
Baker who was then in the White House. Schultz was then the Secretary.
But, Schultz then became Secretary of State and he very much wanted to
use Max in the negotiator's job.

Judge Richey: He couldn't have picked a better person.

Mr. Singer: Max did a wonderful job. And Dick was, I guess, by that time Assistant
Secretary for Human Rights and Humanitarian Affairs at State.

Judge Richey: He used to call me and ask me if I would be interested in helping, going
over, you know. I said, "No, Dick. That's not my bag. We have too many problems in the United States and in the courts here. I am not interested in that. I am sorry. I'd do anything for you, but not that."

Mr. Singer: And Dick is...

Judge Richey: He's a committed person.

Mr. Singer: Absolutely. I think the nation is fortunate to have people like that around.

Judge Richey: So do I. I like him.

Mr. Singer: I think that once our own practice...the office began to expand physically and the Indian practice, which he loved...

Judge Richey: He did.

Mr. Singer: Became a lesser part of our operation, in part because of the shifting emphasis from within our firm and in part because we had trained oh, maybe a half dozen really first-class young Indian lawyers -- they began to steal our clients. So, that our actual engagement in the contemporary practice -- that is not to say about the claims practice, which we did some, but not very much.

Judge Richey: Oh, he was an expert in Indian law.

Mr. Singer: Absolutely. These were the heirs - he and his partner Art Lazarus -- to the mantle of Felix Cohen. The people who really knew American Indian law.

Judge Richey: Dick Schifter and I ended up in Baltimore before the court of which Sandy Harvey, or later Chief Judge, now retired, was a member of the panel arguing a reapportionment case. Dick for the Democratic party and me
for the Republican party. Both on the same side.

Mr. Singer: Give us a date.

Judge Richey: Early '60's.

Mr. Singer: Okay.

Judge Richey: I'll never forget the argument because Dick said, "As you know, I am an expert in Indian law and that is something I know something about." And I said to myself, what in the world is he confessing error about knowing so much about Indian law and nothing about reapportionment? But, we still won. [garbled.] One man, one vote.

Mr. Singer: It was after Baker against Carr?

Judge Richey: Yes, yes, yes. We're good friends.

Mr. Singer: What was the nature of your kind of day-to-day practice? Touching some of the highlights.

Judge Richey: Started doing immigration work. The first case I tried was in this court in the old building in 1950. Famous case, it's in all the books on immigrant and nationality law called Acheson v. Maenza. An Italian person. An old Democratic politician from Ohio sent it to me and I didn't know beans from donuts. But, anyhow, I was able to prevail before Holtzoff.

Mr. Singer: I told you the Holtzoff story the last time.

Judge Richey: And that was in the days of the old general assignment system so you didn't know what judge you were going to get. He had written an opinion in a case called Tomasicchio v. Acheson. I had learned it was wise to file a brief.
Mr. Singer: With Judge Holtzoff? Or, just generally?

Judge Richey: Well, generally. Trow vom Baur told me how they always used to do that in New York. So, I had it done in this case. I handed it up to him in the beginning. And of course, he praised Holtzoff as much as anybody could possibly….But he was smart. Oh, my God, brilliant. He said, "Have you given this to the other side?" I said, "No, I understand in New York you don't necessarily have to." He said, "Well, you do here." So, I handed it to the other side. A fellow named William Glendon, later with Rogers & Wells in New York, who ended up arguing the Pentagon Papers case in the Supreme Court. But in any event, I won. He just copied it right out of my brief. To make a long story short there was an appeal. Glendon handled the appeal. One of the three members of the panel was Bennett Champ Clark, a former United States Senator from Missouri. His law clerk at the time was my colleague and dear friend Harold Greene.

Mr. Singer: Judge Harold Greene?

Judge Richey: Judge Harold Greene. He, I know, wrote the opinion. Copied it right out of my brief. When you are going to take away an American citizenship, the most important right in all the world today.

Mr. Singer: Surely he had to feel very strongly about it.

Judge Richey: He did. He did. It became a seminal case. It is in every book on immigration and nationality in the lexicon. You go to an undergraduate college library and you will find books on it -- on that case. My very first one I ever tried. That led to all kinds of cases. It got lots of publicity all
over the country. Particularly, in the ethnic community, the ethnic newspapers. It led to a whale of a lot of business until I then got to know Jack Wasserman. We formed the Association of Immigration and Nationality Lawyers.

Mr. Singer: Of which one of my partners is now the president. Or, was recently, Bob Juceam.

Judge Richey: Bob who?

Mr. Singer: Juceam. He was in my New York office and the moved down here. Active for the Haitian immigrants almost from the beginning, a mini-career for him.

Judge Richey: Well, they put us out of business with the McCarran Act, essentially. That was a bad, a terrible thing.

Mr. Singer: We used to do immigration work at Fried, Frank.

Judge Richey: Did you?

Mr. Singer: Because...

Judge Richey: None of the big firms did it in the beginning, in those days. It was like criminal law, you didn't touch that stuff. It was beneath your dignity.

Now, come on, Dan.

Mr. Singer: It was not beneath our dignity. I'll tell you why. It's very easy. The core of the firm's practice in New York was commercial but the human being clients who ran these commercial enterprises were many of the refugees from Eastern and Central Europe. Including Hans Frank who is the Fried Frank. Hans Frank and several of the other partners had come
out and retained their relationships with many people, some of whom came out in 1956 or came out after the Second World War and who continued being very wealthy people. I remember we used to have to count for clients how many days they spent in and out of the United States - clients who were naturalized citizens because, as you know, back then you could lose your citizenship. That was declared unconstitutional in the '60s sometime. I mean it is only a question until the right case came up that that would be found out. But you still had to go through... you still had to go through the motions with your clients who... the consequences to them were staggering and we did a lot of that work. It was one of the first things I ever did was acting on behalf of some pretty heavy hitters. And through that, we managed to get some people who were not heavy hitters at all, but who were being dogged in the '60's, in the late '50's and '60's by the fact that when they were young, these were among the people who had come up from Hungary after the Revolution in '56 who were tainted, because in order to go to college, they had to belong to a Communist party.

Judge Richey: Oh, and I don't doubt that.

Mr. Singer: That looked like it was going to be an absolute [garbled] and we developed a whole kind of litany that we would go through in order to fight that first at the Board of Immigration Appeals, then the hearing officer who was a waste of time but at the Board, sometimes you could achieve a better result and if we didn't, we went to court and it was just a constant battle.

Judge Richey: Well, that BIA was something else right there in the Department of Justice.
Mr. Singer: But your practice must have expanded well beyond the immigration.

Judge Richey: It did. I began to get criminal cases. I began to get personal injury cases, domestic relations, the whole panorama. I think in my career I tried every kind of a case that any lawyer tries except a patent case. I even tried some copyright cases. What today is called intellectual property.

Mr. Singer: The whole thing is called intellectual property.

Judge Richey: Right, so I had a broad range of experience and to some extent I did it deliberately only because I liked people as such. And it wasn't until the last eight or ten years of my practice that I began to represent corporations and banks and things like that and that came about as a result of my political service in the county government and the public service commission because I met people there that law firms in Baltimore at that time had no connection with Montgomery County or the District of Columbia.

Mr. Singer: It was awfully far away from Baltimore.

Judge Richey: It was.

Mr. Singer: It was even quite distant from Annapolis.

Judge Richey: But, they needed lawyers over here and they knew me through that political office I held. Paid $5500 a year.

Mr. Singer: Which political office?

Judge Richey: General Counsel of the Public Service Commission.

Mr. Singer: Yeah. But that comes after you've....
Judge Richey: In 1967.

Mr. Singer: Right.

Judge Richey: And then before that, for three years before that, I was a member and Chairman for two years of the Montgomery County Board of Appeals - powerful job in zoning and land use - and there was a time when I was the only one in the county because of my former colleagues; there was no ethical prohibition against it getting special exceptions for my friend Jack Coopersmith to locate a filling station on some corner.

Mr. Singer: Now, in this case, you're now acting as counsel to Coopersmith.

Judge Richey: Right. Right. Facts of law. Represent all kinds of banks, New York, Baltimore all over heck and back. Did a lot of real estate work, too, in the end.

Mr. Singer: So that although your practice started as basically a courtroom practice, it then changed its focus or added a focus?

Judge Richey: Added a focus, I had at the end five or six major insurance carriers, I didn't much of the work myself except supervise it. But I had beaten them so badly they finally decided to hire me.

Mr. Singer: And, when you said you didn't do the work, it sounds as if you then had a firm of some significant size.

Judge Richey: Right. I did. I supervised it. I also had a substantial real estate practice, settlements, closings, things like that.

Mr. Singer: How big was your office; how many...

Judge Richey: I had eight lawyers at the time I ended.
Mr. Singer: And with how many of them did you share the profits since...

Judge Richey: I owned the firm. They all...

Mr. Singer: (Telephone interruption)

Judge Richey: ... basically what I did. It was the best advice I ever received from anybody.

Mr. Singer: Will you be good enough to repeat it because I confess that after the phone call I forgot to turn the tape on.

Judge Richey: Oh, I said in 1950 Senator Taft of Ohio called me and I went up to see him and he asked me what I was going to do after he was reelected in that terrible race he had in 1950. Organized labor and everybody was out to beat him and I said I wanted to be a politician and a lawyer and he said you can't be either because you don't have any money and you don't know anything about the law yet. And it takes 12 to 15 years to learn enough to be a lawyer. I think in retrospect he was probably right. And certainly right about money. Because you can't be in his view a successful politician without having some financial independence. It was the best advice I ever had.

Mr. Singer: Maybe we'll come back to that later because nowadays while it is still true that you need a lot of money to be a successful politician very little of it is your own money.

Judge Richey: If I had my way, I'd adopt a Common Cause Wertheimer's view abolish PACs and everything else. But, I'm a voice in the wilderness. It's too late for me to do anything about that now.
Mr. Singer: You remained involved though, throughout...

Judge Richey: Not very much. I did because Clarence Brown of Ohio, ranking member of the Rules Committee, called and asked if I would help Taft at the 1952 Convention against Eisenhower. I went out there and spent 10 days at the convention in Chicago at the Stockyards and worked night and day. I lived with Clarence and his wife in a suite, I think it was the Hilton Hotel on the lake, the big hotel in Chicago, at least then the biggest. Eisenhower was around the corner at a smaller hotel called the Blackstone.

I'll never forget it. And in that convention there was the famous Brown Amendment, I can tell you a lot of stories about that convention.

Mr. Singer: What was that? The Brown Amendment? I don't recall. I remember that convention.

Judge Richey: Well, it had to do with the Southern delegates and they called all of us crooks and so on and so forth for trying to steal the nomination for president of the United States because at the hearings prior to the convention the national committee hears delegate contests and they had 150 seats all reserved in the halls. They wouldn't allow TV cameras in the meeting room. It was the largest facility that was available in the city of Chicago at the time for that and there just wasn't room. And I never will forget Eric Sevareid and then Governor James H. Duff of Pennsylvania. Right outside the hearing room it had a big sign "Republican National Committee In Session," and they were hearing the delegate contests. And I stood there and watched Sevareid do an
interview of Duff and the question went something like this: "What's going on in there, Governor? 'Oh, those Taft people are in there stealing the nomination for president of the United States. They won't allow anybody in there. Everybody is excluded.'" Well, that was just a bold face lie. A bold face lie! And Dan, as God is my witness, it shook me to the bones that two men of that caliber - Duff and Sevareid - would stoop to tell bold face lies to the American people like that. I didn't think that at that point in my career that people would do such terrible things.

Mr. Singer: You've learned a great deal over the years that suggest that...

Judge Richey: That was the beginning of it. That convention convinced me that the advice two years previous by the Senator was absolutely right I didn't want to have anything to do with it at all.

Mr. Singer: My recollection of that convention is quite limited but the one thing that I remember seeing on television, if I got it right, is Taft kind of storming up to the rostrum saying "but a deal is a deal" it had to do with something with the Pennsylvania Delegation, if I remember correctly. Is this a non-memory on my part?

Judge Richey: I think it is a non-memory. You probably remember Dirksen's famous speech "at the last minute I campaigned hard for you in 1948, Governor Dewey, and you lead us down the road to defeat." This was in the Stockyards and I was on the platform standing next to Hugh Scott and I thought Scott was going to have a heart attack he was so angry. I thought there was going to be a riot. If Dirksen had spoken one more minute
there would have been. It was that tense. I've never been in a place like that - there was no escape - people would have been killed but for the fact he finally stopped. And I was there when somebody asked him to be the next speaker and he said I don't a darn thing about this stuff. And they made old Tom Jenkins who was then Chairman of the Ways and Means Committee give up his seat on the aisle to the platform. Dirksen listened to the previous speaker, made a couple of notes on a piece of paper, we were all asked to stand back and then he went out there and made that famous speech. Attacked Dewey by looking right down at him ahead of the New York delegation, Governor, so on. Will never forget it as long as I live. But that was the end of it. And then out of the blue they appointed Nixon to run for Vice President. After that evening, I'll never forget standing out there waiting for a car to take us back down town. This mob there was Nixon with his arm around Pat Nixon, his wife, I said, "What did you think of the speech?" It was after MacArthur had made the keynote address. Just a blunt comment, "Good, but not great." And that was probably exactly correct. I was in the car that went out to the airport to meet MacArthur that night. Never forget. What an incisive mind that guy had. He asked, not me, but a couple others in the car -- a couple of very particularized, specific questions, I don't remember what they were. After he got the answers he said, "Well, it is all over then." He was for Taft.

Mr. Singer: This was essentially a Taft delegation who wanted to pick him up.
Judge Richey: Right. They controlled the convention machine there, except the vote.

Thought they did.

Mr. Singer: Except the important vote.

Judge Richey: Yeah. They did. That's exactly right. But it was in a whisker. I liked the Senator very, very much. I thought he was a great American.

Reading the other day how he had supported federal aid to education, federal aid to housing.

Mr. Singer: He is really the Father of the National Science Foundation.

Judge Richey: That is correct, which Dave Bazelon used to love.

Mr. Singer: Yeah. Dave played a very important role in our family. My wife went to graduate school.

Judge Richey: Oh, is that so?

Mr. Singer: At first, she was graduated in 1952 from college and the first pre-doctrine in fellowships really ever given on a national scale were given out by the National Science Foundation in that program and she was one the first 625 or so people. I'm delighted to say that my youngest daughter is...

Judge Richey: Isn't that neat. That's great.

Mr. Singer: I know. They both went to graduate school on the National Science Foundation.

Judge Richey: That's marvelous.

Mr. Singer: Really.

Judge Richey: Well, good for the women in your life.

Mr. Singer: The women in my family have done very very well. That's for sure.
Judge Richey: Oh, so has their husband and father.

Mr. Singer: So tell me. Can we talk a little bit about your family - how they looked at the practice, how you looked at them from the vantage point of being obviously a very busy, very successful lawyer, probably rarely had an uninterrupted dinner, and things of that sort.

Judge Richey: Well, that's about right.

Mr. Singer: In... I mean, I can empathize with that.

Judge Richey: I'm sure you can. Well, you can see, I probably have more books than any other judge in the building. But that's not new that's been that way all my life. I love books and I can't exist without them. I have a full library at home in our apartment consisting of...

Mr. Singer: You said in your apartment.

Judge Richey: Yes. 8101 Connecticut Avenue in Chevy Chase. I have USCA, Wright & Miller, all of the Court of Appeals, U.S. Appeals D.C. back to 1970, all the Supreme Court decisions back to 1970. I don't know, they keep coming out of the air like water out of a fire hydrant. Fed. Supp. I give those away from time to time, when I run out of space, to one of the law schools. I have a complete library at home plus being a computer nut I have access to the library here at the courthouse.

Mr. Singer: From home. So you're on online.

Judge Richey: From home. There's a little program. You can get it called PC Anywhere.

Mr. Singer: Yeah. We have it in the office.
Judge Richey: Oh, yeah. But you can get it for your computer at home.

Mr. Singer: I have it on my computer. The office gave it to me.

Judge Richey: To use at home.

Mr. Singer: To use at home.

Judge Richey: Right. So you can have access to the library.

Mr. Singer: Right.

Judge Richey: And, we have that. I use that to do a lot of work at home and as a fax capability so I can fax things to my staff here in the middle of the night whatever.

Mr. Singer: Whenever you feel like it.

Judge Richey: Yeah. My children. Do you want to know about them?

Mr. Singer: Well, I kind of want to get a sense of what the family life was like.

Judge Richey: We had a marvelous... I never missed a football game, a baseball game, or a basketball game. The kids in those days didn't play soccer.

Mr. Singer: How many were there?

Judge Richey: Just two boys - one is I think 42 now born in '53. Does that make 42?

Mr. Singer: Yep, pretty close.

Judge Richey: And the other one two years later. We ended up sending them to Sidwell Friends School.

Mr. Singer: Where you met the Democratic cream...

Judge Richey: I don't know. I guess. We loved the people. I became President of the Parents' Association there and was very active in school affairs and all the lives of both of my kids. The eldest is a lawyer in Massachusetts now and
a very successful one. He was a law clerk to a federal judge of what is now the Court of Appeals for the Federal Circuit. The judge is now deceased.

Mr. Singer: Which judge was that?

Judge Richey: Bob Kunzig, managed Arlen Specter's campaign for DA in Philadelphia. Then he went to the U.S. Attorney's office and then he went to a firm downtown and he married a woman along the way who has a lot of money in Massachusetts. Well, she was from Massachusetts and she wanted to go back home. She had been married to one of Charlie's high school teachers, believe it or not, and was divorced and they met while he was in the DA's office and by God, she had two children, and he has essentially reared those children and adopted them. He is a joker like his mother, got a great sense of humor said he "I like my history professor so much in high school that I married his wife." Goodness, he'd say all kinds of crazy things like that. But anyhow, the younger boy was in the construction business and is now separated from his wife, has a little boy, sells time shares. He's the sadness in our lives, although those things happen to all families. Seems to be doing quite well - I think he is going to come out of it.

Mr. Singer: At the period when you were building a practice and building a family, obviously working as hard as you could ever work, there were still political alliances that you were a part of and political engagements?

Judge Richey: There were but none really. Between 1952...
Mr. Singer: Which was the front of the presidential campaign.

Judge Richey: And really, during that interval between 1950 and 1952, I didn't do anything either.

Mr. Singer: Anything political.

Judge Richey: That's right. But then between 1952 and 1966 I didn't do anything either politically. I did a lot of civic work.

Mr. Singer: What kind?

Judge Richey: I was on the Board here in the City for, oh, what in the world. I'd have to look in the bios. The Redevelopment Land Agency was one of them. I was active in civic association work; I went to the District Building once every month to debate the issues of the city and so on. Advocated Home Rule and all kinds of crazy liberal causes.

Mr. Singer: Did your Republican...

Judge Richey: I just lost interest. Your friend Eisenhower...

Mr. Singer: My friend (Laughter).

Judge Richey: Yeah. He beat my candidate Stevenson. I didn't like Eisenhower.

Mr. Singer: I know you didn't.

Judge Richey: I didn't like him a bit.

Mr. Singer: You told us in the first session the story about being late to that Armed Services Committee outside the...

Judge Richey: Yeah. That was the first day in Washington. Collided face to face. I also told you after the nomination it was suggested that we, the National Committee, meet the candidate and I wasn't going to do it but I went to the
room and sat in the back of the room and by golly the line formed and I
was the last person to go through the line and I looked down at his shoes
and he had military brass buckled shoes. Of course, I didn't want to like
him and that was just another reason not to.

Mr. Singer: Right. You were looking for reasons not to like him.

Judge Richey: And boy that sure cinched it. But, one of my best friends who had a great
deal to do with my appointment to the court went on to become his counsel
- an Irishman.

Mr. Singer: Who was that?

Judge Richey: Ed McCabe. Edward A. McCabe. And he served on the board that
created the public defender service here in the District of Columbia in the
first instance at the request of Dave Bazelon. Very conservative fellow
but a man of decency, a lot of decency. An abundance of decency. A
good friend, a good friend.

Mr. Singer: At what point does Mr. Agnew begin to play a role in your development?

Judge Richey: In 1966 I had achieved reams of publicity as a member and chairman of the
County Board of Appeals.

Mr. Singer: This is now a Zoning Appeals Board.

Judge Richey: Yes. Because when I went there they wouldn't allow cross-examination
of witnesses and it was a five-person Board and the chairman would by
rule exclude any request for cross examination and I would dissent. And
the press in Montgomery County were pretty liberal and they like that.
And finally Rita Davidson, a Democrat, who later became a judge, her
husband was on the Labor Board, counsel on the Labor Board or
something high in the Labor Board, David, took one of those cases to the
Maryland Court of Appeals, the highest Court and by God my position was
sustained. And so I kind of was kinda made overnight in the State of
Maryland, person of legal acumen and so on.

Mr. Singer: For fifteen years you were...

Judge Richey: Then I got involved in the reapportionment efforts on a state-wide basis
and then locally for the County Council. And then the Charter came
along, a proposal for the Charter, it was authorized, written in my law
office, in my library by a committee on style of which I was vice chairman
because the Democrats then controlled the council.

Mr. Singer: And the chairman was a Democrat.

Judge Richey: Chairman Jim Worsley, a lawyer in town. And...

Mr. Singer: Was he a Klagsburn, Hanes partner? Worsley?

Judge Richey: He may have been. I'm trying to think of the name... it was in the Ring
Building.

Mr. Singer: Yeah. That's where they were. That's the firm.

Judge Richey: Yeah. It's now a Baltimore firm. I don't know what the name of it is.

Jim's a nice guy but a doctrinaire Democrat. He wouldn't vote for a
Republican if his life depended on it. Wonderful person though. But we
did. We created the county executive in Montgomery County and then
there was a three-way race for Governor: Mahoney, Carlton Sickles and a
fellow named Finan, who was the Attorney General. They had unit
voting.

Mr. Singer: What year was this?

Judge Richey: 1966. And so the person who got the plurality of the County votes, who won the most counties of the 23 counties, was the nominee and Mahoney slipped through. He campaigned on the platform "Your home is your castle". Well, nobody thought that (a) he would win. It would either be Sickles, who was the favorite, or Tom Finan and that Agnew would just be an also ran.

Mr. Singer: Agnew was on the Republican ticket...

Judge Richey: Agnew was on the Republican ticket as nominee for Governor. Nobody else would take it. I remember Newton Steers called me to say he had been up to Hagerstown to some meeting and that the long and short of it was that nobody else wanted to run and Agnew was willing to run, that he was county executive of Baltimore County and so he was going to get it by default. It was kind of a joke. About 25 of us young lawyers who were Republican leaning.

Mr. Singer: But active within the party and a certain status and credibility...

Judge Richey: Well, yes. But I wasn't really. By that time I had some status because of my position on the Board of Appeals. And so, as it turned out Mahoney won. The liberal Democrats like Dick Schifter and Bill Greenhalgh --they had formed in the Democratic primary a group called the Democratic Action Group (DAG) and they immediately threw their
support to Agnew because he had pushed through the first public accommodations ordinance in Baltimore County.

Mr. Singer: As County Executive.

Judge Richey: As County Executive. He was a liberal. Would you believe he ran with the endorsement of the ADA and the NAACP for Governor the first time?

Mr. Singer: That's hard to remember. Yes.

Judge Richey: That's how I met Joe Rauh. I'd never known Joe Rauh until we started to raise... after Mahoney came into the picture - we had to defeat him no matter what and Agnew had no money and so I decided I was going to work like the devil for him. It was the principle thing to do. And we did. He won by about 90,000 votes, carried Baltimore City; Baltimore County; and Montgomery and Prince George's County, kind of like this fellow that is now Governor did, except by a bigger margin. And then they had a heck of time finding people to take state jobs because there weren't enough Republicans in the state of Maryland to fill them. I got calls from his staff, party officials will you take this, will you take that, no no, no....

Mr. Singer: This is in '66 when Agnew was elected.

Judge Richey: And I wouldn't take any full time job because by that time I knew I wanted to be a judge period nothing else! And I did offer to take a part time job as long as I could keep my practice. And so finally at the behest of a fellow named Sachs on his staff I gave him a list of three because there is a book of all the state patronage in Maryland. And I went through that
book as well as the Code and I figured well People's Counsel to the Public Service Commission, General Counsel or Judge of the State Tax Court. Well, they'd already committed to the other two jobs so I got the General Counselship - paid $5,500 a year.

Mr. Singer: But that was an add-on to you.

Judge Richey: Yeah. Cost money to do it but it brought me into contact with the power structure of the whole state of Maryland.

Mr. Singer: You were involved in Baltimore Gas and Electric.

Judge Richey: You're absolutely right. PG&E, the telephone company, the banks - even though we didn't regulate the banks they were heavily involved in the utility work. Just was like night and day. My goodness gracious. When I went out there to be a member of the County Board of Appeals you got a parking space at the courthouse. Doors opened like they had never been opened before. Same way in Baltimore when I went over and had an office in the state office building and started going around the state handling appeals. My goodness gracious, it was amazing when you represent the state, the people so to speak. The difference in attitude that you would find if you were there for a private litigant. So I shot up like a rising star.

Mr. Singer: You liked that?

Judge Richey: Yeah, it was fun!

Mr. Singer: You said that beginning in 1966 you kind of decided that you wanted to be a judge.
Judge Richey: Oh, I knew that long before then in the early-1950s.

Mr. Singer: But then you must have known or assumed that this goal of becoming a millionaire, you would have to do it very quickly or never.

Judge Richey: I didn't have a goal of becoming a millionaire. I told you I would have become a millionaire in a few more years in private practice. That was never a goal. Money was not my objective. If it had been I would have stayed doing what I was doing. No. Money was not their objective. Just enough to eat, sleep there is only so much you can do with money. It's nice to have but...

Mr. Singer: During this period, your kids are now on their way to being teenagers in the time you are talking about. What was dinner table conversation? What was vacationing like? And so on... Those kinds of things.

Judge Richey: We didn't do too much in the way of vacations. We participated in all their activities in the way of school work, PTA. I was President of our younger son's PTA in Potomac, Maryland. Was active in community work out there. Wherever I lived I've always been active in civic work. The only thing I was never active in really was bar association work.

Mr. Singer: You've probably become much more active since you became a judge.

Judge Richey: Oh, 100%. I was the first trial judge to ever become a member of the ABA House of Delegates and I learned then it was the biggest mistake I'd ever made professionally.

Mr. Singer: Why? Because it's an interesting perception.

Judge Richey: It's not a perception, it's a fact. I saw there was one of the most
conservative Attila the Hun people from Oklahoma had been there for years.

Mr. Singer: This is in the House of Delegates?

Judge Richey: Right. Joe Sample or something like that was his name. Here was Sidney Sachs a member of the ACLU in Washington and he sidled up to me, I'm a teetotaler, at a bar in Las Vegas. "Judge, you know my friend Sidney Sachs?" "Yes, Joe I know him very well." Well you know, he came from some little town Enid, Oklahoma, something that didn't have more than 300 people in it, you know Wexler's in Washington, and I said, "Sure that's an auction house." Well, you know, I had an old widow that died in my town and she had lots of money and I had to have some kind of ancillary proceeding in Washington so I called up my old friend Sidney Sachs and he handled it for me." And I thought to myself, my God, I've never seen two people more politically opposite who hated each other more so than they did, and yet when it came time to share economics, that's the way it worked. Those guys fed off each other. All you had to do was be there and see it. It may not be that way today in 1995 but that was it when I was there in the early 80's and late 70's and 80's. And I could have done that if I'd wanted to but never thought it was worthwhile. I always thought that fooling around with lawyers, your competitors, was a waste of time. But that is wrong. That is wrong. I didn't know it, nobody told me.

Mr. Singer: Were there family vacations? How did you…you must have created
Oh, we did some. We'd go to see our parents in Illinois and Ohio. We did take a trip once to the Islands for the Thanksgiving holidays. My wife arranged that without my knowledge. I thought I was going to have to go to the hospital after we got back I was trapped and couldn't do anything which is what she wanted but it didn't work.

Is this when you were a judge or still in practice?

Still in practice. Then I acquired a condominium at Rehoboth Beach when the boys were in high school and we used to go down there the first week after school before the public schools let out. They had a good time. I did that and I could work down there. But we didn't take long vacations, go out West, or to Europe. Hell, I never was out of the U.S. as far as Europe was concerned until June of 1994.

Wow!

And, I don't really want to go back. This man Rose is the only one I met over I really cared about.

That was when you went to England.

First time I had ever been to the continent. I used to go in my immigration practice to Montreal, Canada all the time you had to go out of the country to bring people back. Been to Mexico a couple times, but no, I had to stay right here and work.

And as a judge you didn't find opportunities to vacation. You still own the condominium by the way?
Judge Richey: Oh, no. We had to sell it about within three years after I came down here because I couldn't afford it. It was as expensive as a big house in Potomac.

Mr. Singer: Which you've divested also.

Judge Richey: Right. Right. We've made money on all of it. People have teased me over the years that I have moved a lot but always at great profit. That is what enables me to be a judge.

Mr. Singer: I think that's an important observation, one that would be of interest to those who try to figure out what...

Judge Richey: What makes me tick?

Mr. Singer: Well, not you alone, but certainly that's part of it. The notion that there are significant financial sacrifices.

Judge Richey: Boy there are. I'll tell you one story about that. My wife didn't pay much attention to the law. She still doesn't really care about it although it has been pretty good to her. When I came down here you know you sign a billion and one forms the first day, and one was to have your checks sent direct deposit to the bank. She got the first notice that the check had come from the bank and she called up my secretary at the time and said "Mary, is this for a week or two weeks", she said "no, my dear, it is for a month." She was stunned. I think the pay was $40,000 a year then. Fortunately, I had some investments that I couldn't continue, but arrangements were made to pay me off over a period of time.

Mr. Singer: Do you think that's typical, or do you think it's unique to Washington
which is a very high cost place to be? That being a judge, recognizing
that one, frequently, almost always will take a pay cut. Because that
universe from which judges are selected, are basically successful
practitioners or university/law school professors who are paid quite well.
But, is the bar missing, is the bench missing something important in the
people who opt not to say, "I want to be a judge."

Judge Richey: Probably, they are - nationwide. Not only because of economics, but
because of the scrutiny people have to go through -- political and otherwise
-- in the confirmation process. I had no problem whatsoever.

Mr. Singer: You were in and out of that process...

Judge Richey: Within ten days of the nomination.

Mr. Singer: That's not true now.

Judge Richey: Not true now. I might not have been had John McClellan lived. He was
a Senator from Arkansas, a prominent Senator. At that time the Justice
Department had a man named John Duffner who was the career guy over
there that shepherded through for every administration judges in the
confirmation process. I got a call one day in my law office from someone
saying, "This is John Duffner from the Justice Department." I said,
"Yes." Well, he called me judge. He said, "I just want to tell you who
your subcommittee is so you can make your courtesy calls. And I also
wanted to tell you what their lines of inquiry would be." I thought it was
a joke. So, I asked for his number and called him back and sure enough
he was from Justice. My Subcommittee was Eastland, Hruska of
Nebraska and McClellan. When he got to McClellan he told me, "Now, he will not vote for any judge even a district court judge who is not in favor of the death penalty." I didn't say anything to Duffner, but I had a lot of struggle with myself. I wanted to be a judge very badly. But, I didn't want to be badly enough to lie. And I wasn't gonna lie. I made up my mind about it. So, I called on Hruska, the Republican, first. He said to me, I will never forget it --office full of about 30 or 40 people, and when I told them who I was and what I wanted, they shuttled me right into him with a friend of mine from the Hill who was taking me around.

Mr. Singer: Who was that?

Judge Richey: A fellow named Dick Moat. A long-time friend who was the liaison for the Vice President up on the Hill, the Senate.

Mr. Singer: Was this someone you had met back in the early '60's?

Judge Richey: Years and years, yes, before that -- the '40's.

Mr. Singer: Was he an Ohio person?

Judge Richey: No, he was from Nebraska. He knew Hruska. So, he just carried me around by the hand. He just picked up the phone and asked me when my hearing was. He called the counsel, was a Democrat. He got my hearing almost immediately. That was it. Then, at the time of the hearing, I went over to see Eastland. That went quite well, to my surprise. McClellan was sick out in Arkansas. I never had to see him. If I had, I wouldn't be here.

Mr. Singer: Maybe yes, maybe no.
Judge Richey: Well, I would have told him the truth and he wouldn't have voted for me. The people, Duffner told me he would never vote for anybody.

Mr. Singer: But would his refusal to vote for you have carried sufficient weight?

Judge Richey: Well, he could have put in a blue slip and...

Mr. Singer: You would have to go off the consent calendar.

Judge Richey: And all that stuff and God knows what would have happened. You never know about those kinds of things. This was the end of the first term, Nixon's first term -- getting towards the end of the term. 1971, the election was in 1972 and this was in April of '71.

Mr. Singer: Correct.

Judge Richey: So, it was touch-in-go.

Mr. Singer: Those were very difficult times in the United States.

Judge Richey: Not easy, with the Vietnam War and all that sort of thing. Yes.

Mr. Singer: Very tense. Were you in Chicago at the '68 Convention?

Judge Richey: No.

Mr. Singer: You were not in?

Judge Richey: The '68 Convention was in Miami. Wasn't it?

Mr. Singer: Well, maybe the Democrats were in Chicago.

Judge Richey: Well, the Republicans were in Miami. I know that.

Mr. Singer: The Republicans were in Miami, that's right.

Judge Richey: Right '68 was an awful thing.

Mr. Singer: Really troublesome.

Judge Richey: I can see poor Abe Ribicoff, my dear friend.
Mr. Singer: It was. I mean Martin Luther King was killed.

Judge Richey: Robert Kennedy.

Mr. Singer: And Robert Kennedy. All that in the run-up to the elections.

Judge Richey: Terrible.

Mr. Singer: It was very difficult times. It all, in my mind at least, come alive again with the publication of McNamara's book.

Judge Richey: You couldn't be more right. It's one heck it took him so long to admit it.

Mr. Singer: Mr. Halberstam was very perceptive.

Judge Richey: Wasn't he though.

Mr. Singer: Talking about the best and the brightest.

Judge Richey: One of my college classmates, John Sagan, was one of those whiz kids for the Ford Motor Company, an economist. I don't know where he got his Ph.D. in economics. But, he went to from Ohio Wesleyan to some place and then he became Treasurer of the Ford Motor Company. McNamara was President. John never came to Washington. I guess he didn't have any political aspirations. He liked business. Well, he's retired know, but he just thought the world of McNamara and how bright he was and so on and so forth. Hell! I have no use for the guy. Unless, now because it took him so long, as smart as he was; he knew it was wrong.

Mr. Singer: Well, he said, at least according the reviews, he seems to deny that at the time he knew he was going down the wrong road.

Judge Richey: Well, that isn't the way I read the reviews.

Mr. Singer: Okay.
Judge Richey: Now, maybe I made a mistake. He said he knew it was wrong, but out of loyalty to his patron and the President, he didn't feel it appropriate for him to voice his concern and his views.

Mr. Singer: But that comes toward sort of the end of it. The important years were '65, '66, '67.

Judge Richey: Sure.

Mr. Singer: I think he was, at that point, fully committed and not suffering angst and self-doubt. But, you were just chugging along at that point. You were practicing away.

Judge Richey: I really didn't pay much attention to the War.

Mr. Singer: Your kids were not old enough?

Judge Richey: No.

Mr. Singer: To have been immediately involved.

Judge Richey: No, they were too young. We had a, I think our kids are very happy, they seem to love their father, admire his accomplishments.

Mr. Singer: Really.

Judge Richey: I've had a lovely, a wonderful marriage. I don't have any complaints.

Mr. Singer: I remember reading with a kind of great feeling of human connection and warmth the reminiscence of your clerks about the relationship between them and Mardelle.

Judge Richey: Oh, they love her. Everybody loves Mardelle. She should be a politician. She has no interest in it. But, that woman doesn't have an enemy in the world. She loves people. And she works at it.
Mr. Singer: Well, do you think you have enemies anywhere?

Judge Richey: Oh, God yes. I've got all kinds of enemies.

Mr. Singer: We'll back-up, not really the question I was gunning for. Getting back to, oh, say 1970, the early days on the court or in that period '65-'75 bracket. Aside from what I will call for the moment, principled enemies, that is to say people with whom you openly disagreed.

Judge Richey: I didn't have too much of that until I became a judge. But once I got here and became a totally free person. Oh my goodness gracious. And when I started to do things that I objected to, as a lawyer, in this court -- it created an awful stir and was isolated in a lot of respects.

Mr. Singer: You are now talking about you immediate colleagues?

Judge Richey: Right. Oh, there still is to this day a lot of jealously, the statistics just came out two or three days ago, since I've seen you. I have 43 cases on my civil docket. Most of the judges are in the 150's or on up to 250.

Mr. Singer: These are data involving cases that are pending, undecided?

Judge Richey: Or, terminated. Yes, yes.

Mr. Singer: That's saying you work with a very modest backlog.

Judge Richey: I had, hell, at least a hundred less than any other judge -- is closest to the fact.

Mr. Singer: That doesn't mean you're working less; it means you're working more.

Judge Richey: Probably, yes.

Mr. Singer: If I understand it the way…

Judge Richey: And hopefully more efficiently.
Mr. Singer: Right. There's a story actually, is it in today's or yesterday's, New York Times about.

Judge Richey: Well, maybe. I don't see the Times.

Mr. Singer: About a judge in New York who sits in the Eastern District of New York who has, apparently keeps his criminal docket quite current, but his civil docket is a legendary outrage. I forget his name. But, cases will sit ready for decision for periods of time measured in years.

Judge Richey: We've got two or three here who do that too. As many as eight years. Subjudice, tried. The Washington Post a few months ago, six months ago, called for an investigation.

Mr. Singer: Who did?

Judge Richey: The Washington Post, a lead editorial. There will be some more stories.

Mr. Singer: With these data that are now coming out.

Judge Richey: Yes. We just, I have to file it tomorrow. One has zeros after it.

Mr. Singer: [Laughter.] It's the first time you've been happy with all those zeros.

Judge Richey: Yes, that's right.

Mr. Singer: Nobody else likes having zeros after his name.

Judge Richey: Well, but this is good because there are no motions pending for more than 60 days, no bench trials more than three years old.

Mr. Singer: Can we go back to the death penalty issue for just a moment?

Judge Richey: Oh, sure.

Mr. Singer: Because it's obviously an issue that's come alive again. It's never really gone very far away. It's always been with us, but periodically the noise
level involving the death penalty seems to rise. There must have been a point at which you said, you know, I really am dead set against it.

Judge Richey: That occurred in high school.

Mr. Singer: In high school?

Judge Richey: You see, I was a debater in high school and in college. I taught debates, speech and debate at American University in the early-'50's. One of the questions was the death penalty when I was in high school.

Mr. Singer: Is it a national debate group?

Judge Richey: Yes, national debate questions. I became utterly convinced it was just dead wrong. I still adhere to that view today. But, my view, I think today, is more informed than it was, Dan, as a youngster. Both of my parents I remember were against it. But, you see experience all throughout the United States where they do not have it. One with the death penalty and one without. It was still the same. Now, though with 54 new death penalties in the last Congress imposed on the federal courts; it's just egregiously wrong. There are not enough strong words in the English lexicon to describe it. The public doesn't understand it. I bet even you as a brilliant lawyer don't understand it. You see, you have to go through a process called voir dire. And in the confines of what is it, a ten mile radius of the District of Columbia? How are you going to find a jury to impanel that can render a fair and impartial verdict without regard to their prejudices or strong feelings for or against the death penalty? Does anybody ever think of the cost of that? Obviously, no. We can't
change venue from Washington, D.C. to someplace in western Maryland or North Carolina or Philadelphia. Gerry Gessell tried a case against a local official named Joe Yeldell in some parking manager. In Philadelphia, since I've been here. But, that was done by consent. Unless you've got the consent you're not going to be able to lead. And they're talking about in this "Contract with America" or whatever it is -- making more death penalty cases. If you just want to put in practical, pragmatic terms, it's not going to work. I'm telling you it's not going to work.

Mr. Singer: I don't have to be persuaded on that.

Judge Richey: Excuse me, I just feel very strongly about it.

Mr. Singer: Right, and I understand it. What I really would like to hear you describe is whether there were events, or particular matters in the public domain, the public press, involving the death penalty, that you may have read about or had an impact on you that led you to the conclusion, outside of almost independently, that the fact that there was a debate question pending on the national high school debates -- that, gee, this is just wrong.

Judge Richey: Well, I always thought it was wrong morally and wrong as a matter of public policy. I made a deep, deep personal conviction about it. I still have that view. I don't know how else to describe it to you.

Mr. Singer: All right, I find that pretty persuasive.

Judge Richey: You know Bill Bryant, when I first came here.

Mr. Singer: [Unclear]
Judge Richey: Oh yes. Yes, he was appointed by Lyndon Johnson. He was a dear, dear friend of mine. And we have an awful lot in common. Because we kind of came up the same way.

Mr. Singer: He argued the Mallory case.

Judge Richey: That's right.

Mr. Singer: One of the great.....

Judge Richey: Great victory. And really, a correct decision, too, Frankfurter notwithstanding.

Mr. Singer: We certainly all thought so. "We" being the people who are what I'll call my side of the U.S. Court of Appeals in those days.

Judge Richey: I was on your side. I could tell you a lot of stories about the Mallory case too. What were you asking me? I'm sorry.

Mr. Singer: We were talking about the death penalty.

Judge Richey: The Mallory case. I was head of the Citizens Association in Burleith and there was a big hue and push to get that decision repealed in the Congress. It involved Rule 5(a) of the old Federal Criminal Rules. And I decided that I was going to have New England style public debate. I was the president of the Association and we lived on 35th Street across from the Western High School. Now the Duke Ellington School of Art.

Mr. Singer: Now, at this point you’re living in the District.

Judge Richey: Yeah, I spent most of my life in the District of Columbia. In any event, I decided that this was so right and that what was happening was the police chief and his deputies were going all over the city to these Citizens
Association Groups and getting them to pass resolutions asking the Congress to repeal the Supreme Court decision. And the people were just doing it because they were asked to do it and they weren't informed. So I took the case. There were four arguments for it and there were four arguments against it. I typed it out and had it stenciled and put it on yellow paper. And then I called a town meeting at Gordon Junior High School, where I had Myron Ehrlich and this principal police officer, a lieutenant that was doing all the dirty work going around the city advocating a repeal of the decision.

Mr. Singer: What was the date of this?

Judge Richey: In the '50's.

Mr. Singer: In the 50's.

Judge Richey: And of course, I presided. And there is a lot of power in the chair, as you probably know.

Mr. Singer: Always.

Judge Richey: And they gave us a large classroom for those meetings in those days. I took that around and delivered it myself door-to-door. Crazy nut, but, I did in my station wagon. It snowed like the devil that night, but so many people turned out that they had to go in the auditorium. And when the meeting was over, the old Washington Star always sent a reporter for every one of those Citizens Association meetings. Guess what happened? It was a unanimous vote without dissent in favor of the decision of the Court. And that stopped the effort to repeal that thing in Congress. I had asked
Billy Bryant to come and speak for it. I wanted to talk about ethics. Bill Bryant said he didn't think it would be appropriate for him having argued the case.

Mr. Singer: At that point was he on the Court?

Judge Richey: No, he was just a private practitioner like myself.

Mr. Singer: Right.

Judge Richey: But, nevertheless.

Mr. Singer: Actually, when I was a law clerk he was had not yet been appointed.

Judge Richey: No, he wasn't here for years. Sixties, Seventies, something like that.

Anyway, I got that started.

Mr. Singer: That's a better win than a lot of them I bet.

Judge Richey: I got a big kick out of that. Then we went down town to the District Building where the present City Council meets and guess who spoke for the repeal of the legislation? Oliver Gasch right down the hall. Guess who I got to speak against it? Against the legislation.

Mr. Singer: Right.

Judge Richey: Jiggs Donohue.

Mr. Singer: I didn't know that.

Judge Richey: And guess what? We won there too.

Mr. Singer: There was no City Council then.

Judge Richey: We had a lot of…

Mr. Singer: Three commissioners still.

Judge Richey: Well, they didn't have anything to do with it, but any how they gave us the
decision. I went there once a month for years. So I lived in the District of Columbia from 1948 when I got here until 1964. And then we lived in Maryland from 1964 until 1978. We moved back into the City until 1983 when we moved back to Maryland.

Mr. Singer: Where did you live the second time you came here?

Judge Richey: On 25th Street, the Plaza, a condo. It was right across the street from the Watergate.

Mr. Singer: Oh sure.

Judge Richey: Lovely, lovely building.

Mr. Singer: Absolutely. We had our offices in the Watergate. You’re talking about the Potomac Plaza Terraces? Is that the building?

Judge Richey: No, it's called, there are three plazas: there's Potomac Plaza, which is right across the street; there's the Plaza -- where we lived, and, then there's that building called the Plaza something, where the EEOC used to be. Right down the street. Big, big complex.

Mr. Singer: It was Columbia Plaza.

Judge Richey: Columbia Plaza. That's it. That's the big one. That is the one I was trying to think of. EEOC was in there.

Mr. Singer: That's right. It's a mixed use.

Judge Richey: Right, right. But, that's kind of a diversion, but Oliver's forgiven me.

Mr. Singer: Well that's very good of him.

Judge Richey: He's a pretty big man. He's forgiven me for that. He felt very strongly about it and he thought I was terrible to lead the fight in favor of that.
That's what brought me the attention of Bazelon.

Mr. Singer: That goes back to where we started today -- the enemy of my enemy is my friend.

Judge Richey: He knew I could be trusted and he liked me; and, he knew that I was a...

Mr. Singer: This is David?

Judge Richey: Yeah, David used to say my friend Chuck is issue-oriented and he's also a man of principle. He said, "I don't give a damn if he is a Republican; he's issue-oriented and we think alike." And we did.

Mr. Singer: You did.

Judge Richey: That's right. Screw them, I don't care.

Mr. Singer: One of the things you said today, which is I think is of tremendous interest, and I think it's something that suggests that the Founding Fathers had insights that we never just appreciated fully. That you said and it is almost in the context of the economic discussion that we had briefly -- that you felt free after your confirmation.

Judge Richey: I did.

Mr. Singer: And that's...

Judge Richey: That is exactly right. I felt free at last. Kind of like Martin Luther King, you know that speech.

Mr. Singer: But that free at last is a whole different thing.

Judge Richey: I know, but I did feel free to be able to do something for my country and the system of justice, which means so much to me that I can't really describe adequately. There are so many things wrong with the buddy
system that I found in this Courthouse when I came here. Particularly, at
the trial court levels.

Mr. Singer: How did that...

Judge Richey: Well if you were a WASP. Didn't come from a big firm. You didn't
qualify. You were like an African-American.

Mr. Singer: Well, you certainly qualified as a WASP.

Judge Richey: Yes, but that was a minority you understand Dan.

Mr. Singer: Oh really?

Judge Richey: This Courthouse was controlled lock stock and barrel by the Irish Mafia.
Starting with James A. Farley. Who stacked this court? I can show you
the one's right over there on that picture.

Mr. Singer: I would be interested to know who they are.

Judge Richey: You didn't know that?

Mr. Singer: Well, I knew that there were...

Judge Richey: Come on.

Mr. Singer: Luther Youngdahl didn't fit that description. Luther Youngdahl was like
you. He didn't fit that description.

Judge Richey: The hell he didn't.

Mr. Singer: I know he wasn't but he used to go to their goddam retreats. He fell in
with them lock stock and barrel.

Judge Richey: Now, George Hart.

Mr. Singer: One hundred percent. John Lewis Smith, Pratt. He's as conservative as
Pat Buchanan. Don't tell me he's not.
Judge Richey: No, I certainly will not tell you he wasn't.

Mr. Singer: Big Ben and Oliver Gasch.

Judge Richey: Right.

Judge Richey: At least a decent conservative.

Mr. Singer: Right.

Judge Richey: But a very right-wing person. Stanley Harris, I'm talking about the present day.

Mr. Singer: Yeah.

Judge Richey: Is a very right-wing conservative. Who else is on this floor? We got Rick Urbina, thank God. He's going to be a marvelous judge.

But you see here you had McGuire, Curran, McLaughlin. And they had their people in the clerk's office. You remember Marsha Hummer?

Mr. Singer: No, because I didn't clerk in your court.

Judge Richey: Well, you didn't file any motions in the trial court. You had to go to her before you were allowed to file it. And she would read it. Made me take a pleading back, a motion back to my office because it had a semicolon instead of a period. And I said Miss Hummer, can't I just put it in there with my pen like that. Nobody will pay any attention to it. Nope, you have to do it over again. Well 15-20 years later, or however long it was, I came here as a judge and the first week they made me motions judge and register rules judge. And every day I have to see her with a pile of orders like this and they had blanks in there to appoint lawyers. So, I started appointing my Jewish friends, and my minority
friends, and some women. That had never happened before. And after a few weeks, she couldn't stand it any longer. So, she said "Judge I have something to say to you." "What's that, Miss Hummer?" "You're not appointing the same people we've always appointed?" And these are quite lucrative appointments. And I said, "Yes."

Mr. Singer: She had it right the first time.

Judge Richey: And she said "What do you mean?" And she pulled out of her purse a list and handed it to me and it was so old Dan it was yellow the paper. And I should have kept it but I got mad and threw it back like that. And said "There is a new day in this courthouse Miss Hummer. As long as I am alive those people are never going to be appointed because it has been their way too long." And six weeks later she resigned.

Mr. Singer: That's right.

Judge Richey: Six weeks later she resigned.

Mr. Singer: How did the other judges allow you to do this?

Judge Richey: I just did it.

Mr. Singer: But this is…

Judge Richey: Oh, they were trying to kill me in the beginning.

Mr. Singer: Kill you by overworking you?

Judge Richey: Yes. Hell, they gave me two judges' calendars. The new judges come on here they get 140 cases. Christ, I had 550 civil cases, about 400 criminal cases, plus all this other work right in the beginning. I wasn't supposed to be here. I didn't come from the big firms. I didn't come
Mr. Singer: Well you came from the establishment. Good grief.

Judge Richey: No I really wasn't the kind of establishment that you normally think of. Like George Hart who had been.

Mr. Singer: Whiteford, Hart, Carmody and Wilson is a firm we all knew.

Judge Richey: But that wasn't George Hart. George Hart was state chairman in the days when it meant something to be state chairman. Like Joe McGarraghy was at Wilkes & Artis firm. Youngdahl had been governor of Minnesota. Christ almighty. McLaughlin, Congressman. McGuire, Jackson's assistant. Number one assistant in...

Mr. Singer: The Justice Department.

Judge Richey: Yeah, hell I wasn't a part of that.

Mr. Singer: But, you came out of certainly what many people, maybe incorrectly, thought was at least part of the local Washington establishment.

Judge Richey: Well in a sense.

Mr. Singer: The Washington, Montgomery County, Maryland Statehouse type of establishment.

Judge Richey: Right. Well sure, sure. But not their kind of people. Not their kind of people.

Mr. Singer: How did the President make such a mistake?

Judge Richey: Well, I have had that question asked and he has alleged to have said that Charles Richey represents his worst appointment during his presidency and that I am the Earl Warren and Bill Brennan of his administration. That's
what Richard Nixon says about me. Sorry, but that was too bad. But
that's the way it is. Most people say that's a compliment.

Mr. Singer: You know, I don't know if you remember back when Tom Clark was
appointed to the Supreme Court.

Judge Richey: I do remember.

Mr. Singer: The Washington Post, I guess it was the Times Herald at that point
editorialized saying this is the worst appointment Truman has ever made.

When Dave Bazelon was appointed, that same newspaper.

Judge Richey: Probably said the same thing.

Mr. Singer: Said no that they were wrong about Clark. It's Bazelon that was the worst
appointment that Truman ever made because he had come out of Chicago
ward politics.

Judge Richey: Oh yeah. And what was the famous national committee man from
Chicago?

Mr. Singer: Jake.

Judge Richey: Jake Arvey.

Mr. Singer: Jake Arvey, right.

Judge Richey: He was Mickey's friend you know that?

Mr. Singer: Yeah I know.

Judge Richey: It wasn't David.

Mr. Singer: It wasn't David. He always was very smart about who his friends were.

Judge Richey: Yeah.

Mr. Singer: And The Washington Post and Times Herald later on, must have been in
the '60's, apologized essentially editorially to David.

Judge Richey:  Great!

Mr. Singer:  It was kind of a great day.

Judge Richey:  That's marvelous.

Mr. Singer:  That happened.

Judge Richey:  Well I want to tell you something, David Bazelon took me in.  I don't know why.  As I say I first came to his attention in that Mallory fight which again was a matter of principle with me.

Mr. Singer:  You want to know something about how far Dave Bazelon came.  His own developments.  It's worth going back and looking at the case called Coplon against the United States.

Judge Richey:  Oh Coplon.  It's called Coplon.

Mr. Singer:  Judy Coplon.  David was really on the wrong side.

Judge Richey:  Was he?

Mr. Singer:  Oh yeah, because there they had intercepted conversations between Judy Coplon and her lawyer.

Judge Richey:  Jesus Christ!

Mr. Singer:  My recollection is that David would have upheld it.  He was in a minority that dissented from Wilbur Miller who threw it out.  I mean this role reversal.  In any event, we now have come almost to two hours that we have been chatting and for me it has been an exciting and most enjoyable two hours.

Judge Richey:  Well, you're sweet.
Mr. Singer: But one thing we haven't done and perhaps you rather I did it with your clerk. I don't want to stop this now, I think we are warming up to the process.

Judge Richey: Whatever you want.

Mr. Singer: I would like at least to schedule a few more such sessions if you are willing to do this.

Judge Richey: Oh, absolutely, I am at your hands.

Mr. Singer: And it probably would be best in terms of not taking your time to look through your calendar that I call up Jeff and try and set it up with him.

Judge Richey: I think we have another one, just let me look here. This is April.

Mr. Singer: We don't have any more scheduled now. We had one scheduled last Thursday.

Judge Richey: Right.

Mr. Singer: That had to be canceled. Well that's show biz. That's what happens.

Judge Richey: Wait just a minute. Today is the, we had one for the 13th.

Mr. Singer: Right, and that's the one that got canceled. We are now at the 17th.

Judge Richey: Well, if you want to do it tomorrow.

Mr. Singer: No, what I would like to do if I may, is get these two sessions transcribed.

Judge Richey: All right.

Mr. Singer: Be able to reflect a little to make some notes about areas that we have already been over that might be interesting to pursue or clues that might be interesting to pursue during discussions of what happens to Judge Richey over the course of 20+ years.
Judge Richey: Starting 25 next month.

Mr. Singer: That's right and be able to…

Judge Richey: It's incredible for me to realize. It is.

Mr. Singer: But it's an incredible career.

Judge Richey: I have just been so blessed.

Mr. Singer: I want to talk some more about this sense of freedom. This internal freeing that happens when someone is appointed -- gets tenure of a very special kind. In a very special kind of university if you will.

Judge Richey: Well, I know exactly what you’re talking about. I don’t know whether I can describe it but it is, except for the pay, it's one of the most wholesome things that can ever happen to a human being. And I am delighted to say that the Article III Judiciary, I think, is probably the greatest group of human beings that have ever been assembled. The Founding Fathers really knew what they were doing when they talked about creating an independent judiciary.

Mr. Singer: Well it has

Judge Richey: Well Dan let me tell you something. I heard George Mitchell say in a TV interview before he retired as majority leader, just at the end of his term in the Senate, that there will be term limits for members of Congress. And he added as a former federal judge, there will be term limits for federal judges. Let me tell you something. If there is any kind of a term limit for federal judges, you can kiss this Republic good-bye. If you know anything about history, as I know you do, but I'm not sure that the
American people do, Adolph Hitler when he came to power, what was the very first act that he did. It was to fire and remove all the judges of the nisi prius courts throughout Germany. That's what's going to happen to America if George Mitchell's prediction is correct.

Mr. Singer: I think federal judges…

Judge Richey: I'm serious.

Mr. Singer: …have a special kind of coming together.

Judge Richey: Well, that may be true and I hope so, but I'm telling you that is what's gonna happen to this Republic if it comes about. Mitchell is no fool, he's a pretty wise man.

Mr. Singer: He is a former federal judge also.

Judge Richey: Yes. For a year, year and a half, something like that.

Mr. Singer: He never fully got his feet wet.

Judge Richey: Let me tell you something about judging. It takes probably four or five years to really learn how to be a judge. One of the unfortunate things about our system of justice is we got a three-tiered system as you know. The trouble with the intermediate circuit courts is unlike the old days in the beginning of the Republic when even the Supreme Court rode circuit. These people come generally from academia. Why, because they write law review articles and the appointing authority, whether a Democrat or Republican, feels secure in his or her views and therefore their long range imprint on history will be more secure. They don't generally appoint people who have had experience in the arena of life, the trial courts, that's
just the exception rather than the rule.

Mr. Singer: Don't trial courts?

Judge Richey: Absolutely. All you have to do is look at the bios to prove it. It's not hard to prove.

Mr. Singer: No, no.

Judge Richey: You don't see a Jack Weinstein on the Second Circuit.

Mr. Singer: Correct.

Judge Richey: You don't see a Marvin Frankel on the Second Circuit. You didn't see Eddie Weinfeld on the Second Circuit. Now, those three I think are among the greatest of your time or my time. You don't see a Charles Richey on the D.C. Circuit. Well there are some of us that just can't pass that litmus test. You understand.

Mr. Singer: Pat Wald.

Judge Richey: She is one of the greatest women I have ever known. But let me tell you something. Dear Pat wasn't a trial lawyer.

Mr. Singer: No, she was certainly not that.

Judge Richey: She worked for the Legal Aids Society, she worked for NRDC, she did all kinds of…

Mr. Singer: She was also Assistant Attorney General.

Judge Richey: Well, Office Legal Policy or whatever it was. She is a person of great principle. I just admire and love that woman beyond description. But, she doesn't know what goes on in the dynamics of putting a trial together like I just went through with Duran. No idea. The same is true. Who
Mr. Singer: What's the downside of having people like that up there?

Judge Richey: The downside is that they review our work and they don't know what the heck they are doing.

Mr. Singer: But are they…

Judge Richey: You see, there is something about knowing human being and the effect that their decision may have on the quality of life. If you haven't been down in the pits working with others and managing the process how can you review it and say this is wrong and that is wrong. Harold Greene and Lou Oberdorfer are another two people that should have been on the appellate courts. I'm dead right. Don't kid me I know I am.

Mr. Singer: Harold has certainly been down in the pits. Oberdorfer was a lawyer in practice here and has also been Assistant Attorney General of Tax.

Judge Richey: Exactly. And I know both wanted to be.

Mr. Singer: That's a big list. Those who wanted to be. That's a big list. Very good sir.

Judge Richey: Well I've got to go to NYU to a conference that I promised Sam Strader that I would go to this Friday and Saturday and then I've got to come back here for a dinner Saturday night. Then next week I go to Florida to do a speech.

Mr. Singer: When you go like that do you take Mardelle with you? Does she come with you?

Judge Richey: Sometimes, but she's gotten so in recent years she won't go unless, if she's
been there before she won't go.

Mr. Singer: She only wants to go to new places with you.

Judge Richey: I don't like that, but if you can figure out a way to change her mind I would pay you for it.

Mr. Singer: I'm going to turn this off
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. in the afternoon of the 25th of April, 1995. This is the third interview.

Mr. Singer: So, that's not a problem. What we were talking about toward the end was basically what your practice was like. We talked about your doing immigration work and you and I had an exchange about the fact that Fried Frank had done some immigration work.

Judge Richey: Right, we did.

Mr. Singer: Schifter was very active in that field.

Judge Richey: And also in Indian law.

Mr. Singer: And also in Indian law. But, that we were talking about our practice. We should have been talking about your practice.

Judge Richey: It's all right.

Mr. Singer: And then actually when we ended, we were talking about your relationship with Clarence Brown and how he was responsible I gather for sending certain matters to you.

Judge Richey: Clarence did. But in the main it was people like H. Alexander's Smith's office.

Mr. Singer: Of New Jersey.

Judge Richey: Of New Jersey. Ab Hermann was at the National Committee in August of 1949. And I was already there in office and he came in with Gabrielson
from New Jersey. Like Grant took Richmond. Everybody was afraid of him but he took a liking to me and then when Gabrielson was replaced, Ab went back to the Senate with his old mentor whom he had elected, H. Alexander Smith, and by that time I had gone on and was in the practice. He used to send me immigration work. Because there was a lot of people from Jersey City and so forth who would jump ship and so forth and have to have their status adjusted. Oh there were others, I remember a Romanian doctor who was a psychiatrist that I went up to Montreal with, after getting permission to get a visa from them. You know you had to go out of the country to do it and that was the nearest Consulate. So we all went to Montreal.

Mr. Singer: Right.

Judge Richey: Mon-real as the French would say. And we got to LaGuardia Airport and I'll never forget while waiting to go through Customs and somebody jumped up from behind and kissed me. I had never been kissed by a man before and here was my client a Dr. Kampeon, and he was from Romania. He was just so pleased to be in the U.S.

Mr. Singer: You had never been kissed by a client before either.

Judge Richey: That's right. But he was very emotional. I could tell you a lot of stories about immigration. But that doesn't make any difference. I did tell you that my first case I tried in this court was an immigration case in the old building. Then argued the appeal here. Judge Harold Greene was the law clerk to Bennett Champ Clark. That is a famous case. Acheson v. Maenza. Then
I got criminal work and a lot of personal injury work. These are in the beginning days. Government contracts.

Mr. Singer: My recollection...

Judge Richey: Discharge review board cases.

Mr. Singer: For military discharges?

Judge Richey: Yes, military discharges. I can tell you honestly Dan there isn't a case I didn't try except a patent case.

Mr. Singer: And that's only because they didn't come to you, not because you wouldn't have done it.

Judge Richey: Well, no, I didn't like that. I had a friend who was a patent lawyer. A solo practitioner as many of them were. I don't know whether they still are or not. But, I didn't want to do anything like that. Well, today what they call intellectual property, common law copyrights, or other copyright matters.

Yes. I did one of those. I tried a case against Jones Day in Cleveland.

Mr. Singer: Were there other practitioners in the community where you really worked who somehow were models for you.

Judge Richey: Oh yes. Like Jake Stein, Trow vom Baur.

Mr. Singer: Well, Trow vom Baur you mentioned. And Trow is, indeed, I think older and more senior than you are. But if Jake is anything younger than you.

Isn't he?

Judge Richey: Well, he's one year younger than I am. But a contemporary.

Mr. Singer: Right.

Judge Richey: Jake spoke at my dinner when I got that award in December.
Mr. Singer: Yes. Were there people who were really kind of the seniors at the bar in those days?

Judge Richey: Billy Bryant of my court was one of them that I admired very much and loved. Sidney Sachs is another one that I admired and loved. There was a fellow named Joe Kaufman who was a partner with Jiggs Donohue.

Mr. Singer: Jiggs Donohue and Joe Kaufman, absolutely. They did criminal law didn't they?

Judge Richey: Joe didn't. I don't know what Joe did. I think he was more of a business lawyer and so was Shaw. Jiggs did a lot of criminal work. But he was always on the right side of his shoes. I loved old Jiggs.

Mr. Singer: He was a legend when I came to Washington in 1956. He was already.

Judge Richey: Nick Chase, Ed Williams a bit my senior but quasi-contemporaries.

Mr. Singer: Would you go to court to hear them to watch them or to hear them argue?

Judge Richey: Yes, yes. I did a lot of that. I was in court almost every day. I tell you there's a lawyer, a little short lawyer, used to, a solo practitioner. Probably one of the smartest men at the bar was a fellow named Jacob Halpern who was in the Investment Building. And the trial bar in the say from the late 50's through the late 60's was basically around 15th and K Street. And there was a drug store named Stoutenburg in the Investment Building corner and they sold coffee. They had a soda fountain, but they sold sandwiches and coffee. And in the morning before you came to court you'd always go to Stoutenburg's and when you came back you always went to Stoutenburg's and Jake always presided. And he would tell us what to expect from Judge
X, Judge Y, whether we were right or wrong. Go look this up, go look that up. The Welch brothers and Joe [undecipherable].

Mr. Singer: They did malpractice. Am I right?

Judge Richey: Yes. I was retained by the brother of a Second Circuit judge who was a blind OB-GYN man here in town. A partner. No - a blind radiologist who worked at Providence Hospital and I remember I defended him with Mason Welch because they only had $25,000 in malpractice insurance. Joe Bulman was the plaintiff's counsel. And if we hadn't caught the -- it might have been a prevarication, they'd have owned the railroad. But fortunately because of that, we were able to settle it within the policy limits. Thank goodness.

But I knew the Welch brothers.

Mr. Singer: Is the Bar as chummy now as the Bar you're describing?

Judge Richey: I don't think so. No, much smaller intimate Bar in those days. Today it is much more diverse, transient. National law firms are here. I'd go out on the bench today and I am lucky if I know the lawyers. Lucky.

Mr. Singer: And you maintained a sense of connection to the local bar associations that probably many of the judges don't have.

Judge Richey: That's exactly right. Bill Bryant really the only one left or maybe Oliver Gasch. There was the famous Buck Nordlinger was a great friend of mine. King & Nordlinger - they used to represent the Redskins in the early days. They were a powerful law firm. Bob Frank was with them. All except Buck are deceased, unfortunately, I see Buck from time to time.

Mr. Singer: Do you see him in the context of being an active practitioner or socially?
Judge Richey: Socially.

Mr. Singer: I think that the whole area of the contrasts between the practice now as you see it from a more lofty perspective than 30 years ago and the practice 30 years ago, there clearly are differences. And I think one of the purposes of this project is to try and articulate and get a handle on those differences and not just in a descriptive sense but why they matter. Why is it important that the Bar be collegial or more or less collegial? How does that impact on the quality of justice that's rendered from your court?

Judge Richey: While the larger the Bar the less collegial it is. The less manageable it is. Our court in Houston, Texas a few years ago adopted some rules on civility. Among counsel. And then Marvin Aspen, I think he's a chief judge, but in any event, he was the head of a study committee for the Seventh Circuit on civility. We're starting one here now. One of my former law clerks is chair of that committee. For both of the courts, the local and the federal. But that's the thrust of it. Also, the complexity of society has changed. Bringing about more and more specializations. About the only specialization that really existed when I was young as a lawyer were lawyers who did nothing but taxation or patent work or bankruptcy. Like Sam Greenbaum.

Mr. Singer: He had a wonderful art collection.

Judge Richey: He is a wonderful guy.

Mr. Singer: Mostly from his clients, but I think it was a great art collection.

Judge Richey: But other than that, all the good lawyers were basically generalists. You had
the Welch brothers who did insurance, medical malpractice work for insurance companies. A few others, but most everybody held themselves out as capable of doing most anything. Like Jake Stein. I did. And I think we did a pretty good job of it.

Mr. Singer: That's one of the areas, I think that you just touched on, where people would tend to make the following value judgment: that the specialization, while it may have narrowed, the focus of many lawyers involved has raised the quality of the practice. And has somehow offered if you will, in the litigating content, offered to the bench a much higher quality of product from which to use as a touchstone.

Judge Richey: That's your opinion.

Mr. Singer: That's not my opinion. I am giving you some third party's imaginary argument. I am imagining somebody else's argument. Because that's assuredly not my opinion.

Judge Richey: Well, I'm glad it's not because it's incorrect.

Mr. Singer: Okay.

Judge Richey: We didn't use, for example, Rule 23 in class actions in those days. I don't recall hearing about class actions really. I knew it was in the Rule in 1966. I really didn't hear about them until '71 when I came here at the court and inherited a couple of big ones. That's why I was in New York last week at a NYU National Conference on the proposed amendments to Rule 23 and listening to all these academics. But I'm gonna tell you Dan, the quality of work on the part of lawyers has become more specialized. But that doesn't
mean it has necessarily become better. It's also become more complex because the lawyers make it complex or have a tendency to want to make it complex rather than simple. And it doesn't inure to their benefit or their clients.

Mr. Singer: Assume the truth about what you just said. Why do you think people do that?

Judge Richey: Money.

Mr. Singer: Okay.

Judge Richey: Money, pull in the meter. There are concerns in New York City today, I have heard on reliable sources from the Bar that have clients who will deliberately do something they know constitutes say a tort. They know that they are going to get a gross of $30 million out of it when they are going into it. They know it's going to cost them $10 million in attorney’s fees, a fine of another $10 million. But they still make $10 million in profit and they do it willy nilly. Without regard to any constraints. I never heard of that kind of stuff, until six, seven or eight years ago. But, it's done all over the country.

Mr. Singer: But part of -- let me carry the argument a little further. One of the things that has been both the cause and the effect of the specialization has been the fascination of all of us, you, me, many people with our array of toys. The computer is a primary example. And in a sense that allows one with tremendous efficiency to scan the universe of prior decisions in a way we could have never of done and build and collect and form in the past. At least, on its face, that suggests that.
Judge Richey: That's a surface observation. That's what everybody says on the street. But when -- I think I'm about right -- 1952, early '50's F.2d was up to 202 volumes. My goodness gracious where in F.3d now. You can't keep a total volume of F.2d, Federal Supplement rather, in any library today. Now there are twice as many judges in the 24 years that I have been here, since I started. So therefore there's a lot more opinions. We now have magistrate judges which we didn't have. We have bankruptcy judges now, which we didn't have. We have circuit executives. A new field of judicial administration. A whole host of things in order to cope with the complexity of litigation as it is now extant. Alexander Holtzoff of this court, for example, read every advance sheet and then when the bound volume came out from the advanced sheets he would take it home and read that again and he knew every case.

Well let me tell you something Dan, you could do that in his day, literally could do it. You cannot do it today.

Mr. Singer: Did that make him a better judge?

Judge Richey: Yes, it did.

Mr. Singer: In what way, he was no more humane surely for having read everything.

Judge Richey: No. It didn't make him more humane but it enabled him to do twice as much work as any other judge in this court in his time. It did. I don't know whether you've had -- how many times you sat in his courtroom next door. But, he could take a patent case and hear motions for summary judgment and without reading the papers deliver a Chaucer like opinion from the bench and then turn around and hear an immigration case and then turn around and hear
a divorce case. It was just absolutely amazing. I remember a bench
conference with him.

Mr. Singer: When you were counsel, in practice.

Judge Richey: Yes, in practice. And a fellow name Jesse Chasen objected to some
evidence. We got to the bench and he said, "What's your authority for that
Mr. Chasen," “Jones v. Smith” he said, "Oh, I remember that case. That
was a 2-1 decision. The judges who wrote the majority are now deceased.
This court will follow the living. Your objection is overruled." That's a
true story. It happened in this courthouse.

Mr. Singer: I surely believe it. But what I'm probing for -- I'm trying to get...

Judge Richey: I'm not answering your question, I guess.

Mr. Singer: Well, I want to get your views on it. But, I want to make sure that we're
covering this waterfront adequately. And that is when you get down to the
quality of the judicial product of the thought process, of relationships between
the bench and the bar, or the judge and the lawyers who appear, have they
improved, degraded or about the same? The same range of...

Judge Richey: Oh, I think the relationship between the bench and bar -- that has improved
substantially. It was a closed shop here in this courthouse. An absolute
closed shop except for a very privileged few. The judges didn't take the
bench until 10:00. They took no less than 15 minutes, usually a half hour in
the mid-morning. They take an hour and 45 minutes for lunch. Do the
same thing in the afternoon and when the clock struck 4:00, no matter if the
witness was from California and couldn't come back, that was the end of it, no
matter what. All the judges did it until I came here in 1971. I decided that
was unfair. If it took me like they did in Rockville, in Upper Marlboro or in
northern Virginia, if you had to stay until 2:00 in the morning, I did it. It
didn't sit well with some of my older colleagues, but justice was a precious
thing. There are letters over there -- the result of my dinner from my
colleagues and staff. I didn't remember it until 2:00 in the morning. In this
courthouse. Because we were trying criminal cases all day long and then at
night I felt that some of these people ought to have their day in court. So, I
had night court.

Mr. Singer: Night court on the civil side?

Judge Richey: That's right, I did it. There is a great relationship, today, I think,
comparatively speaking, between the bench and the bar. I never saw a judge
maybe more than once or twice come to a Bar meeting. Now, great numbers
of them come to the Bar meetings. The American Inns of Court movement
is starting. That's made up of judges as well as lawyers, like your partner.

Mr. Singer: Milton Eisenberg.

Judge Richey: Yes.

Mr. Singer: Yes, but why do you think that's common? Is there kind of a reason for that?

Judge Richey: Well, it's in order to enhance more people's knowledge, civility, ethics. A lot
of things have come on the scene that are lacking. The American Inns of
Court movement is designed to increase the quality of advocacy, increase the
element of civility among lawyers and between bench and bar. That sort of
thing. That's why it's there. That's why it's manifested itself. The Bar has
grown enormously. That's big business, today. It's also opened its doors.

Mr. Singer: Yes.

Judge Richey: To minorities. Look at the ABA today, 1995, a woman President -- from New Mexico, a woman Chairman of the House of Delegates from Tallahassee, Florida. Who would have heard or ever thought of such a thing? I applaud it and think it's absolutely magnificent.

Mr. Singer: Yes, without question.

Judge Richey: I just want to see the day when an African-American, some Hispanic -- somebody like that becomes the head of the ABA.

Mr. Singer: Do you think that one of those developments you anticipate will be the closing down of the National Bar Association? That they will go out of business?

Judge Richey: No. I don't think it'll ever go out of business, per se. I hope it doesn't because they shouldn't lose their individual identity, but by the same token it won't be the only place an African-American lawyer can go. They will be welcome.

Mr. Singer: Let me get back to -- the law firm you described to me, your law firm, if I remember correctly, you have one partner in there - I think you said [garbled]. What were the economic arrangements with your partner?

Judge Richey: Well, I didn't really ever have a partner, as such per se. As far as the world was concerned, it was a partnership, but it never was. I had the business and they were there to help and to satisfy the thing, you know, called ego. And that sort of thing. So, that was the reason for it. It was my practice. I
made it and I developed it.

Mr. Singer: So, even your partner was essentially an employee?

Judge Richey: An employee. I paid him a salary and a percentage of the income and percentage they brought in. They never brought in anything.

Mr. Singer: Did the associates have that, though in some sense?

Judge Richey: Yes, I always did that.

Mr. Singer: What was the difference between an associate and a partner?

Judge Richey: Not really, nothing. A name on the door, the stationery, that sort of thing.

Mr. Singer: Yes.

Judge Richey: Never had many associates, per se. Usually, I'd use law students.

Mr. Singer: Much less expensive?

Judge Richey: Yes. As things started in the early '50's down in Charlottesville, a law school called the Legal Research Assistance Program. For $2.00 a half-hour they'd do legal research for you.

Mr. Singer: [Laughter.] You can't even buy coffee today for $2.00.

Judge Richey: I never will forget when the Madison Hotel opened, a bunch of us decided we'd go up there for coffee one morning instead of going to Stoutenburg's.

What's the fellow who owns the Madison?

Mr. Singer: Jack.

Judge Richey: He had a construction company called Ajax or something. I forget.

Mr. Singer: He came out of the real estate business.

Judge Richey: Marshall Coyne.

Mr. Singer: Marshall Coyne, that's exactly right.
Judge Richey: Fifty cents for a cup of coffee! We thought that was outlandish. I saw him about a year ago and I mentioned that to him. He said, "Well, Judge, it now costs you about $5.00." [Laughter.]

Mr. Singer: In terms of your practice how did you -- in terms of the organization of your day and, I assume, was largely controlled by your court schedule. But, you know, when did you write briefs? Did you take it home with you? Or, did you stay in the office?

Judge Richey: I usually stayed in the office. But, I tell you one story - a brief in opposition to a petition for cert once. In my office, then at 1025 Connecticut Avenue, I got into it and at 5:00/5:30 in the morning my wife called. I picked up the phone as bright as the day and said, "Hi, hello," or something. She said, "I hope you're all right?" I was still at my desk writing this brief. Just lost all track of time.

Mr. Singer: Cert granted or denied?

Judge Richey: Denied.

Mr. Singer: Oh.

Judge Richey: There was a great lawyer named Alan Cole.

Mr. Singer: Oh, he was a wonderful person.

Judge Richey: He was a dear, dear friend. He had a lovely son, too -- a partner at Steptoe

Mr. Singer: Don't know his son.

Judge Richey: Chuck Cole, was a clerk to Leventhal. His father had been a law clerk to Robert Jackson.

Mr. Singer: I knew that. I knew that. Alan Cole was somebody...
Judge Richey: I sent him a copy of that brief in opposition. You know what the reply was?
"Dear Chuck, I have read your brief. I am convinced you have deprived yourself of an opportunity to make an oral argument before the Supreme Court of the United States."

Mr. Singer: [Laughter.]

Judge Richey: "Sincerely, Alan." And do you know what happened? He was exactly right.

Mr. Singer: He was exactly right.

Judge Richey: I beat the Solicitor General. That's pretty good for a single practitioner.

Mr. Singer: Because they have an overwhelmingly winning record.

Judge Richey: Oh, they sure do.

Mr. Singer: Certainly in getting to the Supreme Court.

Judge Richey: Yes, cert denied. Boy! That was a big case.

Mr. Singer: Do you remember what kind of case it was?

Judge Richey: An immigration case. Alan did a lot of immigration work.

Mr. Singer: Right. You know, Alan was quite a lawyer. There was one occasion in which one of my partners was sued or threatened -- I guess he was sued for malpractice in connection with a -- if my recollection is correct -- with a divorce settlement. This would have been back in, oh, the late '50's or very early '60's, and we engaged Alan to defend the firm. My recollection is that he ended up with a judgment in favor of the firm. You know, for money. We thought that was a pretty impressive result. [Laughter.]

Judge Richey: You know, it is impressive. I'm not a bit surprised. That sounds like Alan
Cole. Now, what was the name of his partner?

Mr. Singer: Ike Groner.

Judge Richey: Ike Groner.

Mr. Singer: And Ike, I still see him.

Judge Richey: When I first came down here somehow or another as surprising as it may sound Alan was retained by General Electric in a bid protest case and I issued a preliminary injunction.

Mr. Singer: This is while you were on the bench?

Judge Richey: Yes.

Mr. Singer: Oh, I see.

Judge Richey: And he presented proposed findings of fact and conclusions of law. I spent three or four hours reviewing that, and reviewing that. How could I change it to make it better? I finally concluded that there was no way under the sun that I could modify those proposed findings. So, I signed it. I didn't know the law in those days that a judge is not supposed to do that because, in the eyes of some appellate judges, it means that the trial judge has not exercised his or her independent judgment and discretion. Therefore, to copy in haec verba proposed findings by counsel is...

Mr. Singer: Bad form [laughter].

Judge Richey: Erroneous. Some people have been reversed for that. Years later, Alan was a member of the Cosmos Club. Oh, that brings to mind another famous lawyer, expert on civil procedure, he's a professor at Catholic University. His wife use to be President of the League of Women Voters here in town.
His partner was the author of Pike & Fischer.

Mr. Singer: Oh, yes, sure.

Judge Richey: They had an office on DeSales Street.

Mr. Singer: Is that right? And he did that service -- that loose-leaf service.

Judge Richey: That's right Pike & Fisher. Well, anyhow, this friend, whose wife was President of the League, invited Alan and me -- after Alan had his folk to the Cosmos Club. We were up there having lunch. I mentioned what I just told you about those findings -- that I couldn't find a way to change them.

He said, "You want to know the real truth about those?" I said, "Yes, I assume you did it."

Mr. Singer: [Laughter.]

Judge Richey: He said, "No, my friend here on my left did it." And that was Ike Groner.

Alan had tried the case, but Ike had written it.

Mr. Singer: No, these were really smart people. Really smart people.

Judge Richey: There was a David Bress around, oh, a Mr. Newmyer, Sr. and his boys.

They had a lot of wonderful people like Rolle Lamensdorf.

Mr. Singer: Was Frosh someone you knew? Stanley?

Judge Richey: Yes. I didn't know Stan well. Only knew him -- he became primarily a Maryland practitioner, and active in Democratic politics out in Maryland.

We just never crossed wires. It was after I became a judge that he became a judge through a mutual friend who was a pediatrician. We both had the pediatrician so we got to know each other socially. He also appeared before me before he became a judge.
Mr. Singer: Right, true.

Judge Richey: But, as you know, Stan's son is in the legislature now.

Mr. Singer: Yes.

Judge Richey: And an awfully nice guy. He tells me that I am as good as any Democrat.

Mr. Singer: [Laughter.] How, do you react to that?

Judge Richey: That's all right. I don't care.

Mr. Singer [Laughter.]

Judge Richey: What difference does it make?

Mr. Singer: Well, to some people, come on, it makes a lot of difference.

Judge Richey: It doesn't make any difference to me.

Mr. Singer: Well, that I can. All right. You've seen, now, 25 years of law clerks, basically. You probably started out with one law clerk.

Judge Richey: I started out with less than that. Myself, period.

Mr. Singer: That's when you were a judge?

Judge Richey: No. Oh, starting here?

Mr. Singer: Starting here.

Judge Richey: Oh, we had two law clerks and a secretary.

Mr. Singer: You had two law clerks and a secretary even in 1971?

Judge Richey: Right.

Mr. Singer: I see. Because my recollection of 10 or 15 years before that….

Judge Richey: They had one secretary and one law clerk.

Mr. Singer: One secretary and one law clerk.

Judge Richey: When I came here there was a fellow who was the number three person in the
Administrative Office of the U.S. Courts who had gone to my law school. So, I called him up and he took me by the hand around all the agencies within the AO. A pretty big place even then. I said, "You know, Joe, I have a friend whose son is a Capitol Hill policeman. He's trying to get through law school. Because of a shooting up in the House, they are going to abolish all patronage with these jobs." He was on Senator Brewster's patronage as an elevator operator. You know?

Mr. Singer: It was Danny Brewster.

Judge Richey: Yes. He had called me and told me about it and asked if I had any suggestions. I told him that I was going to be a judge and I'd find some way to get him on my staff. So, I went up to the AO with Spaniol and asked him if I could hire him. I didn't want a black messenger. Why couldn't I do that? He said, "That's perfectly all right. You can do that. Other judges around the country have done it." I told Johnny Sirica that, my Chief Judge, that I had done that and he raised holy heck with me. In fact, he ordered me to tell this young man he couldn't come on even though I had hired him. Which, I refused to do.

Mr. Singer: Judges are not in the habit of ordering around other judges on their court are they?

Judge Richey: It depends. Sometimes they do; sometimes they don't. But he did. He said, "You can't function without a messenger."

Mr. Singer: [Laughter.] And your response was?

Judge Richey: Go to hell!
Mr. Singer: Well.

Judge Richey: I literally said that. You know what happened? He had a messenger who apparently had a drinking problem. I was here about six or eight weeks and I got a call at 5:00 in the morning. I was dead asleep. "Chuck, this is John. How soon can I see you? Something very important has come up." I said, "Well, what is it about?" "Well, I will tell you when I see you."

Mr. Singer: This is John Sirica?

Judge Richey: Yes. Well, I said, "I could be at the courthouse by 8:00 [a.m.]. Is that too late." "No." Down there on the end where Linda Finkelstein Ferren is now.

Mr. Singer: Right.

Judge Richey: There he was marching up and down the hall. Well, I opened the door and said, "John, would you like a cup of coffee?"

"No."

"Want to sit down?"

"No."

And I said, "What's the problem?"

He said, "You know that goddam messenger of mine?"

"Yes."

He said, "He got drunk again yesterday and I fired him."

I said, "Oh, did he have an alcohol problem?"

He said, "Oh, yes. I've been putting up with it for years, but I can't stand it anymore. Now, what I want to ask you, Chuck, is this: I want to ask you if I could have Peter?"
Mr. Singer: Your messenger.

Judge Richey: "Would you give me Peter?" And I said, "No, John." This is history.

“But, I'll tell you what I will do for you. I'll get Peter to get somebody just like him.” And so when Peter came in an hour or so later, I told him about this thing. And by that time he had known Sirica. I said, "For God's sake find some Italian fellow."

Mr. Singer: [Laughter.]

Judge Richey: And he did. His name was Richard Azzaro. I haven't seen him since he left the courthouse. Then Sirica, after the Watergate, he was making a speech up at the Army-Navy Club and he had that almost fatal heart attack.

He was clinically dead for a couple of minutes. The newspapers said that the Deputy U.S. Marshal saved his life. That was not correct! You know who it was? Richard Azzaro, who by that time was a young staff attorney at the FCC. He administered mouth-to-mouth resuscitation and saved John Sirica's life.

Mr. Singer: Very interesting.

Judge Richey: That's how that happened. That's the honest to God's truth.

Mr. Singer: I see, that's very interesting.

Judge Richey: That's history, true history.

Mr. Singer: What you're describing is sort of a plantation that existed here.

Judge Richey: Oh, it was. You didn't know that? Come on, Dan, you were in the courtroom! Oh, all right. I had a call from Judge Tatel last week or ten days ago. He said, "I look forward to reading Dan's oral history."
Mr. Singer: Okay. [Laughter.]

Judge Richey: [Laughter.] I said don't blame it on him; blame it on me.

Mr. Singer: Well, it certainly…..

Judge Richey: It was a plantation. Now, come on Dan Singer, you were on the Court of Appeals. You knew what went on.

Mr. Singer: It looked like a plantation to me.

Judge Richey: It was.

Mr. Singer: But, the judges themselves seemed to enjoy the plantation. I'm talking about David Bazelon and George Thomas Washington and Charlie Fahy.

Judge Richey: Sure, and Henry Edgerton.

Mr. Singer: Edgerton a little less so. Edgerton was a very special, an especially decent human being, of a very different stripe than the other three.

Judge Richey: Yes, but those four human beings were all on the same wave length.

Mr. Singer: Certainly in terms of their political views and their judicial policy views.

Judge Richey: Exactly.

Mr. Singer: But, on a human level, Edgerton was really a much nicer person, as far as I was concerned.

Judge Richey: Really?

Mr. Singer: Two years up there, one working directly for Edgerton because he hired me, as a motions clerk, and one from the vantage point of...

Judge Richey: Judge Washington.

Mr. Singer: Chambers. And Edgerton was really an interesting person. Wide range of intellect and...
Judge Richey: You know what David told me about him one time?

Mr. Singer: This is David Bazelon?

Judge Richey: Yes. He said, "Chuck, when Henry Edgerton spoke, I listened."

Mr. Singer: Right. It was not Bazelon's normal [laughter] way.

Judge Richey: No, it wasn't, but that's what he said. I think that's about the highest compliment a man could pay to another human being.

Mr. Singer: Well, Edgerton was of that foursome was the only one who was an academic. David certainly was not an academic. David was...

Judge Richey: He had an academic mind.

Mr. Singer: Yes, but that comes very late and only after he was a judge. That strain of mind.

Judge Richey: So, what?

Mr. Singer: No, no, no. My point is that Henry Edgerton was an academic; he was a person who liked always to play with ideas and was always open and accepting. He was not in a sense a practitioner. Fahy was Solicitor General and had been in government service. George Washington had taught a bit, but really kind of consummate bureaucrat, in many ways, whose finest achievement was when he was Lend Lease Administrator in Iran he kept track of every paper clip. I mean, they would talk about him in those terms. Bazelon came out of the streets of Chicago. And Edgerton was appointed because he was the only one who spoke out in favor of the court backing plan toward the end of the Roosevelt court packing plan.

Judge Richey: From Cornell, as a law professor.
Mr. Singer: Yes, that's exactly right. And that's what earned him a place in the sunshine. He had some wonderful views. He thought that no representation of the human figure could be obscene. You know, it was a well-developed intellectual construct that he brought with him. He would sit at his desk and the most important set of books within reach was the, I guess, 18 volumes of the Oxford English Dictionary. He had a wonderful kind of relationship with the English language. And he had two law clerks because he was the chief judge. If I remember correctly. And everyone else had only one. Bazelon had after a while got a second, but he paid them out of some other fund not out of his chamber's administrative fund. He may have had a grant from some foundation nominally.

Judge Richey: That's what Dave would do. It was the National Science Foundation or something.

Mr. Singer: Right.

Judge Richey: He was good at that.

Mr. Singer: Yes. And early, he was one of the first.

Judge Richey: That's right. That's exactly right.

Mr. Singer: But in terms of the sweep of what you've seen now in your own chambers and to the extent you have had any relationships over time -- with not just the other judges, but perhaps their law clerks. Have there been changes in the 25 years in the kind of folks who become law clerks, with whom you interact, with the range of talents that you look for, and can get? To come, to be with you. For how long do you take these young people?
Judge Richey: One to two years. I like them for two years, but sometimes it doesn't work out that way. I've got this young woman right now who is brilliant, has qualities of a genius, but because economic reasons... Early in my judicial career, so that there would be an overlap between the two clerks. One who had been here a year, who could help train the new one. And that's worked out very well. It effectively established a trend. Right after I came here, the court had voted, a split vote by one vote margin, to leave the old general assignment system and go on the individual calendar system. I'd never been lobbied for or against anything so hard in my life as I was by the group that were opposed to individual calendar system.

Mr. Singer: What were the issues and who cared?

Judge Richey: Oh, the judges cared.

Mr. Singer: The judges cared, but what did they care about?

Judge Richey: It was a method of hiding from doing work.

Mr. Singer: The general assignment?

Judge Richey: General assignment. He's in court or he's not available. He's at a meeting. That's how Holtzoff got so many cases. Others didn't do anything. There was no accountability. And that's taken hold; the rule all over the country, except maybe in the Eastern District of Virginia. So, that's a major change in judicial administration in the last quarter of a century. But, Sirica, Hart, Walsh, I don't know who all they were. But, they expect me to come down there and get that turned around. I determined that they were wrong and that ended it.
Mr. Singer: And now, the process is you are assigned a case and it's yours until it goes upstairs or out the door?

Judge Richey: Right. For all purposes.

Mr. Singer: Does it have advantages other than accountability?

Judge Richey: Yes, because if you nurture and structure a case from the beginning yourself you know the issues, you understand it, if it has gone through six hands on a discovery motion, protective order, all kinds of discrete discovery problems including maybe motions to dismiss, maybe even summary judgment motions, then it gets up to the trial stage, the judge doesn't know anything about it at all.

Mr. Singer: Does the familiarity that you get over a period of time, the pre-trial period, help or hinder or make no difference with respect to your ability to bang heads together?

Judge Richey: Oh, helps enormously. Not only that it helps in your understanding of the case and you get to know the lawyers, their ability or lack thereof, so on. And you can also deal with matters much more quickly when you are the boss. It's a wholesome thing - it has proved itself to be wholesome.

Mr. Singer: If you took a vote today would it be unanimous?

Judge Richey: I think so, it would be unanimous. Nobody would have the nerve to vote against it today.

Mr. Singer: That's a different issue.

Judge Richey: It would be unanimous and the vast majority would vote to sustain it on its merits.
Mr. Singer: Let's get back to the law clerks because that's a population that we used to see at the bar in private sector two or three years later. And what I was asking if you've seen the change in your own clerks over the period?

Judge Richey: That's a terrible question. I don't know how to answer it. I guess I tend to attract the same kinds of people but I had deliberately sought and obtained young men and women from all over the country that is law schools and disparate backgrounds. Why? Because I love the interaction with young people. And I use them as a sounding board. Assume you were a law clerk for a moment. I would say "Dan I've got this such and such a case, I think the government is wrong and these are the reasons. What do you think of that?" That may be wholly incorrect as to my real views but I'll call you in to ask you that and I want your honest answer. "That's off the wall Judge, you can't do that." "Why, tell me why?" Then I confess I didn't want to do it anyhow. But it is a sounding board and you get back from them a picture of the country. Don't forget this is a national court from young men and women from around the country. Gerry Gesell, my late colleague, friend always took his law clerks with one exception from Yale in all the eight years he served here. And that was a person from Harvard law school.

Mr. Singer: Well, you know he grew up in New England. I understand that his father was distinguished pediatrician and academic.

Judge Richey: Correct, but I used to tell Gerry, I think you are crazy as heck, you are denying yourself access to a lot of information you would otherwise get, but for your narrow-minded parochialism. I used to tease him. I liked him. His
picture is up there on the wall.

Mr. Singer: The same people they used to get at Covington.

Judge Richey: They were all Yalies. I'm sure, probably.

Mr. Singer: Well, Yalies, and Harvards, Ivy League types and then far righted in that category, feet first. But you now have three clerks, if I understood from our conversation, with Jeff.

Judge Richey: Yes, that is right.

Mr. Singer: And either because of or in spite of all these classy toys you've got you've no secretary.

Judge Richey: That is right I don't need one. I need the help and the brains.

Mr. Singer: How do you communicate with these guys? Guys is unisex.

Judge Richey: I know that.

Mr. Singer: Do you leave the messages on their computer? Do you have e-mail to the next room?

Judge Richey: Yes. I have e-mail from here, I call them in, usually face-to-face, I send e-mail from home.

Mr. Singer: Are you on-line?

Judge Richey: Yeah. I have a little program called *PC Anywhere*.

Mr. Singer: Right. Except for the fact that it tends to be slow, it really works.

Judge Richey: It does. You get a faster modem it works pretty fast, pretty good. What have you got, a 2400?

Mr. Singer: No. No. No. I have a 14-4 at home and it's slower than sitting at my desk in the office as opposed to…
Judge Richey: It's a little bit slower but not a heck of a lot. The slow part is getting into the program. Have to wait a few minutes, but that's alright.

Mr. Singer: How much work do you do from home?

Judge Richey: It varies from time to time depending on how I feel, what other things I'm doing.

Mr. Singer: What about your colleagues here? Are they computer literate? Or are they someplace in the 14th century still?

Judge Richey: Pretty much, I hate to say. I've never gone to one professional class. I'm self-taught. And they have a school in San Antonio, Texas for judges. These characters, three of them, just got back from there.

Mr. Singer: You don't think they learned much, I gather.

Judge Richey: Well, they tease me about being a computer guru and so on. What did you learn? Well, you know it all anyhow. They just go over the basics of it.

Mr. Singer: But their clerks are all literate. I mean all of this next generation. They are not only literate, they're really good at it and for them it's...

Judge Richey: They are not as good at it as you might think. Some are better than others.

Mr. Singer: That is always true about everything, I've concluded.

Judge Richey: Yes, but don't assume that every kid coming out of law school today is really good at using the computer. And they don't know as much as you think they should about Westlaw Lexis or Nexis even though it's free in the law schools.

Mr. Singer: We poach on that in the law firm. Because we have law students who come to work for us and use their law school accounts to find stuff.

Judge Richey: Very expensive for a law firm.
Mr. Singer: It's expensive but we bill it out to the extent we can.

Judge Richey: My son's senior partner, old man Glovsky, he cannot understand why I belong to the law practice and management section of the ABA. Why would you want to do that, you are a federal judge. I said "Well, Henry, I have to fix attorney's fees. I want to know what is going on within the legal profession and I think I have a duty to do that. How many of your colleagues belong to that section?" "None." "Well, doesn't that prove my point, Chuck?" No.

Mr. Singer: Au contraire. If anything, it proves your point. Do you like those cases involving the fixing of attorney's fees?

Judge Richey: No, I hate them. But, if you have to do it you might as well do it right.

Mr. Singer: There's a lot to be said for that.

Judge Richey: And I don't know, is the book still there, it was there on the corner of the desk? The three ring notebook. I just did that. Brand new. It is to be published by West.

Mr. Singer: Hot off the presses.

Judge Richey: You still haven't gotten me, by the way...The gender thing. I told you I will.

Mr. Singer: And I was going to bring you something on the American Society for the Protection of Nature in Israel. I now see my note on that.

Judge Richey: That's all right. We'll do that soon because I have to make a speech on Friday to the Florida Bar on ENE and Arbitration.

Mr. Singer: I had my first ENE appointment from Linda.

Judge Richey: Which court?

Mr. Singer: Your court.
Judge Richey: Good. You'll be good at that. I can tell.

Mr. Singer: I've done a lot of mediation and I enjoy it a lot and I think it is useful and Linda and I and Nancy Stanley, I think have a pretty good relationship in that area. But it's the first time I did an evaluation where I really told people what I thought instead of just trying to cajole them into some kind of settlement posture. At least so far, it hasn't totally gone away, gone to trial yet. So, I don't know what will happen. I did not have the feeling I was being immensely successful.

Judge Richey: Let me ask you this, Dan, under the arrangement we're not told who the mediator is and that is wholesome and good.

Mr. Singer: I think that's good.

Judge Richey: But I do something that I don't know whether the other judges do. Everything I do as a judge, everything, I impose a self-imposed deadline on myself, and the lawyers. There is a next date throughout the entire process. When I send something to ENE, which is seldom, but when I do, I impose a deadline. Does that strike you as bad?

Mr. Singer: No, I think it is essential. All of the mediation cases I've been involved in come with an order saying get it done and report back by such and such a date.

Judge Richey: It does?

Mr. Singer: Absolutely!

Judge Richey: Well, I don't think the forms have a deadline. Mine, I do, but...

Mr. Singer: But when I get one of these and I see what the deadline is and I begin to bring
the people in, frequently it can't be done within that time and if I sense that it may be worth pushing ahead with it, I'll call Nancy and ask her to get the judge to extend. Some judges will do it without the kind of formal intervention of motions; other judges will not. They will ask for a joint motion from the parties and I don't know why they should choose one rather than the other but...

Judge Richey: It may be because they got a discovery deadline, a pre-trial conference and a trial date.

Mr. Singer: They could extend it without having a joint motion, because I'm reporting essentially that the parties have told me that they are interested in staying in the mediation process and would she with a phone call to the judge's clerk see if we can't get another two weeks or month to do it. That office really runs well.

Judge Richey: It does. I want to tell you that Linda is a crackerjack. She is super.

Mr. Singer: She is just super. My experience is she is very, very thoughtful about her relations with the private bar and to the extent I've seen the way that she talks to me about her relationship with the judges. Obviously thought a lot about all of the things she is doing.

Judge Richey: She has. You know Dave Bazelon -- this idea of a circuit executive was a Warren Burger idea. Dave was unalterably opposed to it.

Mr. Singer: Yeah. He didn't like it because it was a Warren Burger idea.

Judge Richey: Well, I don't think that is fair, Dan, it really isn't. David and I had many intellectual conversations about the merits of it. He thought it was going to
be a bureaucracy, super-imposed not only upon the clerks' offices but also upon the independence of the judges. And I bought into that to be candid with you. And it took me many years to realize that she has brought a dimension to this office that I didn't realize existed. We couldn't function without her now.

Mr. Singer: My point was a somewhat different one. And that was that I don't think David liked Warren Burger very much.

Judge Richey: He didn't. But until 1975 David appointed me -- see I'd only been a judge 3-1/2 to 4 years something I like that - chair of the Judicial Conference arrangements committee. And of course, the Chief Justice was our circuit justice so he had to be there. I got those two fellows together and you would -- I'll never forget it - I can see them hugging each other like they were blood brothers at the end of the conference. Blowing tributes to each other...

David blah blah blah. Warren blah blah blah.

Mr. Singer: My experience was...

Judge Richey: Just the opposite, I know that.

Mr. Singer: A law clerk, to the extent I chose up sides, I chose up sides on Bazelon's side inside the court and Warren Burger was the junior judge, was number nine when I was a law clerk there. And David was just, well, just really didn't like him.

Judge Richey: Oh, no question about that. But I want to tell you by 1975 that changed. I saw it with my own eyes. I was there - the three of us, in public, too, as well as in private.
Mr. Singer: Well, that was 15 years later - I watched this from '56 to '58. Fifteen or 20 years later things change even for us older guys things change.

Judge Richey: Well, I became within a matter of weeks, it doesn't take long for people to find out, the courthouse is a small place, the walls and the elevators have ears. David would be down in my chambers or I would be up in his. I had a lot of power in those days.

Mr. Singer: He was the chief judge, wasn't he?

Judge Richey: He was the chief judge and he deferred to me.

Mr. Singer: He ran this courthouse.

Judge Richey: He sure did.

Mr. Singer: And so you can sense there might have been some unease on his part with somebody who was coming in to help him run the courthouse.

Judge Richey: But he took me in, I want to tell you, he took me in lock, stock and barrel.

He and Mickey both and we became very fast friends and that is how I met Justice Brennan, who became Bill and Milton Kronheim.

Mr. Singer: Were you in that lunch club?

Judge Richey: Oh sure I was.

Mr. Singer: That went over and ate in the, I want to call it the Stockyard, but that's not right.

Judge Richey: Over in Northeast Washington at Milton's Warehouse. Oh, yes, I was, right off the bat. David always drove or had his chauffeur drive and, as I say, he would come to my chambers and it was frankly made my colleagues jealous, they didn't like it, they didn't like him, and that was transferred to me but I
didn't care because we were the same two peas out of the same pod, we were
mid-western populists, I really didn't care. I liked him.

Mr. Singer: Actually, the business of going to someone else's place to say hello is really
important and it first hit me when I arrived as a motions clerk on the Court of
Appeals and I've tried to live by it since. And that is Henry Edgerton came
to the office I was in, to make sure I was comfortably situated.

Judge Richey: Isn't that sweet.

Mr. Singer: I would have crawled up a mountain for him at that point.

Judge Richey: Sure you would have.

Mr. Singer: That was just stunning and I try to do it now with new people coming into the
office. I don't have to hold court or audience for them. I'm going to go and
welcome them.

Judge Richey: Aren't you kind?

Mr. Singer: And it just makes a tremendous difference, it certainly did for me.

Judge Richey: I'll never forget when I broke my hip playing basketball when I was age 50.

Mr. Singer: (Laughter) With your wife....elbowed you into the corner or something.

Judge Richey: Well, one of my kids did. And I was on crutches - I was only away for ten
days but I had five pins my hip. I'll never forget Bazelon showed up here
and he said I just wanted to make sure you are all right. I said, well I'm still
hurting a little bit, David. He said yes, I presume you are but I know you can
still raise a lot of hell out there. I'll never forget that.

Mr. Singer: Let me get back to your law clerks.

Judge Richey: Oh, yes, I love to talk about them. They are children. There is not a week
goes by that I don't hear from at least five out of the 40 odd clerks I've had.

I've had two calls from two different clerks today, this morning.

Mr. Singer:  How do you make use of their talents?  What is their role?  You are a
district judge who is not afraid to write things.

Judge Richey:  That is part of the key to my success; it's because I do write.  In the old days,
Carl McGowan told me the government would file a motion to dismiss on the
alternative for summary judgment.  A trial judge, when he first came here
would write "granted" or "denied".  He said we could never tell which one
they were granting.  I've read from day one and they have to be able to write
in my style, my way.

Mr. Singer:  How do you know that when you hire them?  What is the process you go
through to hire?

Judge Richey:  I don't know it.  You try your best by looking at research papers they've
written.  You never really know whether they've done it themselves or go
through an interrogation process.

Mr. Singer:  Because you said you don't use the kind of law school filters Gesell would use
for instance - two or three people from Yale.  Dave Bazelon would use Abe
Goldstein.  Abe Goldstein at Yale would say David this person is really good
- take him or her.  But if you are looking all over the country you don't have
the benefit of...

Judge Richey:  Yes, I do.

Mr. Singer:  Okay.

Judge Richey:  I do now.  I have them at all the law schools - Harvard, Yale, Columbia,
NYU, Michigan, Chicago, Northwestern, Georgetown, GW, Stanford, UCLA, I have professors in Texas at Austin. I have them at all those schools.

Mr. Singer: These are people you know somehow but are not necessarily former clerks of yours.

Judge Richey: That is correct.

Mr. Singer: But Abe was, I guess, David Bazelon's first clerk.

Judge Richey: I don't know.

Mr. Singer: He came from Jiggs Donohue. Abe was down here practicing law. He must have known him from the Alien Property Custodians office in Justice. Abe I think was his first clerk.

Judge Richey: Well, I've got so many friends, probably mutual friends of yours, Alan Dershowitz, Larry Tribe, I could go on and on -- every law school in the country. I sat at NYU this week, last Friday and Saturday, all these academics from coast-to-coast, knew these youngsters coming off. But I still know them. I've got a new generation of Judge Richey fans and it is "Dear Chuck". They know I'm a hard task master, they know the requirements they've got to work six days a week.

Mr. Singer: No vacations and no beard.

Judge Richey: Oh, Jeffrey Liss says that, I don't give a dam about a beard, come on. Jeffrey says that, that is a joke. It really is a joke. No, I don't care what they look like, I'm interested in their brains, their capacity to do clear, concise legal research and do it accurately and well and have the capacity to express themselves also. Have some original ideas. Teach me something. Stay
ahead of me. Do independent reading. Do independent research.

Mr. Singer: Okay, abandon your family. You're mine for two years or one year.

Judge Richey: That is exactly right, exactly right. You'll see in Fed. Supp. Patty Seitz -- who's right over there on the wall -- President of the Florida Bar two years ago, she said that when she came to me it was seven days a week, 12 hour days at least, and becoming an associate in a law firm was like a "piece of cake" because of the discipline and the training. And as well as the excitement in Judge Richey's chambers. No, this is just the third year that I've done that.

Mr. Singer: Comfortable with it?

Judge Richey: Yes. I don't know why I didn't do it sooner.

Mr. Singer: Anybody else operate in any similar fashion?

Judge Richey: Not here.

Mr. Singer: Most of them are two clerks and a secretary?

Judge Richey: Right. They all are, except for me. But you know what? Turn this off and I'll tell you a secret. [Machine is turned off.]

Mr. Singer: Merci. It is interesting. You say there are 17 staff law clerks. I mean, I think the job I shared with one other law clerk, we were motions clerks, and this was -- there were two motions clerks for the whole court. And that was in the days when an enormous amount of the court's business came up on motions directly from the administrative agencies. There was a whole array of in forma pauperis stuff that first came up on motion and there was something you'll remember called the Municipal Court of Appeals from
which there was a certain type of jurisdiction.

Judge Richey: Correct.

Mr. Singer: We worked very hard and we had it all, because we had something no other clerks had any place: We sat in the conference with the judges.

Judge Richey: You did!

Mr. Singer: We were in the conference with the judges on the disposition of the motions.

Judge Richey: Oh, okay.

Mr. Singer: Thursday mornings they would hear motions and then we would go back with the whole motions docket that included both the ones they had heard and the others. We had memoranda on all of this stuff to the three-judge panel with our recommendations and how the matter should be disposed of. That's where I met Bazelon. That is how I kind of met Bazelon and how he would then reach out to get somebody to essentially develop one of these motions issues. I mean all of this stuff was motions issue. David thought it was a Constitutional question -- it merited much greater effort. [Laughter.] And he was right; he was very much right. This was in the immediate aftermath of Griffin v. Illinois, when the court really had to work out how do we provide transcripts and counsel to this vast array of petitioners, who in the District of Columbia were all the state types. That's to say that all -- never mind felony types as well as the U.S. crimes that were afflicting -- you know that had the benefit of Constitutional protection. It was an interesting kind of three, or four, or five year run before that range of questions got surfaced and resolved. And I think got resolved very well.
Judge Richey: I think so too. We are still the beneficiaries of it. Well, you had a lot of satisfaction in that.

Mr. Singer: Yes, and it wasn't without...

Judge Richey: Effort.

Mr. Singer: The naysayers. The Walter Bastians of the world or Millers, the John Danahers and the Warren Burgers.

Judge Richey: You couldn't be more right.

Mr. Singer: And the kind of person who really had clout with those -- was Barrett Prettyman. What a prince.

Judge Richey: I never knew him that well.

Mr. Singer: He was really -- he and Walter Bastian were old Washington folks. Danacher was a new comer, and Burger was someplace else, Wilbur Miller was from Kentucky. I think he was the public utility's chairman in Kentucky. But, Barrett Prettyman had been the Corporation Counsel and was a local person. I think Walter Bastian was a practitioner out in Maryland.

Judge Richey: No. He was National Press Club. His son went out to Maryland.

Mr. Singer: His son went out to Maryland. Yes, that's right.

Judge Richey: Walter was a practitioner here; President of the Bar. He and Bo Laws, who became Chief Judge of this Court.

Mr. Singer: Right, right.

Judge Richey: They were all intimate buddies. But, I think Barrett Prettyman, who lived in Chevy Chase, was a conciliator and a born leader. I just looked at him from a distance. I never knew him.
Mr. Singer:  Well he was...
Judge Richey:  I have his parking place in the garage.
Mr. Singer:  Well, he certainly sat in the middle.
Judge Richey:  He did.
Mr. Singer:  Of these two very strong foursomes.
Judge Richey:  Yes.
Mr. Singer:  And he was a person, just in terms of my watching the relationships with other judges -- both first as a motions clerk and then when, you know, George Washington would toddle... down to the end of the hall to talk with Prettyman about what they could do about thus and so.  Whatever it was.  I thought he was always a very fine guy.
Judge Richey:  Well, I didn't know him.
Mr. Singer:  And his son is a real leader.  He's getting on now, but young, Barrett to Prettyman.
Judge Richey:  Yes.  He's still very youthful, very vigorous.
Mr. Singer:  Yes, he's still very active at...
Judge Richey:  Hogan & Hartson.
Mr. Singer:  Hogan & Hartson.  But, I want to get back to the law clerks again as to whether there are changes over time.
Judge Richey:  Not a great deal.
Mr. Singer:  Not a great deal.  Okay.
Judge Richey:  Not a great deal.  I think I've only had three Republicans out of the whole lot.  All the rest of them have been Democrats.
Mr. Singer: Well, this young Jeff is...

Judge Richey: Oh, Jeff. Oh my God! Is he ever a right wing conservative!

Mr. Singer: He's off-the-wall.

Judge Richey: He sure is. He sure is.

Mr. Singer: I must say that I appreciated the fact that, in a sense, he didn't permit me to stuff my foot in my mouth with him. He told me pretty much. It came out pretty early on that he was...

Judge Richey: Oh, he's not a Republican. He's a Libertarian.

Mr. Singer: Yes. Maybe it's unfair to characterize him that way.

Judge Richey: Well, I just laugh at him. I don't pay any attention to him and he knows I don't.

Mr. Singer: How does he get on with your other clerks?

Judge Richey: They get along beautifully.

Mr. Singer: Oh, well that's good, because that's a good lesson to learn early.

Judge Richey: Oh, they've got to learn that. I mean it's such an intimate, small environment. The architecture is bad here. We don't have enough space. Upstairs -- they've taken over two floors, you know.

Mr. Singer: I didn't know that.

Judge Richey: The Court of Appeals now has the whole third floor. You should see their offices!

Mr. Singer: Where's the U.S. Attorney's now?

Judge Richey: Up on Fourth Street.

Mr. Singer: So, they kicked the U.S. Attorneys out of this building?
Judge Richey:  Totally.

Mr. Singer:  I didn't realize that happened.

Judge Richey:  Oh, for a while they had the Probation Office up on Eleventh Street.

Mr. Singer:  Because all of that was -- the U.S. Attorneys had the third floor.

Judge Richey:  I know. I know it. That's all Court of Appeals now.

Mr. Singer:  Oh, I see.

Judge Richey:  Palaces, palaces! You've never seen anything like it.

Mr. Singer:  No. When I left the Court of Appeals after my year as a law clerk, when each of the judges had only one law clerk. I was in the largest office I had ever been in. I just saw Linda Finkelstein. My office was the size of Linda Finkelstein's office. Linda Ferren's office. I mean, adequate quarters for someone who's a year and a half or two years out of law school, I thought. Not only that, but where Washington's chambers where I had a dead-shot look at the Capitol. It was wonderful! It was just wonderful!

Judge Richey:  You thought you were in heaven.

Mr. Singer:  I thought I died and had gone to heaven. It would never be that good again.

Judge Richey:  That's what our son tells his mother. He died and gone to heaven.

Mr. Singer:  [Laughter.] Where's he working?

Judge Richey:  He's a partner in Glovsky & Glovsky in Beverly, Massachusetts.

Mr. Singer:  And Glovsky was a classmate of mine in law school. I am sure. Jerry Glovsky?

Judge Richey:  Henry Glovsky.

Mr. Singer:  Lovesky?
Judge Richey: Glovsky.

Mr. Singer: "G"? No, that's a different one.

Judge Richey: He was a classmate of Lou Oberdorfer.

Mr. Singer: Yes.

Judge Richey: At Dartmouth College.

Mr. Singer: So, he's a little older, because Lou is a couple of years older than I.

Judge Richey: He was a Republican. Would you believe third generation immigrant from Russia.

Mr. Singer: Yes. He came early.

Judge Richey: Well, two generations back.

Mr. Singer: Yes.

Judge Richey: And they literally own that area of Massachusetts, north of Boston to the New Hampshire border.

Mr. Singer: Yes, yes.

Judge Richey: Banks and everything else. Charlie tells me that that's no longer true with respect to the banks because the banking industry has changed. And that's hurt a little bit. But, that he was a Republican believe it or not. He was in the state Senate.

Mr. Singer: Yes.

Judge Richey: When Lodge was running for Vice President. Henry Cabot Lodge.

Mr. Singer: Right, right.

Judge Richey: It was 1960, I guess it was.

Mr. Singer: Yes.
Judge Richey: Henry ran all over the country. He was one of his major campaign managers.

Mr. Singer: Right.

Judge Richey: First case Charlie worked on up there was something about a dispute with a gas line for one of the Saltonstalls. I mean they knew all those, you might say what we call today, liberal Republicans.

Mr. Singer: They were wonderful and a very important piece of American history. I mean people like Christian Herter.

Judge Richey: Exactly.

Mr. Singer: The Joe Welches of the world. And those who forget that history do themselves a disservice.

Judge Richey: You know that's absolutely right. And you might say, "What's the difference about law clerks?" I've only had two or three that have really had a grasp of history. That's the deficit in the last 25 years in the young mind.

Mr. Singer: Yes.

Judge Richey: Of both the men and women. With a couple, two or three exceptions, they don't have any idea about it. You ask them who Joe Welch was, Christian Herter -- they wouldn't have the slightest idea. Paul Douglas of Illinois, Herbert Lehman of New York -- they wouldn't know.

Mr. Singer: Yes, sure.

Judge Richey: Well, it's their loss.

Mr. Singer: Well, yes, but it's a national treasure to recall that kind of history. To use it, and particularly, in this next generation -- the next two generations. To be
able to integrate that into whatever current problems are that are being faced.

It's not irrelevant.

Judge Richey: It isn't irrelevant!

Mr. Singer: In walking around with whatever it is we do now.

Judge Richey: Yes. Well, I'm not telling you very much. What else?

Mr. Singer: No, because I want to -- I think we finally stopped ducking this question about law clerks. That some are better than others. We've established that.

Judge Richey: Yes.

Mr. Singer: And that at least over time, there seems to be some diminished knowledge or perception or perspective with respect to history. I don't think that's unique to your law clerks, my guess is.

Judge Richey: Oh, it's true of all job levels.

Mr. Singer: I have the same problem with younger people in the firm and what I find is that the ones who have that sense of history are the people who are -- I don't want t to put too strong a cast on this -- are the most critical of their own role as practitioners.

Judge Richey: Yes, and they're better lawyers too.

Mr. Singer: In firms like mine they're certainly more imaginative.

Judge Richey: Yes.

Mr. Singer: They're no less willing to work hard.

Judge Richey: No. That's absolutely right.

Mr. Singer: And you know, a more interesting crowd with which to have lunch.
Judge Richey: Steve Pollak was telling me one day, "You know I had lunch the other day with your friend Elise Rabekoff."

"Oh, you're a lucky man. Yes, what did you talk about?"

"What do you think we talked about?"

"I have no idea, Steve."

"Sailing"

Now, Elise is the kind of human being who could talk to you about any subject you could want to name. Any subject. She's just that much of a genius.

Mr. Singer: What is her relationship to you?

Judge Richey: Law clerk.

Mr. Singer: Law clerk, right. In practice now?

Judge Richey: She was until recently and she had her second baby.

Mr. Singer: Yes.

Judge Richey: And she now is taking an additional leave of absence from her firm, has become general counsel to her husband and father-in-law's business the Quadrangle Development or something.

Mr. Singer: Oh. They're interesting folks.

Judge Richey: Gladstone. She's just, she and Chris are just lovely young human beings.

Mr. Singer: Yes. Well that's a nice way to practice law. I mean, it's...

Judge Richey: Well, I told her not to do it.

Mr. Singer: You told her not to do it. That you wanted to see her in the public arena somewhere.
Judge Richey: Oh, I got her an appointment as Assistant U.S. Attorney and she after getting it -- turned it down. She decided she didn't want to do it. She now admits that she was wrong.

Mr. Singer: She went into practice then rather than going into...

Judge Richey: Right.

Mr. Singer: My view is that you can't ask someone to help you with a job like that and not take it.

Judge Richey: Well, you're right.

Mr. Singer: I mean, I just...

Judge Richey: But, see Elise is so liberal she couldn't...

Mr. Singer: She didn't want to put people in jail.

Judge Richey: That' it, exactly it. She couldn't do it. And I told her you've got the power of being a prosecutor; you can divert a lot a people from the system. You also can recommend probation. You can do all kinds of things.

Mr. Singer: I'm very impressed with how lucky we are with Mr. Holder.

Judge Richey: Well, you're darn right. You ought to be.

Mr. Singer: Good. I'm glad you said that.

Judge Richey: You ought to be.

Mr. Singer: Well, I think he's...

Judge Richey: He's terrific!

Mr. Singer: He's terrific!

Judge Richey: Oh, he sure is.

Mr. Singer: He's just really...
Judge Richey: Elise admits today that she was wrong. I could tell you the names of their spouses, were they went to college, to law school, the names of their children. I can't name some who have about two or three kids. I can't maybe name all the kids, but I can name the number.

Mr. Singer: Of your clerks?

Judge Richey: Yes, yes.

Mr. Singer: Well, that's one of the great things of being a clerk. It really is.

Judge Richey: Well, it's a difference between judges. Some of them say, "Good-bye. Thank you very much." And that's the end of it. They won't help you get a job.

Mr. Singer: I never knew anyone who...I didn't know all that many. But, Fahy, who would fire his clerks routinely, three or four times in the course of a year.

Judge Richey: He would.

Mr. Singer: A man of just monumental temper. I mean...

Judge Richey: I heard that.

Mr. Singer: Really just volcanic in that way. And it was part of the game that you got fired. And you know, the next day if you didn't come in, or you came in late, he was worried what happened to you. Well, he had wonderful relations with his clerks throughout. George Washington less so, but he himself had no family. He was married to Helen Goodner. It was a match made by the American Historical Society because she was a lineal descendent of Patrick Henry. Each of them well into their forties when they found one another. It was, as I said, the American Historical Society probably achieved nirvana in
some way.

Judge Richey: Yes.

Mr. Singer: Fortunately, for me, she was herself a tax lawyer. So, she acted as his law clerk on the few tax cases that would come up, either District taxation or a very small number of cases coming from the Commissioner of Internal Revenue. But, it was interesting to me the kinds of the things that George Washington would articulate. We had a slip and fall case. A classical slip and fall case involving somebody slipping into a storm drain. Well, whatever the law was, there was no way George Washington was going to hold in favor of the City. He said, "I can't tell you how many times I've pulled Helen out of one of those storm drains." They're designed improperly.

Judge Richey: Oh.

Mr. Singer: I mean there was just going to be no stopping him on that issue. My recollection is it was a 2-1 decision in which he and somebody else voted to hold the city liable and then there was a lot of…

Judge Richey: Somebody else. Probably Wilbur Miller.

Mr. Singer: Probably Wilbur Miller, exactly. [Laughter.]

Judge Richey: I had an experience like that one time. There used to be a judge over in the old, I think it was called the Municipal Court then.

Mr. Singer: Yes, it was indeed.

Judge Richey: His name was called Harry Walker. Remember him?

Mr. Singer: No.
Judge Richey: He came from the Corporation Counsel's office.

Mr. Singer: I don't remember him.

Judge Richey: And I represented O'Donnell's, down in Bethesda. They were downtown.

Mr. Singer: They were on E Street.

Judge Richey: That's right. Somebody went in there and ordered a, oh, what do you call those little cups of... seafood...

Mr. Singer: Chowder of some sort?

Judge Richey: No. Shrimp, shrimp!

Mr. Singer: Okay.

Judge Richey: It had glass in it.

Mr. Singer: Yes.

Judge Richey: And allegedly cut her lip. And then this youngster went and started working as a receptionist for a broken-down doctor. And he was broken-down as evidenced by the fact that he spent his entire life in the U.S. Army and only became a second lieutenant.

Mr. Singer: You really have to work at that.

Judge Richey: You'd have to work at that to only get that far.

Mr. Singer: [Laughter.]

Judge Richey: He started and that's where he ended. It was crooked as heck. It came time to charge the jury. And the limit was only $3,000. And I said, "You know, Your Honor, I am entitled to a directed verdict." The law in the District of Columbia is that if the plaintiff did not sustain substantial physical injury, she is not entitled to claim damages for fright and shock, or emotional distress.
is not entitled to claim damages for fright and shock, or emotional distress. That may be in the minority rule, but it's the law in the District of Columbia

Mr. Singer: Sure.

Judge Richey: He said, "I'm not going to give it." And I argued with him and argued with him. We finally got back in chambers. And you know, they didn't have court reporters over there. He confessed, he said, "You know why I'm not gonna give it or why I don't want to give it?" "No, your Honor, I don't."

"Well, I was Assistant Corporation Counsel and I had bought a new white suit. I went over across the street to Bassin's Restaurant and I bit into some food and cut my lip and got blood all over that suit. And that cheap S.O.B. wouldn't even pay for the cleaning of that suit. It was ruined! I never could get the blood out. That's why I don't like your request for charge or that law." So, he went out and gave it. But, Dan, as God is my witness, he gave it so fast nobody could have assimilated it. And I lost the case. They gave her $2,500, which was a terrible loss to me. Well, the first insurance company case that I had, but I was trying to really show them.

Mr. Singer: Right.

Judge Richey: But, in any event, kind of an interesting aside. I'll never forget it, though.

Mr. Singer: Well, we're coming up on ten till six. I'm going to ask if we can turn this off.

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

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

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

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

Mr. Singer: They were different organizations.

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

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

Mr. Singer: Sure.

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

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

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

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

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

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

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

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

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

Judge Richey: Well, they wouldn't have gotten a dime but for me in the first case there. I would like to have five cents for all the hours I've spent on the case and we were going to go to trial in this case on June 5, come heck or high water and they know it. But, the plaintiff filed some sort of a pleading with me indicating they'd made a demand on the District government about alleged cheating in the second promotional examination. Well, cheating by itself, I think I know what I'm talking about from the first test, it was an allegation that somebody might have gotten in advance some of the answers or during breaks in the bathroom, had some help from whoever, I don't know. That doesn't prove discrimination by itself standing alone. So I directed, yesterday afternoon, that the Corporation Counsel himself be here and that the union and the plaintiffs' responsible parties -- I was told by my law clerk that the court room was full, and I got visited with the lawyer but they came back here today and we are back to square one, and they are now visiting about it indicating
that the plaintiffs want far more than a simple demand. They told me they
didn't want money, but they want a restructuring of the whole basis of hiring
and promotions along the lines of someplace like Phoenix, Arizona and some
other city, I don't know which, they mentioned it but I've forgotten. It's the
first time I ever heard of that. It almost made me laugh because years ago, in
the first case, the D.C. government wanted to appoint three experts to design a
test. And, I must have told them seven or eight times I thought that was a
waste of the taxpayers' money. All they had to do was call St. Louis, Detroit,
Cleveland and get the affirmative action plans that they had utilized and
successfully put in place and be done with it. They obviously had it
committed to writing. I couldn't persuade them to do it. Now, this new
group of lawyers is essentially asking for the same thing. What some other
city has done in allegedly the same or similar circumstances, I don't know.
You know, you put out fires as I told them. It's not a heck of a lot different
in Washington, D.C. than it is in St. Louis.

Mr. Singer: That's certainly true.

Judge Richey: I wouldn't think.

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

Judge Richey: It would be so de minimis it wouldn't make any difference. But, anyhow... It
essentially [garbled] employment discrimination in civil rights you have to be
very, very cautious and I wouldn't let them tell me because I got to try it for
myself without benefit of a jury. But, the elements are there and demands
were. It's just using my office to compel them to talk to each other.
Mr. Singer: It's surprising to me because... now that I've gotten myself a role as a mediator for this court, I see that so often, that lawyers don't seem to know frequently how to talk to each other or...

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

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

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

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

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

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

Judge Richey: You couldn't be more right.

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

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

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

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

Mr. Singer: Either way.

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

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

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

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

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

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

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

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

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

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

Mr. Singer: It's interesting if you... I mean I have no doubt from what I've seen in the private practice that the lure for that first five or six years after law school, and
frequently in our firm after clerkships, judicial clerkships. Those kids are doing it for the money. That is to say to get the loan monkey off their back and frequently now there are two of them. There is a husband and wife and what used to be $70,000 of debt may now be approaching $150,000 that they are carrying.

Judge Richey: You couldn't be more right.

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

Judge Richey: That doesn't last long.

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

Judge Richey: Well, that's correct, but you asked me why I thought that the quality of work
by the government has declined and I think that's part of the answer.

Mr. Singer: It may well be.

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

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

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

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

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

Mr. Singer: I do.

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

Mr. Singer: You mentioned at the beginning today, maybe even before we had the machine on, you talked about a case in which you were reversed 6-5 en banc.
Judge Richey: Yes. Ab Mikva says that's one of his greatest opinions.

Mr. Singer: Majority or dissent.

Judge Richey: Dissent. Yes.

Mr. Singer: What case was that?


Mr. Singer: Barry is the mayor. Formerly.

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

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

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

Mr. Singer: And, the majority held that you had to apply across the board. No, they
wouldn't have done that.

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

Mr. Singer: The one time I remember where I could say I was reversed, which is not quite the way to put it, was when Judge Washington wrote an opinion on the Court of Appeals and it went up to the Supreme Court and the Supreme Court did reverse it. It had to do with certain due process rights in connection with the then Defense Department's industrial security program. And then clearly the Supreme Court just said it and therefore it was correct. I was delighted.

My reaction was that I was overjoyed because I had argued with the Judge and argued with him and argued with him and finally did it his way and was reversed. But, there was a very personal identification on my part with that reversal and I'm wondering how does it, how did... I mean, maybe you've been at it so long you can go...

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

Mr. Singer: It changed the way things happen in the real world. It is not always apparent
from what you do on the bench.

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

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

Judge Richey: Right. Right.

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

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

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

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

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

Mr. Singer: (Laughter)

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

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

Judge Richey: And they sure did and boy, people got as much as $1500 to give up their seats to go from Salt Lake City to Jackson Hole, Wyoming.
Mr. Singer: That's a nothing trip. I mean... (Laughter) make it [?]

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

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

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

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

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

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

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

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

Judge Richey: But I think that it was egregious that I got reversed in the NAFTA case and it was reversed by two judges, I forget who the third one was but they were intimate friends of mine. Pat Wald and Abner Mikva. And they held essentially that that was a political question for the other two branches of the government. However, this fast track trade legislation runs right counter to the Constitution. Don't tell me that isn't a treaty. But putting all that aside, that wasn't the basis of my decision. The basis of my decision was that when the Executive presents a legislative proposal involving major federal action, the National Environmental Policy Act requires the preparation of an Environmental Impact Statement, known as an EIS. They didn't do it. Now I didn't enact NEPA, even though I was the first judge to have an opportunity to construe it and to require an EIS which is nothing more than, as Leventhal said, the reasonable alternative doctrine. They ignored that in this case. I thought it was a slam-dunk decision and was praised in most newspapers across the country, except for the Washington Post and they would have had a lead editorial, "A Bad Decision" or something to that effect, because they were strong for that NAFTA Agreement. A lot of the things that I predicted. Not only some of the things in the opinion, but privately to myself. But the adverse effect on working men and women in this country and on the environment and things like that, this treaty has not solved, it's not going to solve it. I think Rubin, Secretary of the Treasury, giving them all this
money, he's going to end up a scapegoat. You watch. Watch history. It's just like my decision back in 1976 in *Williams v. Saxbe* in which I was the first judge in the country to say that sexual harassment was cognizable under the Civil Rights Act. *Time* magazine gave me holy heck saying that that was never contemplated by the Congress in 1964 or 1972. Well, it was and as Judge Wald said, "Chuck, you've been vindicated by history. What do you care?" I predict I'll be vindicated by history as a result of this egregious trade agreement and also by GATT. I don't like that either.

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

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

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

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

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

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

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

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

Mr. Singer: Yeah, I know.

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

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

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

Mr. Singer: (Laughter) That's a wonderful story.
Judge Richey: I think it was a 3-judge court at that time.

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

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

Mr. Singer: You like it?


Mr. Singer: You quit doing that.

Judge Richey: Yes.

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

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

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

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

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

Judge Richey: Oh, there is a tremendous joy in it. You're accountable to the public, the bar and the litigants, but I'd rather make my own decisions rather than have to compromise and politic with my colleagues. There is an article in today's Washington Post about Justice Brennan and Dean Sexton of NYU Law School presented apparently at the Supreme Court yesterday. Some award or program for Justice Brennan. And as I read the paper this morning, it
seemed to me that he was selected and pointed out on the basis of his ability to solicit votes and achieve consensus and so forth. Kind of like a Quaker type of thing which I only know vicariously through my kids in being a president of parents' association at Sidwell Friends. I really don't like that. It doesn't appeal to me. It did in the beginning but it doesn't any more. I just don't like to do that. I want to do what Richey thinks is right. What is the law? What is fundamentally fair?

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

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

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

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

Mr. Singer: Whatever it was...

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

Mr. Singer: It was... these guys took it very seriously and they basically waffled their way through all the way to the end. It had been a long time since any of them had
thought about any of these issues as if it were straight in front of them. It was one thing to sit and review somebody else's mistakes.

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

Mr. Singer: Oh, sure.

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

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

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

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

Judge Richey: That's an entity within the courts of appeals all across the country. I think we have fourteen or fifteen right here that work on motions. Another thing that generates applications for law clerkships is the high profile case that gets
some press. It's amazing how the law schools and students think, "Oh, gosh, I agree with that decision. I'd like to work for that judge." Every time you have a high profile case, the avalanche of applications goes way up.

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

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

Mr. Singer: [Laughter] That's a great line.
Judge Richey: That's a real true story. I heard him say it. I wasn't there, but I'd been told afterwards.

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

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

Mr. Singer: You love it even more now.

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

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

Judge Richey: It's a rare exception.

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

Judge Richey: What I think as a human being, they like me. Probation officers do, the court reporters do, you see...
Mr. Singer: I was going to follow on to what you did...

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

Mr. Singer: You know the Kipling poem?

Judge Richey: No. What's that?

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

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

Mr. Singer: It must be.

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

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

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

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

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

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

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

Judge Richey: Oh, he's not?

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

Judge Richey: That's great.

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

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

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

Judge Richey: Oh, of course. Yes. There's an old story. It's true. You know you have this system of direct deposit with your paycheck through the bank. And so when Mardelle got the notice of my first paycheck, she called up my then secretary who had been with me in private practice and said, "Mary, is this for
a week or two weeks?"  "No, my dear.  That's for a month."  I think
Mardelle had a heart attack.  Really.  She couldn't believe how we were
ever going to make it in a...

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

Judge Richey: Oh yeah.  Absolutely.

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

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

Mr. Singer: What about charitable contributions?

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

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

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

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

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

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

Judge Richey: Getting judges?

Mr. Singer: Yeah.

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

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

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

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

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

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

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

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

Judge Richey: Right.

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

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

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

Judge Richey: As a judge.

Mr. Singer: As a judge.

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

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

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

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

Judge Richey: No. No. But, look, I'm the fellow that was appointed by President Nixon.
I had to do several things that he didn't like. I knew it. I held that he didn't own his tapes and papers. That ultimately led to the Presidential Materials and Preservation Act in 1978.

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

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

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

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

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

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

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

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

Mr. Singer: But it's certainly a fact and...
Judge Richey: It is. And you know, if you're going to be a good judge, you're not going to win a popularity contest.

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

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

Mr. Singer: Right.

Judge Richey: Because, you know...

Mr. Singer: It's down and dirty.

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

Mr. Singer: Never.

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

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

Judge Richey: That's correct.

Mr. Singer: ...who I mean there is some rationality that creeps into the appointment process that gives some weight to the fact that someone has been in court before and indeed they've spent a lot of time and surely the ABA review and
rating system, at least for district judges, I think, puts a fair amount of weight on the judges on experience in trial courts, so that they're not naive folks who are joining you in this.

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

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

Judge Richey: With about twenty-five Article III judges that have been rated as unqualified that have been confirmed by the United States Senate in my life time. And, take former Chief Judge Browning of the Ninth Circuit. He was rated unqualified, appointee of John F. Kennedy. He turned out to be a great judge. Alex Williams is sitting now in Beltsville, Maryland the new District Court, rated unqualified. Unanimously confirmed by the United States
Senate. I predict he'll be a good judge. I hope when somebody listens or reads this someday that they'll agree. But, you know, here in the last five new appointments, there is a broad range of experience absolutely magnificent. The best at one time any administration has appointed since I've been.

Mr. Singer: These are all now...

Judge Richey: Brand new judges.

Mr. Singer: Are they all Clinton appointees?

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

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

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

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

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

Mr. Singer: I see.

Judge Richey: It sounded ridiculous but...

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

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

Mr. Singer: Who are the five?

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

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

Judge Richey: He's president of the Bar.

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

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

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

Judge Richey: Oh, I see.

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

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

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

Really.

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

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

Judge Richey: Absolutely, sure.

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

Judge Richey: One of my patrons, Senator Mathias, was then a member of the House of
Representatives in Maryland, went down in the Selma march in Alabama.

Mr. Singer: In March of '65.

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

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

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

Mr. Singer: I have no idea.

Judge Richey: I don't know.

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

Judge Richey: Well, it was in the beginning. And it was really fun in the beginning because David Bazelon was chief judge, Skelley Wright was there, Harold Leventhal was there, Carl McGowan was there. They liked me as a human being, they respected me as a lawyer, a man of the law. I respected them. It was very collegial and fun to strike blows for liberty. In those days we would have big fights in the city and the law was under the applicability of sentencing. Under the Youth Corrections Act, under the Narcotic Rehabilitation Act and had an opportunity to write and made some good law. I think.
Unfortunately, Congress repealed them. Both statutes. But those were fun days. But then the '80's came along and new judges came along and it became a bartering system. And I don't like that.

Mr. Singer: On the Court of Appeals.

Judge Richey: On the Court of Appeals.

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

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

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

Judge Richey: Right. Right.

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

Judge Richey: I remember sitting up there once in 1984 or something like that. Maybe it was '85. Start mentioning the names of the judges, the presiding judge turned to me, "What's your view?" And I said, "The agency ought to be reversed", and gave my reasons. He said, "I think Chuck's right, what do you think?" And the other judge changed the subject and started talking about something as irrelevant as baseball or whatever it was. And about fifteen minutes went by and he was going along on this diatribe, I think it was just obviously because he knew he didn't have the votes. And finally, the presiding judge said, "Look, I've got to get out of here. What is your position?" "Well, I'd like to have the privilege and opportunity to write a non-binding, non-precedential decision affirming the agency." And the presiding judge, to my distress, having said that he agreed with me, said, "Well, all right." And he did, the author did exactly that very promptly and
the vote sheets came around and I thought my colleague would never adhere
to this even though the judge did write a non-precedential, non-binding
decision. It wasn't a case of great national importance. In any event, by
return mail I got the concurrence from the other judge who had agreed with
me in the conference and I said, "Aw heck".

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

Judge Richey: Oh, no.

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

Judge Richey: Correct.

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

Judge Richey: Definitely, you are correct. I hate to say it, but you are correct.
Mr. Singer: But, I mean, there's got to be instances where some judges just don't respect other judges either…

Judge Richey: Oh, yeah.

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

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

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

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

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

Judge Richey: Fifteen.

Mr. Singer: There are fifteen judges.

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

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

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

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

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

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

Judge Richey: Well, not really.

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

Judge Richey: No, they can't.

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

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

Mr. Singer: That power exists.

Judge Richey: That power exists today.

Mr. Singer: Has been exercised how often?

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

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

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

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

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

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

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

Mr. Singer: The other courts being...

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

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

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

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

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

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

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

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

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

Mr. Singer: I think she's upstairs.

Judge Richey: Right. Just to name a few who were really just born to be what they were.
Chief judges. I think Ab Mikva would fall in that category.

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

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

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

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

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

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

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

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

Mr. Singer: This is John Penn.

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

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

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

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

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

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

Judge Richey: Yes. They did.

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

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

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

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

Mr. Singer: Oh, yeah. But there, there is no question about who the boss is. I mean, there may be a question, but...
Judge Richey: There isn't much question about who's the boss in the United States courts. That's the Chief Justice of the United States.

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

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

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

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

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

Judge Richey: Yes.

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

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

Mr. Singer: Right. OK.

Judge Richey: He appeared to represent the Judiciary.

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

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

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

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

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

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

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

Judge Richey: Well, that's true.

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

Judge Richey: Correct.

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

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

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

Judge Richey: Most generally, cleared with him or Ralph Mecham, the Director of the Administrative Office, consults with the Chief on administrative matters
regularly, and it's a big entity. When I started, there were four hundred federal judges under Article III of the Constitution and now there are about just under eight hundred. That's more than double the number when I came. So, I think it ought to be kept at that level. But, the odds are it's going to be increased with the enhancement of our federal jurisdiction. Crime and all.

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

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

Mr. Singer: Yeah.

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

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

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

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

Judge Richey: Number of cases.

Mr. Singer: All right.

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

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

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

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

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

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

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

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

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

Mr. Singer: Right.

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

Mr. Singer: Right.

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

Mr. Singer: And the client understands that.

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

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

Judge Richey: Exactly. And what's the other option? Well, you go to the Chief Judge and lodge a complaint. The Chief Judge calls up, Judge X, and says Dan Singer has been in here complaining about your not deciding the cases... or some motion or anything I can do to help you or what... what's the problem. Well, I just haven't been able to get to Singer's motion. You know, I've been busy with other things, or my wife's been sick, or something. And that's the end of it.
Well, he's been complaining about it. I'd recommend you get it out. This has never happened to me.

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

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

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

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

Mr. Singer: Yeah.

Judge Richey: It's not offensive.
Mr. Singer: You come in and you cry. Basically. [Laughter]

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

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

Judge Richey: Exactly.

Mr. Singer: Yeah.

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

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

Judge Richey: Exactly.

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

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

Mr. Singer: Who?

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

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

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

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

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

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

Mr. Singer: Yeah. The middle west.

Judge Richey: Missouri.

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

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

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

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

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

Judge Richey: Well, Frankfurter too.

Mr. Singer: Was Frankfurter still there?

Judge Richey: Oh, yes. Yes.

Mr. Singer: That must be a terrible experience for somebody. I go all the way to the top of
the heap and I'm nobody.

Judge Richey: Could be.

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

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

Mr. Singer: A very difficult one.

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

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

Judge Richey: Yes.

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

Judge Richey: More officially than ex officio. I've been on...I've run the judicial conferences. One since Linda was here. My appointment of Chief Judge Mikva. We alternate between the District and Circuit Judges to chair the judicial conferences each. Now every other year, it used to be every year, but because of funds we only do it every other year. And that is quite an undertaking.

The Circuit Executive helps with that. She runs it. She's our secretary. And, so I've had a lot of interaction with her on that; I've had business with her dealing with the task force on race, gender and ethnic bias -- a whole host of other things. Many, many meetings. She is extraordinarily competent.

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

Judge Richey: Oh, yes. She is a lovely person.
Mr. Singer: The way the dispute resolution service runs is really good. Really impressive.

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

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

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

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

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

Mr. Singer: Cause I think... I mean, my vision is that at some point the mediation will no longer be effectively optional with the judges but become somehow an integral
part of one of the hoops you have to jump through before you can get to trial.

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

Mr. Singer: Yeah. It is. Yeah.

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

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

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

Mr. Singer: Well, I can't.

Judge Richey: I just spoke to the Bar down there two weeks ago. One hundred and seventy-five employment discrimination lawyers. And they have a rule in that court that you have to go to non-binding arbitration whether you like it or not in every civil case unless there is a constitutional question. And, three arbitrators
are appointed and the losing party pays their fee of $100 each. The arbitrators are appointed by the court. Do you like that?

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

Judge Richey: Course it does. Course it does.

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

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

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

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

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

Judge Richey: Yes. And, a lot of the public are very up in arms about it and I think legitimately so. Particularly the disadvantaged and the poor. They haven't
had the advantage of discovery, they are pushed into mediation by the arm of some judge and they are at a terrible disadvantage. If it doesn't work, then they are disappointed. If the mediator doesn't have access to all of the information because it is in the hands of the defendant, there may be an injustice done. Usually mediation is done before discovery is completed, again to save money. Or if it is done after discovery, then it may result, in arbitration at least, not mediation, in making the parties go through the process twice at double the expense...

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

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

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

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

Mr. Singer: [Laughter]

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

Mr. Singer: No.

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

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

Judge Richey: Well that helps tell each party the strength or weaknesses of their case if they know it and if the mediator knows it or can be advised on it.
Mr. Singer: The mediator can tease it out and use it as a device to push the parties closer together, but it's...

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

Mr. Singer: That is certainly true.

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

Mr. Singer: There are two ways to respond.
Judge Richey: There are.

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

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

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

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

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

Judge Richey: Fifteen.

Mr. Singer: Fifteen of you down here.

Judge Richey: Active judges.

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

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

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

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

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

Judge Richey: Of course they are!

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

Judge Richey: That's right. I remember Judge Oberdorfer when he came here he said, "Ya
know, Chuck,” he said, “I don't feel any different than a judge in South Dakota. I'm going to run my court the way I want.” And bless his heart. Good for him.

Mr. Singer: Yeah, well...

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

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

Judge Richey: It sure is.

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

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

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

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

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

Judge Richey: Nope. Unfortunately.

Mr. Singer: That's right.

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

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

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

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

Judge Richey: People like you, huh!

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

Judge Richey: They would have to be trained.

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

Judge Richey: That's right. But let me tell you something, Dan. If you're young and you start telling clients that you've got this weakness and that weakness with your case and the other side has got this strength and that strength, you're going in as a hog and you're going to come out as a sausage; the only one who is going to benefit is me and therefore we ought to try to get together with the other side and resolve it. You aren't going to have very many clients. There was a lawyer in this town who is now deceased. I used to watch him, he tried many cases before me and I really never have figured out, or could figure out, what it was that was the basis for his success. Finally, somebody told me, "But Judge, it's not as complex as you think. He tells his clients what they want to hear."

You get that -- I'll repeat it. This lawyer now deceased told his clients what they wanted to hear. He didn't attempt to evaluate their claims. He'd come into a court, my court with his darn calendar and it would take eight months or maybe a year before I could get a free date to bring him and his client to trial. Maybe a year and a half. Or he would try to tell me. I resented it; I didn't think it was fair; there were other people in his law firm, but they would try to tie your hands and he would tell all his clients that "we're going to get them" and "they're no good" and appeal to their basest emotions. But he was very successful as a lawyer. Got a lot of business.

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

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

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

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

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

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

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

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

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

Mr. Singer: (Laughter)

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

Mr. Singer: I don't laugh because... I laugh because I know him. And we once engaged in...

He was in 1700 K Street for a brief period of time. That's where we were before 1970. In '71 we moved to the Watergate. But before that we were 1700 K Street and Jake was before Stein, Mezines.
Judge Richey: That's where the firm started while he was still on K Street.

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

Judge Richey: *The Spectator*.

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

Judge Richey: He's a genius.

Mr. Singer: Very good lawyer. Very.

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

Mr. Singer: Telling jokes by the numbers.

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

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

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

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

Mr. Singer: [Laughter]

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

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

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

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

Judge Richey: I see.

Mr. Singer: That is what I did mostly was real estate development, acting for what I used to call the poor side of the deal, the developer. And, fortunately, there were
people in the firm who found very large clients who were poor in the sense that they were borrowers. And, I used to make those deals go and I loved it. I loved battling with the insurance companies, their lending mortgage loan officers, and the banks for interim financing and tenants, and most of the time when we acted in leases we were acting as tenants. But I thought it was great.

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

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

Judge Richey: It does.

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

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

Mr. Singer: I think his wife is still around town, isn't she? Adrienne?
Judge Richey: I think she is. I want to get it because I promised it to Judge Pat Wald and I have not delivered on it and they're just about to go on a trip to Egypt. I don't know why anybody would want to go to Egypt but she...

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

Judge Richey: Well. That's ridiculous.

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

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

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

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

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

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

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

Judge Richey: All right, sir.

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

Judge Richey: Oh, yes.

Mr. Singer: And he said we can go again on Friday from 4:00 to 6:00.
Judge Richey: Well, whatever he said. I don't know. I'm a prisoner of my staff.

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

Judge Richey: Is that this week?

Mr. Singer: The 12th. Yes.

Judge Richey: OK.

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

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

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

Judge Richey: OK.

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

Judge Richey: That's my birthday!

Mr. Singer: Well, OK...

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

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

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

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

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

Mr. Singer: Oh, really.

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

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

Judge Richey: Many, many times.

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

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

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

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

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

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

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

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

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

Judge Richey: Yes. As a district judge.

Mr. Singer: As district judge.

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

Mr. Singer: What were they?

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

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

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

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

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

Judge Richey: Right.

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

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

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

Judge Richey: By the time we got over to that courthouse whom Carswell had appointed from top to bottom were very distressed at his conduct in [garbled] that jury
and he was successful. His son-in-law was acquitted. The others were convicted but, like the judge, he got his just desserts later on in other ways and so did that young man who was the defendant. But it was a bad miscarriage of justice. And it might have even been worse had it not been for my having my own marshal.

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

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

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

Judge Richey: Tons.

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

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

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

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

Mr. Singer: That was different.

Judge Richey: The lesson though in going to another district, I guess, is to be very wary of
that for future historians and judges, because you usually get a tough case and a dog case and you better just stay home.

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

Judge Richey: I haven't done it since.

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

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

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

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

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

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

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

Judge Richey: It's a different ambiance but it's not a whole of a lot different than what we have here.
Mr. Singer: You felt more comfortable in Los Angeles than you did in Florida?

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

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

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

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

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

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

Judge Richey: To the system? Not really.

Mr. Singer: Not really.
Judge Richey: Oh, over the last two years when we've had visiting judges here, we just were so overladen with work. I've found that in every case, I was giving them instructions, telling them how to rule on evidentiary questions and all... I just had to...

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

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

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

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

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

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

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

Judge Richey: Right.

Mr. Singer: Not because...

Judge Richey: They were trying cases.

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

Judge Richey: Not of any significance. We have a rule in our dining room, you don't bring books up there. It's all kind of weird, but no word ever spoken there is repeated outside, that kind of stuff.
Mr. Singer:  That's OK. It's like a fraternity. But, but the [laughter], but in terms of there being any significant, either social or other kinds of cross fertilization...

Judge Richey:  Not much.

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

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

Mr. Singer:  Right.

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

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

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

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

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

Also able to sell some of my own.

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

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

Mr. Singer: That there would be a certain amount of either proselytizing or

propagandizing whatever you want to call it that...

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

kinds of innovations.

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

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

you try regulatory cases...

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

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

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


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

which is substantial.

Judge Richey: Substantial.

Mr. Singer: Yes.

Judge Richey: I want to say some. That brings to mind and I think something ought to be

noted. You know, the legal profession, which includes judges, is based on

history and precedent right or wrong. But that doesn't... just because it's

always been done in such a way doesn't make that always right. When
somebody comes along that's got a new or innovative idea, there's a natural resistance. Just a very, very vigorous resistance, but it takes courage to inaugurate change, particularly in the law and I think lawyers and judges are probably the most resistant to change of any part of human kind. And I think that's unfortunate.

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

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

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

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

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

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

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

Judge Richey: No. What the jury gets is what the court decides is appropriate and proper or the lawyers themselves will work that out.
Mr. Singer: Do you push it? I said do you push handing the testimony to the...

Judge Richey: Do I push doing this? Yes.

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

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

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

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

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

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

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

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

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

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

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

Judge Richey: Both.

Mr. Singer: Both.

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

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

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

Mr. Singer: How about in other places?

Judge Richey: Yes. Lots of them.

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

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

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

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

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

Judge Richey: But, yes. All through the northwest, the southwest, they're doing canned testimony now. I met a woman named Cabraser from San Francisco.

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

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

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

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

Judge Richey: No.

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

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

Mr. Singer: I do.

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

Mr. Singer: That I didn't know.

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

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

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

Mr. Singer: Oh, all of...

Judge Richey: All of us.

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

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

Mr. Singer: Special courtrooms for what purpose?

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

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

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

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

Judge Richey: I think life tenure is absolutely essential.

Mr. Singer: Would you see it in your own... I mean, do you ask yourself at some point.
"If I had to run again in ten years for this job, would I be doing it this way?"

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

Mr. Singer: Fourteen, I guess in New York

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Judge Richey: A law clerk?

Mr. Singer: [Laughter] Yes.

Judge Richey: In the presence of the judges?

Mr. Singer: Oh no.

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

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

Mr. Singer: This is a judge presently sitting?

Judge Richey: Yes. That's his rule.

Mr. Singer: What's [garbled?]

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

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

Judge Richey: You told me about that. And the only judge that would allow law clerks was Judge Leventhal. Although the other day, I'm sitting on a 3-judge Voting Rights Act case and the Circuit Judge invited the law clerks of the two district judges to come along. Big long record, I suppose he wanted to make the law clerks do that part. I was the only one there really familiar with the record.
Mr. Singer: What would be the theory behind not allowing an appellate court where there is a necessary interaction at the point of decision, at the point of writing, between the judges and there is however much you may not enjoy it, there is a negotiation...

Judge Richey: No question about it.

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

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

Mr. Singer: Yeah.

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

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

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

Mr. Singer: [Laughter]

Judge Richey: He also appeared before me.

Mr. Singer: I'm sure he did.

Judge Richey: Harold was good.

Mr. Singer: Absolutely. But Harold was a master at this, I mean, he used to come over and practically break your arm and it would most often be in the context of, you know, if you go that way you're going to lose my judge on this. He
really feels strongly. Or at least modify the language so that he's not
precluded in the next case from...

Judge Richey: Exactly. And they did that.

Mr. Singer: Sure.

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

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

Judge Richey: Harold Leventhal?

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

Judge Richey: All of that.

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

Judge Richey: And he also was kind of intimidating.

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

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

Mr. Singer: He just left to go to the...
Judge Richey: I know. He's over in Justice now, but essentially two years in the counsel's office, I think.

Mr. Singer: Right.

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

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

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

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

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

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

Judge Richey: Different alternatives to reach a given result.

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

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

Mr. Singer: Yeah.

Judge Richey: I know in one case it is not done. In other cases it may be done. I don't know.
Mr. Singer: I sense on the Supreme Court, it is done all the time.


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

Judge Richey: Correct.

Mr. Singer: Not as judges but as clerks.

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

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

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

Mr. Singer: That's for sure.

Judge Richey: And I have awesome power and awesome responsibility. You can't say one without the other. My wife tells me, to digress only for a moment, that I'm a different human being here at the courthouse, whether I'm on the bench or not, than I am at home. And she doesn't really like me around here. I don't
notice that I'm different but she tells me I am. And, she may very well be right, because to be kind of like Judge Holtzoff I think this is a temple where the most important business of the nation is conducted. And, I think that is a weighty responsibility, particularly if you are sensitive about human rights and advancing the cause of justice and civil rights and all those things. It requires every ounce of ability and energy and innovation. Everything at your command to do it and do it right. Fairly. One of my law clerks came in a couple of years ago and sat at my conference table across this room and said, "Judge, I've finally got you figured out." I said, "What's that, Martin?" He's now with Williams and Connolly. And he said, "Well, there's only one way to say it. Is it fundamentally fair? If it is, that's the side you're going to rule in favor of. If it's not, get out of here." And I think that pretty well sums me up.

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

Judge Richey: He did?

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

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

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

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

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

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

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

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

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

Judge Richey: That's right.

Mr. Singer: She was...

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

Mr. Singer: No.

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

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

Judge Richey: Before that.

Mr. Singer: Since Barrett Prettyman.

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

Mr. Singer: Pat is...

Judge Richey: I don't know how... I've watched her in meetings be brutalized, I thought.
Very unfairly and I wish I had her, I don't need it, but I wish I had her ability to put up with that stuff and deal with it effectively. She is absolutely par excellence. You have no idea, Dan, unless you've seen her under fire, and I doubt if you have.

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

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

Mr. Singer: [Laughter]

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

Mr. Singer: I didn't know that.

Judge Richey: Yes.

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

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

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

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

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

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

**Judge Richey:** ...another context?

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

**Judge Richey:** That is a great relief and that's correct. It does.
Mr. Singer: Is this what you meant by blossoming? Or did it allow you to read more widely?

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

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

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

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

Judge Richey: Yes. Yes.

Mr. Singer: When you were in practice?

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

Mr. Singer: Right.

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

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

Judge Richey: Absolutely. You would too. Anyone would. You read all that and you
don't have time for novels.

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

Judge Richey: Oh, yes.

Mr. Singer: And Judaism and ecology?

Judge Richey: Pardon?

Mr. Singer: Judaism and ecology?

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

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

Judge Richey: Absolutely. In my view he was.

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

Judge Richey: No question.

Mr. Singer: Yeah.

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

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

Judge Richey: Have they?

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

Judge Richey: I hope so because you know, Eddie Weinfeld got to the court very early.
Judge Richey: Went to bed at night and got up again. All his waking hours were devoted to that temple, as he used to call it. Not an original phrase with me.

Mr. Singer: How did you know him?

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

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

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

Mr. Singer: But he left the bench.

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

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

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

Mr. Singer: All right.

Judge Richey: I'm sorry.

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

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

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

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

Judge Richey: Correct.

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

Judge Richey: Exactly.

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

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

Mr. Singer: The one here?

Judge Richey: At home.

Mr. Singer: At home.

Judge Richey: My library at home. I didn't have anything on the bench that I knew of this morning because it was by mistake my staff had failed to put it on the calendar. 9:30 there was a call, this gentleman and I hard at work, intensely concentrated on what the heck this problem was and I was told about this case, namely it involves the presidential tapes case and records [?]. And there was a motion to compel the government to live up to its commitment to preserve these hard drives and back up tapes. But they've been essentially destroyed and impaired, not destroyed fully, but impaired when Reagan left
office and some to the same extent when President Bush left office. I made
the law that e-mail messages, these electronic messages, had to be saved and
preserved for purposes of history and that that was a responsibility of the
National Archives and Records Administration. I was told that I had a
hearing this morning at 11:00, could I be here? Yes, I'll be there.

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

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

Mr. Singer: Yeah.

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

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

Judge Richey: In Justice.

Mr. Singer: In Justice.

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

Mr. Singer: It was...

Judge Richey: Do nothing but work on this case defending the government. Well, I had the
press there. I saw the press sitting out there. It was kind of casual, but my God, there are two press persons every time there is... I should have known that there would be press there but I didn't pay attention to that. I never do. But, I had to go back over orders that had been issued three or four years ago and I really hadn't read any of the papers. But, one of the things I possess, God gave me I guess, was a great memory. And, so I really didn't have to read the papers. I knew what kind of a motion it was, I knew what they wanted, I could tell from their argument. I didn't decide the case in advance because I do look at the papers but I was able to pretty well tell them what...

Mr. Singer: What was the underlying...

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

Mr. Singer: That's a technical job.

Judge Richey: Well, in part.

Mr. Singer: Yeah.

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

Mr. Singer: NARA?

Judge Richey: National Archives and Records Administration.

Mr. Singer: Right.

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

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

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

Mr. Singer: On records.

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

Mr. Singer: It focuses the mind.

Judge Richey: All right, it does.

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

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

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

Judge Richey: No. The records of Reagan and Bush? That was one of the most difficult
ones. I got the answer at 2:00 one morning when I couldn't sleep. And I have a PC program called *PC Anywhere*.

Absolutely, we all have that one.

Judge Richey: We do?

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

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

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

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

Mr. Singer: OK.

Judge Richey: Betcha!

Mr. Singer: You're on.

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

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

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

Judge Richey: But that stuff at the top of the page, there's no way to print that out. It's called "job numbers" in the "Bit Fax" program. And the government was
arguing to me. That all they had to do was print this stuff out on hard copy
and that satisfied the Presidential Recordings and Materials Act and the
Federal Records Act. I didn't know that this essential information at the top
couldn't be printed out and the plaintiffs weren't making it clear to me either.
And so I remember back in….

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

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

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

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

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

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

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

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

Mr. Singer: Right.

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

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

Judge Richey: No, they weren't waiting, but it was here whenever they got here in the
morning. Called the lawyers in two days later advising them of my
discovery. And you know what? That was how I made the decision. By
luck. The plaintiffs hadn't really pointed that out. That's why we have today the law that e-mail messages are federal records. Under the Federal Records Act and the Presidential Records Act and must be preserved for historical purposes. I made that law that morning.

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

Judge Richey: Right.

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

Judge Richey: Correct.

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

[Telephone interruption]

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

Judge Richey: Yes.

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

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

Mr. Singer: OK

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

Mr. Singer: Now I understand.

Judge Richey: Well, that's a trick.

Mr. Singer: Yeah.

Judge Richey: But, therefore, if the sender prints out on hard copy, Daniel Singer from Joe
Zilch, that part, "What did you know and when did you know it?" isn't going to be there.

Mr. Singer: Quite correct.

Judge Richey: But they didn't tell me that. If they knew it, they were lying and I don't know the answer. I'm not going to call them liars, but they didn't make that clear.

But, that's how I found out. That's what you call "total immersion", I guess.

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

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

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

Judge Richey: Fall within that same category?
Mr. Singer: Yeah. In terms of the two or three or four most difficult cases that you've handled. What...

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

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

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

Mr. Singer: Right.

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

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

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

Mr. Singer: Yeah. That's a different kind of difficult from waking up in the middle of the night...
I tried Tony Boyle for illegal political contributions. He was President of the United Mine Workers. Right in the first year or two. That was about a ten-day trial. He had, I think, three or four additional co-defendants. It was an unusual case. There were no instructions, that statute, Charles Ruff, now a partner at Covington, was the principal trial attorney.

Mr. Singer: AUSA.

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

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

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

Mr. Singer: Yes. You did.

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

Mr. Singer: Didn't tell anybody basically.

Judge Richey: Nobody, except me and whoever it was I called, some high official in the FBI. And sure enough, that man had transferred $187,000... something between $187,000 and $190,000 from his name to his wife's name between conviction and date of sentencing. So what did I do? I used the Rules of Procedure. Never been done before in this court. We convicted him on thirteen counts.
I gave him probation on some but as a condition of appeal pursuant to the rules, I made him pay the fine, totaling the amount that he had converted from his own name to his wife's name to avoid the fines. And so, the words of art were the defendant shall stand committed until payment of the fine as a condition of appeal. The marshal took him into custody. He was in the cell block for a day. And you know, they got the money. Paid the client. That day. Before the marshal turned...

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

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

Mr. Singer: Who's they?

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

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

"No, that's it, Judge. That's all we have to do."

Mr. Singer: They just list the alternatives?

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

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

Mr. Singer: NRDC. Right.

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

Mr. Singer: A very famous case.

Judge Richey: You'll find that that bond, aside from the establishment of reasonable alternative doctrine, but that case will run you three or four pages of citations in Wright and Miller and probably Moore. I don't know, I haven't looked at Moore. But I did a couple of years ago and my goodness gracious...

Mr. Singer: This was followed all over the United States.

Judge Richey: By all kinds of courts. Then Christmas came. The late George Hart used to have an annual Christmas party. Hogan does it now. I reluctantly went; got there late.

Mr. Singer: Why reluctant?

Judge Richey: Well, I don't like the idea of the courthouse having liquor served; don't think it's appropriate. Secondly, I don't like, that offends me, religiously.

Mr. Singer: It's a church-state issue.

Judge Richey: Yes. It is. But, reluctantly, I thought, well, as junior judge, I better show up. I went. As I said, I got there late. But just before, Harold Leventhal came and Harold went like this with his finger. Come over here, in other words, come over here in the corner. And the conversation went as follows. An exact quote. "Chuck, do you know what I've been doing all afternoon?"

"No". "I've been listening to a bunch and oil and gas lawyers in the ceremonial courtroom for three hours." End of conversation. Oh, one more sentence. "All I can say, Chuck, is you've got a lot of courage." Period.
End of Quote.  End of conversation.  I thought, well, Harold is telling me that I'm going to be reversed.  But it was a two to one decision; I was affirmed.

Mr. Singer:  Who were the other two judges?

Judge Richey:  I don't know.  I remember the dissenter was George McKinnon.  I don't know who joined him.  Probably Carl McGowan.  But I thought Leventhal was telling me I was going to be reversed and I lost a lot of sleep about it because I put a lot into that case.  Even though I didn't write, I dictated the opinion.  But both of them are still great laws.

Mr. Singer:  Still good law.

Judge Richey:  Great law.

Mr. Singer:  [Laughter]

Judge Richey:  I did two juries involving those two members of the liquor board here in the City and some...

Mr. Singer:  I'm not a trial person so I really don't...

Judge Richey:  The first time two juries had been impaneled in the same case in this Circuit and among...I'd never seen it done before in the country.  But there was a prudent problem in the case...

Mr. Singer:  That's a question of taint from one to the other?
Judge Richey: Right. In other words, one of the co-defendants in the conspiracy had had a conversation implicating the other co-conspirators, two others, outside of their presence. Therefore, the defendants moved for a severance. The government opposed. I made an inquiry. Well, who else heard this? The defendant and this one person to whom he made the statement. Them ABC boys messed up. Meaning the other two defendants. That's all there was to it. That person he'd made the statement to was a drug addict. Wasn't a very good witness! But you couldn't allow that in a joint trial because of *Bruton v. United States*. So I said to myself, "Well, Richey, they're telling you you ought to have six weeks trial. I know that you aren't going to allow them to spend six weeks but you sure aren't going to let them have two trials back to back because of this *Bruton* problem." So after listening to their arguments out there, I said, "Counsel, court's ready to rule. I'm going to impanel two juries, based on your representations that this statement was made out of the presence of Defendant A and Defendant B implicating Defendant A and B and as to that witness and to the defendant, if he takes a stand, Jury A will hear it; Jury B will hear the rest of the evidence and the instructions and the opening statements will, by and large, be the same. If there's any difference, we'll excuse the jury." Turns out, everything was the same. All the prosecutor had to do was make two back to back opening statements and the instructions, I just made them to both juries at the same time. Everybody thought I was nuts in this courthouse. Crazy to do this. Never been done before.

Mr. Singer: Yeah. It's a pity that people think that something that has never been done
Judge Richey: Well, that's part of the law as I told you earlier today.

Mr. Singer: There's a whole community of people in the world who think that this is the first time...

Judge Richey: It was a marvelous innovation and it worked. I had to get a couple extra marshals and an extra jury room. I remember Judge Gesell, my old friend, was up here one night at some moot court meeting and I said, "Gerry, do you want to... let me show the way I've got the courtroom set up". "I don't want to have a thing to do with it". I mean, it was just terrible, criticism and resistance to it.

Mr. Singer: But how do you...

Judge Richey: And you just have to put up with it.

Mr. Singer: Is there a money problem in doing something like that? Do you have to find money to do that?

Judge Richey: No. I just order it. A little extra money for a marshal to attend the extra jury. But supposing I'd had two trials.

Mr. Singer: But who is it that makes... Is that something that Linda does as Circuit Executive?

Judge Richey: No, she doesn't have anything to do with that. I would call the marshal and tell him. Sure I did it in that case. "I need some extra marshals because I'm going to impanel two juries." "What's that Judge?"

Mr. Singer: You need more money for juries.

Judge Richey: You know. No. Well, it's...
Mr. Singer: If it's a money problem, nobody ever mentioned it.

Judge Richey: No. Nobody ever mentioned it. I told the Clerk. Of course it got in the newspapers and everything else. People came from far and wide. When I tried Rayful Edmond, my goodness, I had seven judges.

Mr. Singer: That's the one I mentioned before, and...

Judge Richey: That had never been done before either.

Mr. Singer: What did you do with Rayful?

Judge Richey: I ordered it... I had developed a questionnaire where all kinds of threats, and so on, murders, drugs. Millions of dollars and kilograms of cocaine being transferred, transported across the country and sold on the streets of Washington. I determined it was absolutely essential, not only to protect the jury, but witnesses and a whole host of things to have an anonymous sequestered jury. Anonymous sequestered jury. Nobody liked that in the beginning. That had never been done before. And, you're only allowed under criminal rules to have six alternates which has got to be a subject of a change because if you have a long trial or a trial like that, you'd be very lucky to complete it without running out of jurors. And, it was a very difficult case because the lawyers were not there to try the case, they were there to obstruct the process. That was their whole focus. I probably had fifty or sixty motions for a mistrial, everything. Nobody did anything right. They put their food at noon in the johns and flooded the basement of this courthouse. The marshal came to me one day said, "You're going to have a strike; they're not going to come in the courtroom." Might as well just put TV cameras in
the cell block where we can watch it. We didn't have the strike, but you
know, bomb threats all the time here in the building against me. I was in
protective custody, as they call it, for a year and a half. No fun.

Mr. Singer: Any cops sitting outside your house at night?

Judge Richey: Oh, yeah. Yeah.

Mr. Singer: The whole drill.

Judge Richey: It's no fun. That's not the first time, but I've had other, two or three, two
other experiences. And you know, you go to bed at night. Oh, my
goodness how many motions am I going to have. As you know, I'm
interested in history so I remembered that Jerome Frank. It was Frank and
Medina. Medina.

Mr. Singer: Medina. Right.

Judge Richey: Tried the Communists in the '40's. Had the same situation. Some of them
were jumping up all the time, making speaking objections in front of the jury
and so on and I had an ex-judge, one of the defense counsel and even though I
admonished him that he was not to tell the jury he was an ex-judge because
that's a violation...

Mr. Singer: Who's that?

Judge Richey: A fellow named Murphy from Baltimore, and African-American. Very
articulate. Smart guy. But he, nevertheless went right ahead and told them
he was an ex-judge. But, I've forgotten the point for a minute. Oh, I go to
bed at night and I think, "What can I do? I'm going to have six motions
when I get up in the morning." And they'd be coming in during the day.
"May we caucus, Your Honor?" All kinds of things. So I developed the Medina technique. "You got any more motions you want to make during the day, we'll take them up during the recesses. I'm not going to impair this jury. It's not to your benefit nor your clients'. Either side. You put them in writing." Oh, they screamed like stuck pigs.

Mr. Singer: [Laughter]

Judge Richey: But that's what Medina did.

Mr. Singer: Yeah.

Judge Richey: And I don't know how I found out but I knew it. And thank goodness it worked and it's been approved.

Mr. Singer: Uh, huh. What were the other two protective custody cases? That's serious stuff.

Judge Richey: Oh, the IRS brought a case against a Synanon group. A religious cult.

Mr. Singer: In California.

Judge Richey: And they had put a bomb and a snake in somebody's mail box out there. Prosecutor's mail box. I was under threats at the time.

Mr. Singer: Prosecutor's mail box.

Judge Richey: I had a lot of threats during that case. Another religious group, Scientologists.

Mr. Singer: Threats from the Scientologists, really.

Judge Richey: Ohhhhh.

Mr. Singer: I mean...

Judge Richey: Well, I don't... they...
Mr. Singer: They're real nut cases in my book, but...

Judge Richey: I tried nine of them. Put a sentence on...

Mr. Singer: Ron Hubbard. Not surprised.

Judge Richey: Right. His wife was a lead defendant. Very contentious. They ended up pleading guilty but, oh, it was an enormous amount of work. Every motion known to human kind.

Mr. Singer: Let me ask you about sentencing which is an area in which I have no experience at all, but it's just as a kind of casual leader of both legal and lay press, one gets the sense that there have been significant changes in sentencing practices over the course of at least my legal career.

Judge Richey: That's right. Starting in November 1, 1987, as a result of the, which Sentencing Reform Act of 1984 was Title II of the Comprehensive Crime Control Act which should never have been allowed to pass, but nevertheless it did. It did away with all my good work with Dave Bazelon on the Youth Corrections Act and Narcotic Addict Rehabilitation Act, both of which were repealed and they set up this structure to establish a commission, nothing more than a regulatory commission to develop guidelines to promote uniformity and sentencing. That was the rationale. My friends Ken Feinberg and Steve Breyer were the promoters of that in the Senate Judiciary Committee and they got my friend Ted Kennedy to join Strom Thurmond in sponsoring it.

Mr. Singer: A marriage made in hell. [Laughter]

Judge Richey: Well, I want to tell you, you know what happened? When he signed off...
Mr. Singer: When Ted Kennedy signed off?

Judge Richey: When Ted Kennedy signed on at their behest, as a matter of public record, it went through the United States Senate like greased lightning. And you know what? They never had as much as a hearing in the House of Representatives. It was adopted in haec verba. I'm telling you the facts.

Mr. Singer: That's a little frightening for a major piece of legislation.

Judge Richey: But that's what happened. And, it has changed. It's put a lot of structure into the subject matter of sentencing. Judge Harold Greene calls it "vending machine justice". But I was more fortunate than most judges because right after the statute was passed in '84, I decided that I wanted to be on a judicial conference committee and if I was on one, I would want to be on what was then the most powerful important committee namely, what was then called the Committee on Court Administration. And I'd...

Mr. Singer: The most powerful what?

Judge Richey: Well, they ran the Judiciary.

Mr. Singer: OK. I mean that's where they're...

Judge Richey: Yeah. At that time that was where the power was vested. Under the aegis, of course, of the Chief Justice.

Mr. Singer: Uh huh.

Judge Richey: So I asked for an appointment with the Chief Justice. Got up there, he gave me an appointment; took a little doing to get it and I thought that was mostly what it was about. Instead, when I got there, it was supposed to be ten minutes, we never talked about the Committee on Court Administration but
the GD crime bill and how the Judicial Conference of the United States had
never been asked for one word or comment by the House of Representatives
and how tragic it was to change the law of sentencing in such a draconian
manner, without any input from the judges and the Judicial Conference. And
so I left there. They had to buzz him and tell him what we want. There a
half hour. Warren Burger just couldn't get over this. I thought I was talking
to Bazelon.

Mr. Singer: [Laughter]

Judge Richey: Well, he had a tremendous interest and still does, I guess. I don't know. I
haven't seen him for years, but in corrections and so forth. And a... very
interesting.

Mr. Singer: He's had an interest, I think in administration...

Judge Richey: I got a letter about a week later signed from W.E.B... The development of the
first draft of the first guidelines of the staff from Justice and I attended all of
those meetings here and all...

Mr. Singer: Essentially a labor to which you were hostile. He didn't want the guidelines.

Judge Richey: No, but, I had to make them work.

Mr. Singer: I understand.

Judge Richey: And that's how I got to know Steve Breyer, Ken Feinberg. I knew who they
were but I didn't know them until then. They were very much a part of it.

Ken was on the commission. I mean Steve was on the commission. I
remember being out West with Feinberg some place, I guess it was San
Francisco, and I said, "Ken, let's stay over the next day with Dave Shapiro and
have some fun." "No, Chuck, I've got to go back tonight on the red-eye."

"Why?" "Well, you know, the guidelines become effective tomorrow and I had a great deal to do with that and I think I ought to be around. So I'm going back tonight". Anyhow, that six years was a.... and I did a lot of teaching about that too because I learned. What demand, how we were supposed to operate? It has diminished the discretion of a District Court Judge but you know something, I read. My colleagues are so angry. Many of them haven't read it yet. They are still here.

Mr. Singer: Those are the...

Judge Richey: Sentencing guidelines. It's nothing more than what's in the CFR as those are by the FCC or Federal Power Commission, what have you. And if you do that, then you can do things.

Mr. Singer: Right.

Judge Richey: And I haven't liked some of the mandatory minimums. I think they are an egregious abuse of discretion on the part of Congress, but the Supreme Court agreed with the Administration in the Tenth Amendment, you know...

Mr. Singer: In the sense that they are taking from you, from the District Judges, a discretion which, at least has historically has been with the judges.

Judge Richey: Exactly. And they can't possibly legislate across the board for every particularized case, because every human being is different, the facts are always different, some of them develop into patterns. But... The first guidelines were, the first edition were not mandatory, statutory mandatorily driven. Then the Congress got up on its hind legs and passed all these drug
laws, Anti-drug Abuse Act of 1988 and that skewed the guidelines and the Commission had to change course. That did put us in a legal strait jacket. And of course you know there've been years of litigation all over the country. Judges have even resigned because they wouldn't put up with this stuff.

Mr. Singer: I was unaware of that. Who was the...

Judge Richey: Oh, a judge in San Diego resigned over it, public statement. There are other judges around the country who have done it. Judge Sweet in the Southern District of New York has gone on television. A lot of...

Mr. Singer: Bob Sweet.

Judge Richey: Whatever his name is. Judge Sweet.

Mr. Singer: Let me ask you. Again in this kind of retrospective look at a rich and rewarding career. Certainly on the bench. Not economically you didn't get to be Croesus on the bench, but rich certainly in terms of all the other kinds of professional rewards and personal rewards. But on looking back, what kinds of things look different to you now. What kinds of things about the practice, about the people, about the process, about the plantation...

Judge Richey: What are different now than what they were when I was practicing or when I began?

Mr. Singer: No. Not only... I'm interested something a little different. That your perceptions of...were there kind of big changes from your perceptions of things ten and fifteen years ago than there are now of those same events. In other words, in some sense, have you changed your mind, but I recognize...

Judge Richey: Yes. Yes. I have changed my mind very substantially. A. The size of the
Judiciary is getting too large. Congress has imposed, without regard to a Judicial Impact Statement, like an Environmental Impact Statement and the rest, they passed too many laws giving us jurisdiction over matters that really are the province of the states. When I came to the court, for example, I said I thought lawyers should be able to do voir dire. That took me a month but I saw how terrible lawyers did it, unlike I used to do it. And so I reverted to doing it because I could do it better and more fair.

Mr. Singer: And faster I suspect.

Judge Richey: Pardon.

Mr. Singer: And a lot faster.

Judge Richey: And a lot faster. But better, more fairly. I also was a great believer in diversity of citizenship. Even though that's inconsistent with what I just said about the enhancement of jurisdiction.

Mr. Singer: Diversity jurisdiction.

Judge Richey: Yes. I now think that that's probably wrong. Why was I wrong about that? Because I think the state courts are not quite as politically infected as they used to be, they're more professional and we just have so much on our plate we shouldn't be trying an auto accident case or even a medical malpractice case or a product liability case. That's for the states. I totally, you ask someone...

Mr. Singer: This is for somebody else, whether it's for the states or some new kind of process, would you...

Judge Richey: I don't know about that. You see, when I started to teach in 1976, I think it
was, the EEOC law to my colleagues, I never will forget the first speech I made, the first workshop was in Chicago and all these great judges, Hubert Will, Bill Campbell, Pren Marshall, I remember at the question and comment period Hubert Will said, "Oh, Chuck, isn't it a fact that this ought to be for a specialized court, this kind of stuff you're talking to us about?" "No, Hubert. That's what courts of general jurisdiction are for and this involves one of the most important sacred rights that anybody has ever had. It goes back to the Civil War post reconstruction era statutes. This is not new, we just haven't had the lawyers bring the cases and we have a duty now that is made applicable to both the public and private sector. To learn how to do it, that's why I'm here. It's not a specialized quote problem. That's not an answer, Hubert." It is not an answer to do specialized court for medical malpractice cases either, or anything else. I'm sorry.

Mr. Singer: Well, no, but I mean, that's one of... let me just follow through with regard to specialized courts in the area in which you've indicated you changed your perception.

Judge Richey: I have.

Mr. Singer: How do you feel about the... I mean if... everybody who now has an account with a brokerage firm agrees...

Judge Richey: Arbitration.

Mr. Singer: Arbitration. Right.

Judge Richey: Well, the Supreme Court just upheld a punitive damage award in an arbitral proceeding.
Mr. Singer: Right.

Judge Richey: And I'm very disturbed about that.

Mr. Singer: OK.

Judge Richey: I resented that compulsory type of arbitration. As I told you I think the last time, I just spoke to the Florida Bar and I was told that Middle District of Florida has got a compulsory arbitration procedure in all civil cases except those which involve constitutional questions and the losing party has to pay a fee to the three lawyer appointed arbitrators of $100 apiece. So, that's not right. I think it's wrong. I oppose it. I don't want anybody to be denied access to the federal courts. I think mediation is a good wholesome thing. ENE like you're doing, but when it becomes binding? No way. If it impairs the ability of a litigant in his or her or its access to the courts later on, I'm against that too.

Mr. Singer: But if you believe that the Judiciary is too large and there's too much federal jurisdiction and somebody tries to develop a mechanism to address those issues in securities cases under the Federal Securities Act, that I mean there are just too many of them, they're requiring us to have too many judges in place, we can't duck the fact that there's a federal question in every one of these Securities Act cases, unless, it seems to me, you find a way to get some of those cases by class, not by one at a time. Let's say, "OK, look, Securities cases..."

Judge Richey: Go to arbitration.

Mr. Singer: Go to arbitration.
Judge Richey: I guess that's all right because you know what, that really only involves money.

Mr. Singer: Only money. Absolutely.

Judge Richey: That's why I say I could probably accept it.

Mr. Singer: OK.

Judge Richey: But when you're talking about an employment discrimination claim, whether you know it or not, I can tell you, most employers in the United States now have not only employee/employer handbooks, but they also have forms in their hiring plans that many employees in some industries have to sign to agree to arbitrate their disputes by...

Mr. Singer: That's certainly the wave of the future.

Judge Richey: Well.

Mr. Singer: [Laughter] Your facial expression tells me you're agin it.

Judge Richey: Yup.

Mr. Singer: Big time

Judge Richey: You're correct. You know me.

Mr. Singer: Naw. I'm learning.

Judge Richey: You're against it too, Singer.

Mr. Singer: [Laughter] Well...

Judge Richey: Goddamn it. You're against it too because it isn't right.

Mr. Singer: Wrong... on the employment issue...

Judge Richey: This is the only area... first of all, it's the most important area involved in anybody's life in America today.
Mr. Singer: A new job.

Judge Richey: Well, wait a minute. You just stop and go through a scenario and think about it. You spend six or eight hours a night sleeping. But if you add up all of the hours, eating, traveling to and from work, the majority of any American's time is spent in the work place. Therefore, borrowing the phrase from the Civil Rights Act of 1964 which I witnessed passage in the gallery of the Senate, affects the terms and conditions of an American's employment. And since that time, lawyers, the workers, rather, of America all workers, no one could rely on unions, collective bargaining agreements to resolve their employee/employer disputes. The focus of that is now in the courts of the United States, both state and federal. And I'm not going to be a part, and I'm going to resist any effort to deny those human beings access to the courts whether it be by way of a class or individuals. It's wrong to do otherwise.

Mr. Singer: Do you think you can draw lines so that some kinds of employment disputes can stay or get out of the courts?

Judge Richey: I have thought about that a lot. As you know, I've written a book...

Mr. Singer: You know more about this than almost anybody, so...

Judge Richey: Well, there isn't... I can't figure out a way to have a termination case, a retaliation case, or a common law pendant claim that provides the same or similar relief. I can't find a way to do that whereby the courts would not be burdened with these claims. The problem with it is this, Dan. Lawyers are not the most skillful people and most knowledgeable, unfortunately. They draw a complaint and assert a federal claim under 42 USC 1983 or Title VII.
OK? And then they attach ten common law pendant claims. That's not uncommon. When I call them in for a status call, I say, "Mr. Singer, you represent the plaintiff?"

"Yes, sir, Your Honor, I do."

"What are you here for?"

"Money."

"What is your best shot? Which one of these twelve claims you have asserted represent your strongest case? Tell me. I'll give you two."

"Well, Your Honor, my 1983 claim and my Title VII claim."

"Oh. You know you now have a right to a trial by jury?"

"Yes, I'm aware of that, Your Honor."

"All right, under Rule 42B, except I haven't talked to the defendant yet but I think that I'm going to separate those out."

Those are the words of Art. "Separate". In criminal law we would sever, severance.

"Any objection on the part of the defendant?"

"No, Your Honor."

They go to trial; verdict one way or the other; the rest of the claims go away. Why should I spend my time boring a jury spending two days instructing on the elements of each one of those claims. Ridiculous. Now that's the only way you can narrow that down.

Mr. Singer: You know, one of the areas that occupy some role in the federal judicial system is tax litigation. And for sure the only issue in virtually all tax cases
is money. How do you feel about taking...

Judge Richey: That's why we have a Tax Court in the United States.

Mr. Singer: Yeah, well people...

Judge Richey: Well we shouldn't have the right of them. The taxpayers shouldn't have the right to appeal to our court. They've got a court over there. It's not a jury issue.

Mr. Singer: Right. OK.

Judge Richey: You got the All Writs Act.

Mr. Singer: Right.

Judge Richey: We shouldn't interfere with tax laws except in the rarest of examples. That's about all they need. There is possibly one exception to what I've said and that's the area of patents. Which, I don't... there are a few judges like them... I don't. It involves hard science, the lawyers are difficult to manage; the reason they're difficult is they don't know what they're doing in the litigation setting and they're very contentious.

Mr. Singer: And, well and you have a...well, there is a lot at stake but you have an administrative agency that, at least in my experience, is not the shining example of...

Judge Richey: You know who I'd like to have come down here and put on a robe next, is your partner Milton Eisenberg. The reason I'd like to do it is because Milton would do a good job, but more importantly, because they would be put through the hoops by my friend and your partner. He wouldn't tolerate them for five minutes. But I have to and so...
Mr. Singer: That goes with the territory.

Judge Richey: With the territory.

Mr. Singer: Are there classes of cases from which you routinely recuse yourself?

Judge Richey: No.

Mr. Singer: Are there judges, I mean I know of one judge in the Superior Court who works very hard but takes no criminal cases.

Judge Richey: What? Wow. I couldn't do that. We would... I'd have my colleagues on neck.

Mr. Singer: Well, he's obviously made a deal with his colleagues somehow. He takes all of the... controls an enormous docket and he's immensely efficient in disposing of them. My sense is he's made a deal with his colleagues.

Judge Richey: I would think he'd had to. I look at every case criminal and civil. Jeffrey makes a file the minute it comes in. I read it for recusal purposes. Secondly, I read it for management purposes.

Mr. Singer: What does that mean? To read it for management purposes.

Judge Richey: You don't have any idea?

Mr. Singer: Well, I'd kind of like to preserve your view of that.

[Laughter]

Judge Richey: All right. Excuse me. I apologize.

Mr. Singer: On tape. [Laughter]

Judge Richey: If it's a criminal case? I write a note like that follows: "Debbie: arraign ASAP. CRR. If it's a civil case...

Mr. Singer: Debbie's one of your clerks.
Judge Richey: Court room deputy.

Mr. Singer: Court room deputy. Ummhmm.

Judge Richey: She'd done the cassette, follows down to her, either that night or that morning, the next morning. It's the first thing she does, calls the lawyers. Judge wants you to come in for arraignment or whatever it is. Civil case. Call the lawyers. Rule 16 status conference. ASAP. She knows my calendar, when I'm going to be available. She'll have them in here and then when they come in, they fill out two little forms. If it's an employment discrimination case, you fill out two forms. What we call a trial certification sheet, one page. Example: Number of witnesses. Lay and opinion. Not expert. Lay and opinion. And estimated time for trial. Waiver of trial by jury. Yes or No. On an employment discrimination case, in addition, they have to label the kind of case. Disparate impact, disparate treatment, pattern and practice, so on and so forth. Pin people down. I can look at that in two seconds because of my knowledge and experience and I can get that case on track immediately.

Mr. Singer: What do you do? How is it that you deal with the fact that through the discovery process, for instance, which has not yet begun at the point of which you are looking at these?
Judge Richey: Right. I get them in. Maybe there'll be in a week in my court and you know, the local rules provide for a tracking system and all that, of which I say is developed. And I was on the committee. Designed for the lowest common denominator of the bench and the bar. I'm the highest. I don't need that. And I mean it in all seriousness. If Eddie Weinfeld were here he would tell you the same identical thing. And all good judges would. When they're here, I can look at that in two seconds. I could see what the nature of the claim is. If it was one of these stupid diversity cases or something like that, a breach of contract case, say a breach of contract case, then they got a big long pile full of witnesses, lay and opinion. I said, "You must have a weak claim. You need all these witnesses? You want to depose all of them?" Well. I talk about 42B and blah, blah, blah. Before you know it, it's down to seven or eight.

"And how long are these depositions supposed to take?"

"Oh, maybe three hours a piece."

"Well, three times seven is twenty-one days, right?"

"Yeah."

"We ought to be able to do that in sixty days. Put your shoulder to the wheel. Your client came to you because he or she wants some money. Right?"

"Oh, yeah. Your Honor, I've got a big trial schedule."

"I know, but your client thinks this is the most important case in his life."

"All right, the defendant. How many witnesses you got?"
"Oh, we've got 42 witnesses, too, Your Honor."

"Well you must have a weak defense."

Then you go through this litany and before you know it as Bill Schwartz says,

"You shape the case." And you can make a rational decision as to how much is a reasonable time, putting the lawyer's shoulder to the wheel to engage in discovery, file dispositive motions, set a pre-trial date, firm, with all the requirements and a trial date.

Mr. Singer: When do you acknowledge the existence of Linda Ferren's office? The mediation or Nancy Stanley's office?

Judge Richey: Oh, I always acknowledge her...

Mr. Singer: No, I mean but in...

Judge Richey: I know but they seldom ask me. They do occasionally. But you know what I do? I say well, "That's fine." We've got a marvelous office down there and they have taken the trouble to train the Bar with experienced mediators. I'll tell you what I'll do. You've got sixty days or ninety days to complete your discovery.

Mr. Singer: Correct.

Judge Richey: You've got ninety days to complete your mediation.

Mr. Singer: Right. Right.

Judge Richey: By that time we've also got to do your discovery and have it over with. Then you've got X days thereafter to file your motions, if there are going to be any motions. And then you've got a pre-trial and a trial date. I'm not going to change that date to accommodate them. You've got to accommodate this
schedule because that's all the time I have. Here's my calendar.

Mr. Singer: But when you set your... I want to be just a little bit of a missionary.

Judge Richey: Sure. You're going to have to be for them.

Mr. Singer: But, in almost all diversity cases, certainly in the contract cases...

Judge Richey: They could be of enormous help. That's where they're good at it.

Mr. Singer: That's right.

Judge Richey: But if you get a case like the one I had today involving the Office of the President of the United States, the National Security Council...

Mr. Singer: It's not going to be mediated.

Judge Richey: No.

Mr. Singer: But for instance. Funny things happen. Supreme Court yesterday. Ruth Ginsburg decided this case on zoning law, the zoning case.

Judge Richey: Oh, yes. Good decision.

Mr. Singer: I think so. I've got it on my desk and I...

Judge Richey: Well, I haven't read it but the result is right.

Mr. Singer: I think that is true. But all over the country there're cases, at least one of which in this district, is in the active mediation process. But for the fact that the outfit on the other side of the Corporation Counsel's office, it seems to me, that case ought to mediate the conclusion very quickly.

Judge Richey: If you've got good lawyers it should be. You're right.

Mr. Singer: I'm not... well... it's Oxford House and it's the same lawyers that did...

Judge Richey: I know Oxford House. I know all about it.

Mr. Singer: Those people are dandy.
Judge Richey: No question about it.

Mr. Singer: On the Oxford House side it's the other folks that are going to give me a problem.

Judge Richey: Well. I'll tell you something.

Mr. Singer: I assume you…

Judge Richey: You couldn't be more right there that that case is the appropriate case in the light of the Supreme Court.

Mr. Singer: That's the Supreme Court decision.

Judge Richey: For mediation. And if the judge has got any brains, whoever he or she or it is, if it were my case on my calendar, you know what?

Mr. Singer: You'd send it back.

Judge Richey: I would call them up and, "How're you getting along in mediation?"

"Well, Your Honor, the other side is not cooperating."

"That's the Corporation Counsel," you'd say.

And I'd say, "Wait a minute. Get Mr. whatever his name is, the head of it. Bring him over here tomorrow. I'll see you at 2:00. Tell him I'm serious about this."

Mr. Singer: Yeah.

Judge Richey: I wouldn't bring the mediator because I don't know who it is. "Now look, you've got this new decision. This is something you've got to deal with one way or another. I don't think you've got a leg to stand on in the light of the Supreme Court precedent. Now why don't you do something about it? It isn't going to cost you any money."
Mr. Singer: Sure. This one doesn't cost them any money.

Judge Richey: This is something you could do some good about.

Mr. Singer: Right.

Judge Richey: Now let's do it tomorrow. Or the end of this week.

Mr. Singer: Right. I quite agree. But in my own view...

Judge Richey: That's what you call judicial management.

Mr. Singer: OK.

Mr. Singer: That's what you call judicial management.

Mr. Singer: Right. And I gather that you view your use of your management skills as somewhat unique among your colleagues.

Judge Richey: I do.

Mr. Singer: I think I stated it correctly.

Judge Richey: You did.

Mr. Singer: I want to ask a couple of questions. Why should that be? Do you think you could change it? Should the Administrative Office...

Judge Richey: No. I can't change it. Neither can the Administrative Office or anybody else. The only person that can change it is the President of the United States, whomever it may be.

Mr. Singer: Right. But he changes it only by changing the appointments.

Judge Richey: Correct.

Mr. Singer: He gets one bite out of each guy.

Judge Richey: And that person ought to have, as I told you before, the number one requisite for being a good judge is management ability and if they can't do that, they're
going to be a failure as a judge.

Mr. Singer: Even at the Circuit Court level. Yeah.

Judge Richey: There's a truth. Here is the latest statistics of my court. Civil and criminal.

Mr. Singer: That's the embarrassment list where they list them by name that you know the state of each of the judges.

Judge Richey: And the manner by which they were terminated. Wait a minute. Tell them by month, by year. January through April, 1995. They're together. I've had more filing or as many filings as any other judge in this court.

Mr. Singer: That's right.

Judge Richey: Look at the terminations. More than any other judge of the court. Total terminations. Now...

Mr. Singer: Then you get this court order.

Judge Richey: Now wait a minute, wait a minute. I want to show you something else. Something else. In court time, who had the least...and the second...this is a brand new judge we would not...

Mr. Singer: Right.

Judge Richey: I only had two more hours, roughly speaking, than this new judge, also a new judge. So you take theirs off and look at the difference between me on the bench and my colleagues. Up to 353. Now just take that person over here. It says...this proves my point if anything ever does. Here are the cases pending at the end of the month. He had 145 cases, your buddy had 41. He had the most time on the bench.

Mr. Singer: This one was the one.
Judge Richey: Yes.

Mr. Singer: It's really interesting what the...

Judge Richey: You see. Look at all these judges and how much time they spent on the bench as against how many cases they've terminated.

Mr. Singer: That's so that you're sure that...

Judge Richey: You know, it just doesn't make me popular.

Mr. Singer: I can understand that. But what I think...

Judge Richey: But you know, I don't have to care.

Mr. Singer: Yeah.

Judge Richey: And I don't. 'Cause I'm here to do a job.

Mr. Singer: I'm going to say that we've been at it two hours.

Judge Richey: We have?

Mr. Singer: It's been a wonderful two hours for me. [Laughter]

Judge Richey: Oh, bless your heart, Dan.

Mr. Singer: And, I will call Jeff tomorrow and try to continue this...

Judge Richey: I'm at your disposal. I committed myself to do this and I haven't been able to prepare for... I'm just trusting...

Mr. Singer: I don't know how you're supposed to prepare for it.

Judge Richey: I don't know what I'm supposed to do.

Mr. Singer: Well, you always do what you're told, don't you?

Judge Richey: I try.

Mr. Singer: [Laughter]

Judge Richey: In appropriate authority I am very deferential to my chief judges, my wife.
Mr. Singer: The important people...

Judge Richey: The important people. You. Linda.

Mr. Singer: Well, I must say that the whole notion of the importance of administration is one with which I was really...largely unfamiliar.

Judge Richey: If that doesn't prove it to you...

Mr. Singer: Are those data... public data?

Judge Richey: No. But under the Civil Justice Reform Act, they're now supposed to be. The Washington Post six months ago did a study and they'll do it again very soon. As soon as they get that out of the AO.

Mr. Singer: Right.

Judge Richey: But you know, they don't... newspapers haven't yet become sophisticated about this stuff...

Mr. Singer: They may not know what they're looking for which is...

Judge Richey: They haven't learned... They don't look at total terminations. They look at how many cases are more than three years old. How many motions have been pending for more sixty days?

Mr. Singer: But they don't understand it. I didn't understand 'til it kind of clicked when you pointed it out that spending a lot of time in court is not productive. I mean, I'd always thought as a practitioner, the kind of law I practiced, that every minute I was in court was a disaster.

Judge Richey: Well you were right, weren't you?

Mr. Singer: Well.

Judge Richey: Didn't that prove it?
Mr. Singer: I feel better about it now but people, my litigating partners thought I was...

Judge Richey: Well, those litigators, unfortunately, didn't know what they were talking about.

Mr. Singer: I always thought they spent too much time polishing the benches at the expense of the clients, but...

Judge Richey: You couldn't be more right. You're absolutely right. I wish, well, you're retired now unfortunately or I wouldn't know you, but that would be my terrible loss. But I wish to hell you were, guys like you should have been litigators rather than a financial transaction lawyer, real estate lawyer. You obviously understand it and you were right. But your partners don't understand this. The litigator.

Mr. Singer: Oh. The American College of Trial Lawyers.

Judge Richey: They don't understand it either.

Mr. Singer: Yeah. And I've got a lot of those people in my law firm.

Judge Richey: Of course you do.

Mr. Singer: Not just ATLA. Not just the American Trial Lawyers. The college people.

Judge Richey: College of Trial Lawyers. Well, that's a little bit better.

Mr. Singer: Well, they have fancier clients. OK, I'm going to turn this... Telescopes.

Judge Richey: Telescopes of the world. And there was a man named Bob Robnikoff. A Russian who was head of the astronomy department and ran that whatever you call it.

Mr. Singer: Uh huh. Telescope.

Judge Richey: But that isn't the name of it. That's what was in it. But big round building,
huge

Mr. Singer:: A dome.

Judge Richey: Dome.

Mr. Singer:: Observatory.

Judge Richey: Observatory. That's it. Now you're helping me, for a change, you rascal. And, you know, it seemed to me a tragedy, I don't know anything about astronomy, I knew Mr. Bob Robnikoff, imposing, big, tall man, Russian. God.

Mr. Singer:: Did he have a great beard too?

Judge Richey: Yes. Yes. This was back in the 30's and 40's. And you know, years later they gave that darn thing because of economics to Ohio State University. It was out on the edge of town, but I don't know, it's probably still there, but it's kind of come into disrepair at last I heard many years ago. But I just happen to think about that in connection with what your wife is doing tonight.

Mr. Singer:: She is actually building, she is part of a joint venture that's trying to build a very major telescope in the northern Chilean dessert. Actually two of them in northern Chile and Ohio State at one point was a potential partner in all of this.

Judge Richey: Do you know that could be because they may have rejuvenated that?

Mr. Singer:: No. We've talking six and one-half meters.

Judge Richey: I don't know what you're talking about.

Mr. Singer:: Twenty feet across.

Judge Richey: Oh, this was huge. This was huge.
Mr. Singer: Twenty feet.

Judge Richey: Oh, I don't know how big it was. It looked like it...the building...

Mr. Singer: The building, but the mirror was just a piece of glass.

Judge Richey: I probably was in it. Probably was forced to go in it but I was so young I don't remember. But boy, it was big. It was big. It was either the third largest in the world.

Mr. Singer: When you were smaller, it looked bigger.

Judge Richey: Maybe so.

Mr. Singer: OK.

Judge Richey: My recollection is the size of the building was darn big, Dan.

Mr. Singer: The buildings were always big and as the techniques...

Judge Richey: I know nothing about them.

Mr. Singer: As the techniques of building mirrors for building telescopes improved, one of the ways they improved was to make...

Judge Richey: Smaller. Smaller buildings.

Mr. Singer: Well. They made a smaller building because they were able to fold the light.


Mr. Singer: As a kid. Enough.
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
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 stewed 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: Awwww, 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 Lindsay, 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. \( \pi \) 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 your 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 tripled 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 upheld 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.
[Preceded by discussion of Robert Putnam, *Bowling Alone*.]

Judge Richey: Why Richey?

Mr. Singer: [Laughter]

Judge Richey: Because I was so darned inquisitive and asked always for an explanation of: Why is this? Why is that? Why do you do this? Why do you that?

Mr. Singer: I think it's a wonderfully fair question for a guy like Putnam.

Judge Richey: It is. It is. And you say he blames his... his thesis is that it's...

Mr. Singer: Yeah. He blames in large part on television...

Judge Richey: Well. Leon Higginbotham was at our house for dinner a couple of years ago in conjunction with a program sponsored by Ruth Ginsburg and Jim Buckley and I were the only three judges here that agreed to it but it was some international exchange program where we had foreign judges. And they asked us to entertain a group. Leon was in our group.

Mr. Singer: Foreign judges meaning judges from other circuits...

Judge Richey: No. Other countries.

Mr. Singer: Other countries.

Judge Richey: Foreign countries.

Mr. Singer: Leon doesn't qualify?
Judge Richey: Well, true. But anyhow, he came.

Mr. Singer: Yeah.

Judge Richey: With some relative of his wife's. Nice lady. I guess it was his mother-in-law. He brought her. He was a judge on the Supreme Court of New Hampshire; at that time Souter was up for confirmation, whenever that was. A judge from Papua New Guinea. I forget where the other judge was from. But Leon and his mother-in-law came first and I had the television news on. And Leon knows me very well and he immediately lights into me for watching the tube. And proceeded to tell me that he was director of the National Geographic which raised my eyebrow a little bit. I tried to restrain myself as a good host. And he said they're having difficulty competing with the electronic age and therefore they had diverted a lot of their resources to meet that kind of competitive need.

Mr. Singer: Uh Huh.

Judge Richey: And he said people like you Chuck, are responsible for a lot of this. You're not reading anymore; you're watching the news on TV. Well, I don't think watching the news on television is that bad. I don't know whether it was in jest, in part or not. But, he did say that. I think he's right. This Putnam is correct.

Mr. Singer: Well, you've got to read it first.

Judge Richey: Well, if... based on what you tell me... I will read it. I thank you very, very much.

Mr. Singer: OK. Let me... Let's...
Judge Richey: Now I had Jeffrey get out this awful...

Mr. Singer: My request was to find maybe three or four of them [laughter] that we could ramble through. Let me just tell you Jeffrey also gave me Peter Gerhardt's telephone number...

Judge Richey: Oh. Good.

Mr. Singer: Because I will be getting in touch with him concerning the nature of the Deed of Gift and the Grant and whatever...

Judge Richey: Well. I'll give you a copy of it if you want.

Mr. Singer: No. No. No. I don't need your deed to him..

Judge Richey: It's right up there on the wall.

Mr. Singer: Oh. OK. But basically what you said to us last time... the last time we got together on this we talked a little bit about this and it may be toward the end of this you mentioned something like twenty-five years. But, I will go through here and pick up what you said...

Judge Richey: It is twenty-five years after my demise...

Mr. Singer: Right.

Judge Richey: That my papers will be made available to the public.

Mr. Singer: Right. And you indicated that that's the same kind of constraint that should govern these tapes.

Judge Richey: Exactly.

Mr. Singer: Right. Right. OK. Actually what prompted my finding the...

Judge Richey: Article.

Mr. Singer: The article was this talk about how to be nice. It's not quite how to be
civil but it's... it's not quite the same but it uses the same kind of words
about civil discourse, civil society and...

Judge Richey: Well. The Bar, headed by one of my former clerks Andrew Marks and
Joanne Doddy Fort, is doing a study for the District of Columbia Bar in
which they've enlisted the support of the Superior Court judges and our
judges and I believe it's been approved by the D.C. Bar Board of Governors
on the subject of civility in the practice of law. Andy is a former clerk,
called me up when he found out I had done...well, before that, last summer,
those green papers up there on my shelf represented a compendium of
everything that's been written on civility and race, gender and sex bias in
the courts.

Mr. Singer: Right.

Judge Richey: And I got it on the agenda last September for our court's executive session
and then was taken off at the last minute because nobody knew that the Bar
was doing the same thing. I put civility in there and stated explicitly that
it was based on Marvin Aspen's report for the Seventh Circuit.

Mr. Singer: Right.

Judge Richey: And, Andy called me up and said "We're going to be charged with a
conspiracy."

Mr. Singer: [Laughter] It wouldn't be the first time.

Judge Richey: But, in any event, it was a, you might say, a quote, a "political mistake",
but I did it consciously thinking that that would soften the impact about the
stuff that you see in that pamphlet now.
Mr. Singer: Uh Huh.

Judge Richey: But it didn't work and it's before the Implementation Committee now if I can ever get them to read it. I've told them repeatedly they will only have to read for about twenty minutes and a simple resolution approving of it. But, I just can't... if you just... you have no idea of how hard it is to push and get things done unless you have the authority to do it yourself.

Mr. Singer: Ahhhh. Yes

Judge Richey: Particularly in a judicial atmosphere. It makes me believe I'm in the right place rather than on an appellate court.

Mr. Singer: One of the questions in your list of questions we asked...

Judge Richey: Certainly.

Mr. Singer: Plays... moves nicely into using those volumes, I think, because the question recalls that... what were your three to five most interesting or important cases and interesting and important are different. May be different on this assumption.

Judge Richey: That's correct.

Mr. Singer: Cases that most fully signaled your view in the role of courts and judges or which were to have the most lasting impact on the development of law or the conduct of real people, ordinary folks. And did you realize the extent of that impact at the time of decision? Say, when you were working on the cases, were you able to predict and did you write with a view that this is an important case and what I write down is going to have some kind of a life beyond the covers of the law books.
Judge Richey:  In the span of the last twenty-five years, I've had so many cases. It's very, very difficult. I'm often asked the question to separate out the ones that you've just described. And, I'm often asked the question, "What is the most important case you've ever tried or presided over?" And, I often answered that, generally answered it. Every case I have tried. And it really is true. The individual before the court, whether it be in a civil or criminal context. That is the most important thing on their minds.

Mr. Singer: Yeah, but, generally, let me take that. Do you think that the immediate litigants, those before you whether it's a public agency, a private individual, or a corporation, or two private entities. Do you think they care much about anything beyond the way in which the case impacts on them? The judge has a broader function, clearly.

Judge Richey: Yes. But you have ideologues who are lawyers who will represent the government of the United States. Let me give you an example. There are approximately seventeen lawyers that came before me at the end of the Reagan Administration that ultimately resulted in my decision which the government had finally accepted after two appeals. That e-mail is a federal record, and in some instances a Presidential record, but mostly a federal record and therefore must be preserved and is the property of the United States. Those individuals are still representing the President of the United States, even though he is of a different political party and with the same vigor, the same ideology that they did and urged when representing Reagan, George Bush and now President Clinton. They were very
emotionally involved. Perhaps because they were representing the President and the Executive Office. But, it was interesting and still is to see the same people in the same case.

It's all been settled except for one isolated instance involving whether the National Security Agency is an agency for purposes of the APA and thus subject to judicial review and whether the Freedom of Information Act applies to it. I wrote one opinion back that I knew of no judge in the United States of any persuasion who would not uphold one of the exemptions in the FOIA statute such as the conduct of foreign policy, foreign affairs, intelligence activity and that sort of thing. And that's happened. I've applied those exemptions. But, they presented an executive order to President Clinton, notwithstanding the fact that it had been in existence, FOIA regulations for twenty years, they had processed FOIA requests in many instances in released documents. He, in that executive order, abolished the status as an agency and in an order subject to FOIA, per his executive order which I ruled was impermissible. And that in the federal appeals now after a prelude about how he believed in openness and government and so on and so forth. But that's what he said and it was put before him. I've no direct knowledge, but I know by these same lawyers who'd been doing all his work for the Archivist of the United States and this subject for the White House. So that's an example of lawyers' emotion rather than the client's emotions. Maybe the clients got emotions involved too.
Mr. Singer: Right.

Judge Richey: But, other cases going back to the early seventies, such as *NRDC v. the SEC* which was a case involving the rule-making of that Commission where they refused...

Mr. Singer: The Commission refused...

Judge Richey: The Commission refused. It refused to require the 10-K statements to include claims for violation of the Civil Rights Act statutes and environmental concerns by ethical investors. My first opinion was not appealed. It was remanded to the agency. And I'll never forget, a dear friend of mine called me up after reading about it in the papers and said, "Chuck, I applaud your decision, but I'm gonna tell you something."

"What's that?" "The agency is going to do it over again, and they're gonna come out the same way." And I'm... that's exactly what happened. And I didn't know until the case came back to me after they had done it over again, coming out the same way, that my dear friend that I didn't know at that time, Arthur J. Goldberg, Supreme Court Justice, among many other things, testified in that second hearing. God bless his soul, and said "Members of the Commission, you should adopt the rule as urged by Judge Richey." And his opinion is among the finest I've ever read, including my own, as a Justice of the Supreme...

Mr. Singer: This was a submission that Goldberg made to the...

Judge Richey: In the record. I examined the record, I had to in order to rule a second time. But I made up my mind... when I read that by Arthur J. Goldberg,
whom I'd always admired from a distance, that I was going to get acquainted with him and I did. And went on for years thereafter until he died. I talked to him about a week before he passed away and it was a marvelous friendship, Dan. And I think it resulted in a lot of good. He invited me to seder dinners...

Mr. Singer: There was a very famous seder, the Goldberg Seder.

Judge Richey: Oh. None like it! Have you ever been to one?

Mr. Singer: I never got to one, but my partner, Max Kampelman usually was...

Judge Richey: Oh, he wasn't there the night I was there, but... I'll never forget it. I'll never forget it. It was fascinating and typically Arthur Goldberg. I will never forget it. At one part he would describe something and then asked his guest questions. "Where did that come from?" And I remember the correct answer to one of the questions was, "FDR".

Mr. Singer: Well, he wrote... if I remember correctly the stories I heard, he wrote a kind of a homemade, the name of the book in Hebrew is *Haggadah*, and he...

Judge Richey: Well, he wrote his own *Haggadah*.

Mr. Singer: He wrote his own service.

Judge Richey: He did.

Mr. Singer: Yeah. It was very famous.

Judge Richey: And you know you contrast that with somebody like, uhhh, more, not orthodox but reformed, like Irving Schiller where you pretty much did things according to tradition. But again, with the presiding host's annotations but totally unlike Arthur's.
Mr. Singer: For a long time, he was a very special guy.

Judge Richey: It's too bad. I regret that you didn't get to know him because he would have liked you and you would have liked him.

Mr. Singer: I knew his younger partners. People like Jerry Anker, Steve Schlossberg, and those people.

Judge Richey: Did you know Mrs. Gilbert, his long-time secretary?

Mr. Singer: No. I didn't know her.

Judge Richey: She's still around. I haven't seen her or talked to her in two or three years. My, but what a lovely human being. Now, let me think of some other cases. Obviously, the Nixon tapes and papers case. That one I knew I was writing for history because when I wrote that, it was about 108 pages and in those days we didn't have computers.

Mr. Singer: [Laughter] You really had to work.

Judge Richey: I remember sitting in the chair to your left at the corner of the desk, about 11:30 one night, pushing myself as hard as I could push to get the opinion done. Writing. And some law clerk said, "A Motion just came in. You might read it, Judge." And I just pushed him off and put it aside. It was a Motion to convene at 3-Judge Court because Congress had, in the last previous twenty-four hours, passed a law saying that this should be handled by a 3-Judge Court. I didn't read it. And of course, that was a fatal mistake and caused the matter to be sent back and then Congress did it, amended the law on its own. But I knew I was writing for history because the only thing in the way of a precedent were the papers from the
Lewis and Clark expedition sponsored and funded by the government in major part if not entirely. And the only opinion was regarding their papers and their work in that expedition by the Eighth Circuit, the only one in the United States. And my position was that, borrowing from that case and the traditions of the common law, that work generated in the course of public officials' duties and with the use of public funds, required that the property so produced belonged to the United States of America and its people. Not a President, a Supreme Court Justice, a trial judge or anybody else. That's what I held. Well, that's subsequently been rejected on remand by the chief judge of our circuit. I don't have the capacity to understand it but he's referred the matter back to reverse and remanded Judge Penn, Chief Judge Penn, on a theory that what the government did in President Nixon's case was a taking and violation of the Fifth Amendment. Judge Penn has the responsibility to determine how much. That came down two or three years ago. I don't know what's happened since. Nothing in the press. So I assume Judge Penn hasn't decided it. I just don't know. I know he's a very busy guy who has all these administrative tasks, the Grand Jury and the other things.

Mr. Singer: The Chief Judge sits or supervises the Grand Jury, is that so?
Judge Richey: Oh, yes. We do not do that. When Judge Sirica was Chief Judge for the period of plus years that he was Chief Judge, they had a tradition when I came here that the Chief took all the pleas pre or immediately after an indictment and he came to me one day shortly after I came here, within a
week or so, and said, "Chuck, I'm tired of sending people to jail, and I don't like to take these pleas. Would you do it for me?" And I said, "Yes."

So, in the last twenty-five years, I've sentenced more people than any other judge of the entire court who served in the last twenty-five years.

Because for three plus years I did that. Now when George Hart became Chief Judge he took that responsibility back which was fine with me. I remember one month in December of 1971, I got twenty... I mean forty-two pleas in one month. Took forty-two pleas.

Mr. Singer: Because they thought you were a piece of cake?

Judge Richey: Who knows? That was a record though for the Court. Jim Davey then the Clerk came and told me. Plus all the other work I was doing.

Ahhhhh, let's see. Another case of tremendous importance... I didn't realize it at the time. Again the NRDC brought an action charging the Nixon White House with political interference with the IRS.

Mr. Singer: This is the Enemies List? That kind of thing?

Judge Richey: That's what it turned out to be. I didn't know it at the time. But obviously the plaintiff's move for discovery. They didn't get it in violation of my orders. And so in...

Mr. Singer: The materials being discovered were in the hands of the White House?

Judge Richey: Justice and IRS. Treasury and IRS. I think they were also in the custody of the Tax Division of Justice. And I'll tell you why if you remind me.

And so I imposed Rule 37 sanctions and held the allegations of the complaint true. Great shock waves went all through Washington and the
country I guess. But I... they submitted four documents in camera. I wish I'd Xeroxed them. For historical purposes. And I placed them in the safe. Obviously told somebody else to do it and forgotten about it until the Watergate hearings began. One afternoon I was out in the courtroom here and the late Bert Jenner of Jenner & Block from Chicago was minority counsel and he walked in my courtroom, into the well of the court and sat down. While we were waiting for somebody to be called to the witness stand or something, he stepped up to the lectern and said, "Your Honor, may I address the Court?" I said, "Certainly, Mr. Jenner." J-e-n-n-e-r.

Mr. Singer: Yeah. I know who that is.

Judge Richey: He said, "As you know, I'm Minority Counsel of the House Judiciary Committee and we have reason to believe you have certain documents that we'd like to have." I said, "I do? What are they?" And he described the documents produced for in camera inspection in this case. I said, "Well, Mr. Jenner, I have no idea whether I have them or not. I remember them, but I don't know where they are. But if you will come back tomorrow afternoon, I'll look. But, since they were submitted to me in camera, I can't give them to you unless you get the consent of the attorneys for the Department of Justice." And I thought very quickly and said to myself, "Richey, make sure you get Jenner in contact with the right person in the Department of Justice." And I quickly recalled, I think it was God's grace that did it, the name of a man named Dick Roberts who was a career
person in the Tax Division who had been there during the processing of that case. And I said, Mr. Jenner, you call Dick Roberts in the Tax Division and if you can get his consent, the Committee may have the documents and be back here at 2:00 tomorrow afternoon. Meanwhile, I left the bench and they were in my safe and Roberts gave his consent on the record and those documents were turned over to the House Committee. Then after the hearings were over a year and a half or so, there was fellow named Mezvinsky who was a Democratic Congressman from Iowa and a member of that Impeachment Committee and we sat in our host dining room, oh, maybe two hours, next to each other. I didn't know who he was except his name, what he did. He didn't know what I did. After dinner we went into the living room or parlor as they say, and he said, "By the way, what do you do?"

Mr. Singer: He says to you?

Judge Richey: Yeah. And I said, "I'm a federal judge." "Where?" "Here in Washington." "Oh. What is your name again?" I said, "Charles Richey."

Mr. Singer: [Laughter] The joy went out of his life.

Judge Richey: And I said, "What do you do?" "Well, I'm a member of Congress." "What committee are you on?" "House Judiciary Committee." He said, "Let me tell you something, Sir. You have made a greater impact upon history than you will ever imagine."

Mr. Singer: Umhmmmm.
Judge Richey: He said, "When Jenner went over there to you your court and you made it possible for us to gain access to those documents, you have no idea what was the status of the deliberations at that time." I said, "No, I certainly don't." Whereupon he said to me, "The Southern Democrats and all of the Republicans were solidly lined up against impeachment and impenetrable block until they saw those documents with people's names and what they were trying to do with them." Which was the Enemies List. And it was all done at the behest of John Dean.

Mr. Singer: The creation...

Judge Richey: All of it. He wrote letters and so on. He's dumb. The guy put it in writing. And so he, former Congressman Mezvinsky, went on to explain to me that when the Southern Democrats and the Republicans saw those papers, they realized they had something serious. And he said to me, "Your opinion in Center for Corporate Responsibility vs. Schultz, together with those documents, became the basis for the second article of impeachment and it changed the whole complexion of those proceedings and from there on it was easy going."

Mr. Singer: Ummhmmm. That's really interesting.

Judge Richey: That's a fact. That's fact. Go ask him. His wife later became a Congressman a couple of years ago from Philadelphia in a...

Mr. Singer: Yeah. Marjorie Mezvinsky.

Judge Richey: Margolis. Margolies Mezvinsky.

Mr. Singer: Margolies Mezvinsky. Right. My daughter was a great admirer of hers.
My daughter teaches math at Haverford, Pennsylvania and was a great admirer of hers and worked very hard for her to defeat Arlen Specter which she...

Judge Richey: Oh, that's a mistake. That's a mistake. I'll forgive her for it because she's a...

Mr. Singer: [Laughter]

Judge Richey: ...a Singer but, I love Arlen Specter and I don't care what you think or anybody else. I like him and he should have been elected and he was. Maybe he ought to be president.

Mr. Singer: Well...

Judge Richey: Too late now. He's withdrawn.

Mr. Singer: Yeah. He would not have made it, I'm afraid.

Judge Richey: I don't think so, but, nevertheless, he performed a use for public service by getting in the race.

Mr. Singer: I think so. And I think I was very disappointed. Well, I want to put it a different way. You don't... I gather you do not think that his conduct in the Clarence Thomas hearings was... I don't want to say fatal, that's not the right word. You thought it was within the bounds of appropriate conduct...

Judge Richey: I didn't say that at all.

Mr. Singer: OK. Well, then...

Judge Richey: You're attempting to... you're inferring that because of my statement that I liked Arlen Specter and wished him well and so on...
Mr. Singer: Well, and that he should be president.

Judge Richey: Yes. I said that. He would have made a good president. He's got a wonderful background. He made a mistake in that case in his colloquy with the... whoever the witness was and Senator Kennedy. But I forgive him for that. That wasn't perjury. But in the tense moments wherein those statements were made, I can understand it if you want to be objective about it.

Mr. Singer: Do you think... I don't know whether you know him or not, but do you think he regrets his conduct in that...

Judge Richey: Oh, of course, he said so, many times. And his opponent was that woman, Yeakel, who was the daughter...

Mr. Singer: ... it was Yeakel he ran against. It was...

Judge Richey: Who is the daughter of a former Byrd machine Democrat from Virginia.

Mr. Singer: I had it wrong.

Judge Richey: You ought to know your political history. You come to your Uncle Chuck and I'll tell you about it!

Mr. Singer: [Laughter] I come to Uncle Chuck, believe me.

Judge Richey: And while she posed as a great liberal and so on and so forth, look at her background. If you want to look at her background objectively, you'll come to the conclusion that, what is the old expression, "a horse never changes its color?"

Mr. Singer: The apple, and in that case it's appropriate. The apple doesn't fall far from the tree.
Judge Richey: That's it. A leopard never changes its color. That's it.

Mr. Singer: Harry Byrd was very much an apple grower and it was...

Judge Richey: That's more appropriate in that case. But I remember her father and I remember seeing her as a youngster being courted around the Capital with her dad and pleasantly pleased with his association with the Southern Democrats and so on and then she goes to Philadelphia and marries wealth and becomes a great do-gooder. Oh, that's all right. I like that but, you know, the sins of one's past come to haunt them.

Mr. Singer: That's for sure. That's the purpose of this whole... [Laughter]

Judge Richey: But you see here, Dan, my liberal friends, when it comes to Specter's candidacy. They thought he should be defeated, as you probably do, because of what he did in that hearing by calling whoever it was, I guess Anita Hill a perjurer...

Mr. Singer: Yeah, he really took Anita...

Judge Richey: Well, of course he did. But don't forget Arlen was an ex-prosecutor and you would say, "Well, therefore, he should have known better" maybe.

Mr. Singer: It’s old habits die hard.

Judge Richey: Exactly. But he said repeatedly throughout the campaign then and when he ran for president. He regretted it. He learned from it. His wife is on the City Council of the City of Philadelphia where the majority of the population is African-American. I don't know much about her ward or district or what but she'd served there with distinction and so has he served in the United States Senate with distinction. And I hope I'm not offending
anybody, but I think we need Jews in the Republican Party and we need Jews in the United States Senate. And he's... it would have been a tragedy to lose him. That's my view.

Mr. Singer: Uhhuh.

Judge Richey: I'm not saying that from a political point of view. Please don't misinterpret me.

Mr. Singer: I understand. Should we turn to those in the books and see whether it refreshes your important cases or cases where...

Mr. Singer: This is Howard Baker from...

Judge Richey: Tennessee. So one night, about 2:30 in the morning, a case had been going along, I couldn't figure it out, I didn't believe the lawyers from either side were telling me all of the facts that I needed to know, and so I got up and went into the library and I had a new program that the court had given me called PCAnywhere.

Mr. Singer: Yup. I have it at home. The firm gives it to...

Judge Richey: And I started to look at that program on my computer and it said "Job Orders" and then I tried to print out some of the faxes I'd sent and quickly discerned it didn't have that material on the top of the page on faxes sent or faxes received. And I obviously knew that that pertained with equal force to e-mail. So I typed an order and faxed it to the office here directing the lawyers to appear before me two days hence. Whereupon I sprung that on them. And that was the decisive moment in the case. Oh, both sides were stunned that I had discovered this.
Mr. Singer: Both sides knew this and were...

Judge Richey: Well, I don't know whether they knew it or not. I can't say that but they sure were doing a good a job, at least the government, of disguising it. And when they found this out, this hard copy business certainly wasn't sufficient for me and I wrote to that effect and was upheld. Now e-mail are, in all government agencies, considered federal records. And there's a book that just came out by a fellow named Blanton. I don't know who he is, praises the decision and traces the history of the case. A former law clerk brought it to me. $14.95. It's entitled White House E-Mail: The Top Secret Computer Messages the Reagan-Bush White House Tried to Destroy and it's a fascinating exposé. I knew I was writing for history on that occasion.

Mr. Singer: I was going to ask you...

Judge Richey: I knew I was writing for history when I made that discovery because it involved the highest echelons of the government of the United States and the leader of our nation, but that made no difference to me but it did emphasize the importance of the preservation of archival material. And I guess my knowledge and my interest in political history enabled me to recall quickly Senator Baker's admonition and repeated questioning during the Watergate hearings, "What did you know and when did you know it?" That was a very good question. And I had the same question. I told the lawyers I had the same question and that the public had the same question. Therefore, in my view they were public records within the meaning of the
You look at the statute and you look at the regulations, they talk about electronic messages but no, not for the government. Not for these lawyers in the Federal Programs Branch of the Civil Division. They're an island unto themselves. Impenetrable.

Mr. Singer: Now do you really... it is quite clear because we've had an opportunity to talk of these guys before, you really have a thing about the Federal Program Division.

Judge Richey: If you don't believe me, go over there and talk to the Attorney General, the Assistant... the Deputy Attorney General.

Mr. Singer: Jamie Gorelick.

Judge Richey: Or others. And ask them how much control and influence they've had over that branch. Which has tremendous power and influence over the conduct of federal litigation involving federal questions, constitutional questions. Now, neither one of them, I've never talked to either of them about it, Reno or Gorelick, but I've talked to others in the division. The wife of one of my former clerks. She tells me that division is... you can't do anything about it. I don't know why, but these people haven't been able to...

Mr. Singer: Well, bureaucracy is a funny thing if they have all...

Judge Richey: Well, it proves my theory. If we elect a new president every four years and if we elect a new one instead of retain one, the same... they appoint about thirty-five hundred people and they come in in high level policy positions, thinking they are going to change the world and hopefully they
will. But, the same bureaucrats are going to be there and they're the ones that make the decisions and they get into the option papers for cabinet officers, assistants, principal assistants to the cabinet, the vice president, the president of the United States, and it's almost impossible to overcome.

Mr. Singer: Probably no one feels that more keenly than the people above them.

Directly above them.

Judge Richey: Yes. Well. It's a cultural shock to them.

Mr. Singer: Yes.

Judge Richey: I remember a person who was one of the high staff persons in the Carter Administration. I don't remember what title he had in the White House, but one of the very top. And I sat next to him at a dinner where Judge Bazelon was receiving an award over here at the L'Enfant Plaza Hotel. There were about 3,000 people there. And he was lamenting the fact that he was having such a great time, it was exciting, it was thrilling, it was the beginning of the Carter Administration, and I said, "Sir, I am enjoying your pleasure. But let me just tell you as a long-hand in Washington that all of this is going to end and it will probably end sooner than you think. And if you remember that as you go through the process, you may come out a little less disappointed." And that's true.

Mr. Singer: Yes. That's certainly true. It's absolutely true. Without question.

Judge Richey: I knew I was writing for history there too. I hope I don't have to write any more, but I may.

Mr. Singer: These are all cases that you've described in which the federal government
in one form or another is the other party. The papers case is a Federal Records Act case as to whether the NSC is an agency and then there's the SEC case.

Judge Richey: Right.

Mr. Singer: What about in the, what I'll call the private jurisprudence, the private sector cases?

Judge Richey: To some extent, the private sector cases have loomed large on the horizon at the time. But you've got to understand a medical malpractice case or other kinds of diversity cases we in the government courts get don't have the substantial across-the-board impact. They're affecting the individuals concerned and maybe their insurance carriers or something like that. But they don't have the impact the big question of public law has. Therefore, you know you've got to do it well. Be fair and honest, apply the law. But they don't have the cross-the-board impact. One of my first cases involved, my goodness gracious, *NRDC v. Morton* in 1971 where the Interior Department headed then by an old friend of mine, Rogers C. B. Morton, entered into oil and gas leases off the outer continental shelf of Louisiana. Multi, multi, multi, multi-millions of dollars’ worth of leases and this public interest law firm, which I later learned Arthur Goldberg was one of the principal benefactors of and they used, would you believe, the Rockefeller Foundation to get a lot of money to finance it.

Mr. Singer: I would believe that.

Judge Richey: Well, I was surprised that he had that influence with the Rockefellers, but
he did.

Mr. Singer: The Rockefellers, well.

Judge Richey: And, sought an injunction to enjoin the sale on the ground that the government had not prepared an Environmental Impact Statement. First time such a claim had been brought. 1971. I issued the injunction from the bench.

Mr. Singer: You had just gotten here

Judge Richey: I know.

Mr. Singer: I didn't think you'd do such a thing.

Judge Richey: From May 'til early...late November, early December. And all hell broke loose because I skimmed through the so-called EIS and it was a couple hundred pages as I recall. And in the middle of it, it discussed the alternatives to this leasing program. And it was triple-spaced. The other was double-spaced or single-spaced. And I said, "For goodness gracious, this doesn't discuss the alternatives adequately." And therefore I issued the injunction. I did not fix a bond that day, blazing headlines all across the country. I remember a judge on the Court of Appeals called me and said, "I just had a call from Louisiana. May I get a copy of your Opinion?" I said, "Certainly, but I want to tell you I relied in part on your Calvert Cliffs decision."

Mr. Singer: Guess that's right.

Judge Richey: And that was the end of that. But then a couple of days later an application was made pursuant to Rule 65 for a bond. And I determined
that since it was a public interest group that brought the action and didn't have public, large resources and public funds, that on that basis I would fix the bond at $100 surety. Now if you want to do some historical research, go look at *NRDC vs. Morton* in 1971 which was affirmed on appeal and see how many cases the courts all over this land have followed that precedent of a $100 bond for a public interest group. I made not only the law about the reasonable alternative doctrine as Leventhal called it, but also about the matter of bond so people like that could bring these cases.

**Mr. Singer:** Did you sense at the time that this was a very special kind of ruling? Not that it was special but that this would address and open up a new avenue...

**Judge Richey:** No, no I did not. To be honest with you I had no idea of the impact. I had not dealt with the National Environmental Policy Act before, either as a lawyer or as a judge. This was a case of first impression on both grounds. EIS and the matter of the bond. And I'll tell you a sidelight. It's a true story. The late Chief Judge George Hart used to have a Christmas party down the end of this hall and it was kind of a command performance. Everybody went. I went late on that occasion in 1971, just before Christmas and I was standing over in the corner drinking a Coke. I don't know whether I was talking to anybody or not, but in comes Judge Leventhal and he pointed a finger and asked me to come over to see him. And he said, "Chuck, you know what I've been doing all afternoon?"

"No, Harold." "Well, I've been in the ceremonial courtroom listening to a packed house of oil and gas lawyers." "Oh." I immediately said, "Well,
I know the case." And he kinda turned and as he walked away he turned back to me and he says, "All I've got to say to you, Chuck, is that you sure have a lot of courage." Those were his exact words. And walked away. I thought, well that's a telescope that I'm gonna get reversed. But thank God for Harold Leventhal who did the right thing. My friend George McKinnon dissented, but it never went to the Supreme Court and that was the end of it. Now it is generally accepted. That established the reasonable alternative doctrine.

Mr. Singer: Umhummmm.

Judge Richey: And as I say, very importantly, also the matter of bond. How much the bond should be for public interest groups? And I'm proud of that. Very proud of it. If I hadn't been there, it wouldn't have been done, I don't think. Why do you laugh?

Mr. Singer: No. No, what I'm trying to think on is, where does someone get the kind of resources, internal resources, to do that kind of thing. I mean you were on the bench, what, six months at that time?

Judge Richey: Yes.

Mr. Singer: That's pretty gutsy

Judge Richey: That's what Harold Leventhal said. You've got a lot of courage.

Mr. Singer: Right. You're looking right down the barrel at, probably what was then the most powerful array of lawyers in the country.

Judge Richey: No question about it. And do you know what those SOBs did to me? I told you that two days after I issued the injunction, I had the hearing on the
question of bond, was it 1:30 or 2:00 in the afternoon. My courtroom was packed with oil and gas lawyers and their lobbyists. My children went to Sidwell Friends School here in Washington and one of their friends was a little girl whose father happened to be an oil and gas lobbyist for one of the major oil companies. Where did he sit but in the front row. It did not affect my decision but it made me very very angry. I've never spoken to that man since.

Mr. Singer: And you're convinced obviously that this was no accident. It wasn't because he got there first and got...

Judge Richey: Oh, absolutely not. And this summer when I was in San Diego speaking for the American Law Institute, I had dinner with that man's assistant who was a college classmate of mine. And I told him about that experience and do you know what his response was? That sounds like Harold. That sounds like Harold. Who was his boss at the time. So, there are other cases that... you know, I had a criminal case some years ago. There were three defendants, two of whom were members of the D.C. Liquor Board and one was an outside person from Iran who was a...

Mr. Singer: Said made some...

Judge Richey: Bruton. B-r-u-t-o-n, based on the Bruton case in the Supreme Court of the United States, that were incriminatory of the other defendants made outside of their presence. That was the basis of their request for a severance. And so I inquired, the government opposed the severance motion. I don't know how they could do it in good conscience but they
were very vigorous. I finally asked the question: "How many witnesses will this involve?" Well, the gentleman to whom the defendant made the statement in Atlantic City. Anybody else, other than the defendant himself, if he takes a stand. No. They had told me that this was going to be, if I granted severance, two back-to-back six week trials. It probably would have been two months' trials in the old days when I practiced. And so, I decided there was a rational basis to impanel two juries to hear the same case. And when the young drug addict, to whom the incriminatory statement had been made, I excused one jury, the main jury, as to that individual defendant who heard that statement, and that was the end of it. But when I impaneled two juries, you would have thought that the world had come to an end and that I was just off my rocker. And those two juries, I had all kinds of problems with that. That same defendant picked up a juror on the way to court during the trial and offered her a ride to the courthouse and she accepted. You have no idea of what problems a trial judge faces in the management of a high profile trial. That was just one little example. You know, we had to voir dire her and then I had to voir dire the other members of the jury to see what she'd told them, what they knew about it and so on and so forth. Well, anyhow, it went on. The two juries did not agree as to the two gentlemen who were employees to the D.C. Liquor Board, they were convicted of the federal conspiracy count. The other defendant was acquitted on the federal conspiracy counts but convicted on the D.C. conspiracy counts. That's a matter
peculiar to our court here...

Mr. Singer: Is that a right result... I mean, is that...

Judge Richey: Oh, of course it was a right. It was all right.

Mr. Singer: Yeah.

Judge Richey: It went to the Court of Appeals and based on the fact that I had impaneled two juries, the principle that where one is acquitted of a count requires that all be acquitted who were charged with a conspiracy. There is law to that effect. It used to be the prevailing view. Judge J. Skelly Wright, that great jurist held because of two juries here, that was not fatal and the convictions were upheld.

Mr. Singer: OK. So,...

Judge Richey: I remember being outside the hall here and Judge Gerhard Gesell, bless his soul, was there one evening, it was about 6:30 or 7:00 at night, and I said, "Gerry, want to go in and see how I set up the courtroom?" "I don't want to see it and I don't want to have a darn thing to do with it." He was angry that I had done this. And obviously one of those, many, probably the majority who was very critical. The down side was that the prosecutor had to make two successive opening statements, back to back. Two successive closing arguments back to back. The instructions were the same.

Mr. Singer: Right.

Judge Richey: And it worked like a charm. Had to have some extra marshals, but it worked. Oh, let me think of some other cases that might... I tried Tony
Boyle, the President of United Mine Workers. He was convicted for accepting illegal campaign contributions in the 1968 campaign. Properly convicted. I didn't think I was doing anything special at the time except my job. But I recall some interesting things happening. During the final arguments there was lawyer here named Al Scanlon with Shea & Gardner. Great lawyer. He was making his final argument to the jury and the court reporter named Joan Blair, who had been a court reporter in the Canadian Parliament, got all upset and screamed right out loud in front of God and everybody, you'd hear it a block from where she sat. "I can't stand it anymore!" Whereupon I had to excuse the jury, get another court reporter, it was on a Saturday morning about 11:00. But for the grace of God, I got through the case. Only with the help of the grace of God. Then it came time for sentencing. But between the conviction and the sentencing of Mr. Boyle, I got a suspicion that he might have been secreting his funds in the National Bank of Washington and perhaps transferring his assets to his wife or somebody in his family. He was convicted on thirteen counts.

Mr. Singer: That's plenty.

Judge Richey: So in those days, we didn't have the guidelines and the Sentencing Reform Act of 1984, so we had a lot of discretion. And what I did based on the rules, I'd given him probation on some of those counts but as a special condition of probation, he'd pay a substantial fine of 189 or 88 thousand dollars. Something like that. And I knew that he had it because the FBI
had discerned that he had, in fact, transferred his money to his wife's name
between conviction and sentencing. And so under the Criminal Rules at
the time, apparently had not been used up to then, according to some of my
judicial colleagues, I as a condition of probation made him pay the fine
immediately. And I also had the power under the then existing Criminal
Rules, to make what was called, "a committed fine." In other words, you
must pay the fine today as a condition of your appeal. That was the rule.

Mr. Singer: That's heavy duty.

Judge Richey: And the marshal told me later, that he... I asked Mr. Boyle if he had
anything to say before I imposed sentence and he said "No." As he got to
cell block, he asked the marshal, "Am I going to jail?" Whereupon the
marshal said to him, "Yes, you are. Until you pay the fine as the judge
ordered." He got two new lawyers that day and one of them was Plato
Cacheris. By 4:30 in the afternoon the fine was paid to the taxpayers of
the United States. End of inquiry. And the conviction, as you know,
was upheld. That led to his indictment for murder in Philadelphia by a
fellow named Sprague who was District Attorney. Same job Senator
Specter had.

Mr. Singer: Let me shift gears for just a second. I'd love to hear other cases of note.
Are the courts suffering under the constrained financing in any serious
way?

Judge Richey: Oh. By the end of this week, if something doesn't happen by the 26th of
January, we may be out of business and required to dismiss all the
indictments that violate the Speedy Trial Act.

Mr. Singer: That’s…

Judge Richey: Oh, you and the members of the public have no idea of the severe consequences. The Chief Justice, the Director of the Administrative Office have written letters, copies to all of us, to Gingrich, Gephardt, Dole, Daschle, President Clinton, asking to please disengage us from the State Justice, whatever else appropriations bill. I don't know what the response has been but I assume a lack thereof. And I want to tell you something, if this Congress and this President don't get together on this much, this will be the biggest issue to confront the country. When people charged with crime, who run…both parties are now running against crime. When they find out that all these criminals by law are being discharged without a trial, without a prosecution...

Mr. Singer: And without…

Judge Richey: Without any supervision or anything else...

Mr. Singer: Oh, yeah. If there is not going to be a prosecution.

Judge Richey: No. Yeah. Their indictments will be dismissed.

Mr. Singer: Right.

Judge Richey: Period. With prejudice.

Mr. Singer: Yeah. Well, that's...

Judge Richey: What is the reaction of the general public? John Q. Public who knows nothing about this now? It's going to be very substantial. We can't pay jurors. We can't pay the marshal service. Because they are under the
Justice Department appropriations. We can't pay our courthouse personnel. I don't know whether even judges are going to get paid. We've been running since the first shut-down on fees paid by litigants. Filing fees and that sort of thing. Run out the 26th of this month according to the communiqués we've received...

Mr. Singer: Those funds don't go into the general revenue? Covered from the general revenue...

Judge Richey: Do you mean fees for filing fees and things like that?

Mr. Singer: Yeah.

Judge Richey: Oh, they...

Mr. Singer: They stay in the Judiciary where...

Judge Richey: I think they do. They must because that's what they told us they were operating on.

Mr. Singer: I see. Because when some...some agencies can do that. I mean I think the Comptroller of the Currency is supported by the fees they charge to the banks for examinations.

Judge Richey: Yes. There are some agencies. You're correct. I don't know whether the Comptroller...

Mr. Singer: I didn't realize it was...

Judge Richey: There is an article about it in this morning's paper and the controversy between Rubin, the Secretary of the Treasury and the Congress. All the shenanigans he's had to employ and the resources to keep the government operating without legislation to exceed the debt limit. Terrible. Oh, let
me see. Some other civil cases that may have had a substantial non-government. About fifteen years ago, I decided that with the case load enhancing every year, it was high time some new techniques in trial management, case management be employed to reduce the time that a judge was on the bench. Or it took for a given trial. So one of the techniques I developed was to require both sides to prepare on behalf of the witnesses within their control a written narrative statement of their direct testimony. In 1983 I wrote an article which was published in the *Georgetown Law Journal* and I've used it ever since in cases against the government under the Federal Tort Claims Act, in the private sector and in each instance there has been great resistance by the lawyers but after they have gone through it, there has never been a dissent that it hasn't worked beautifully and has actually enhanced the cause of justice. The principle objection is, this destroys the spontaneity of the Q & A Question and Answer form of lawyer to witness and thus to the jury to enable them to better judge credibility, etc. etc. That's not true.

Mr. Singer: How do you feel about that?

Judge Richey: I know it from empirical data. I've got about seventy-five juror questionnaires which I myself designed proving it. Plus the lawyers who've gone through it. And it makes the trials much more efficient, it enables the lawyers and their witnesses to put their best foot forward in a succinct narrative form, conversational way. And you never tried a case, Dan Singer, that you didn't prepare your witnesses. And if you're doing
that as thoroughly and I know you would as a competent lawyer or your partner Eisenberg...

Mr. Singer: He knows all about that.

Judge Richey: You would have done what I did. Namely prepare your witnesses. And I learned this from regulatory proceedings in my private practice. They work like a charm. I knew in advance what the witness was going to say. I could read fifty pages in probably fifteen minutes and so it was easy. That's been something I've done. That's never been controverted on appeal yet. The Ninth Circuit has approved of the practice. Bill Schwartz, the former director of the Federal Judicial Center wrote a year ago when I got my law school's medal, the sixth person in the 103-odd years of its history to receive it, wrote a letter and said Judge Richey has inaugurated many practices since he became a judge that were considered revolutionary at the time but are now commonly accepted. If you read the Manual on Complex Litigation, Third Edition, you'll see the reference to that practice noted with approval.

Mr. Singer: We adopted it in a major arbitration, you'll be pleased to know.

Judge Richey: Oh, God bless you. Good.

Mr. Singer: There were 57 or 59 arbitral days that case and then it would have been 800 if it hadn't been for the use of written testimony.

Judge Richey: Surely. Nobody was impaired. This brought full cross examination. You let the witnesses supplement their answers, correct their narrative statement if there is something wrong with it, right in the presence of the
They don't like to do that, but that's...

Now I did have one instance on the negative side where a plaintiff in an employment discrimination case, whose lawyers didn't like to do this, wrote a narrative statement that went way beyond the length necessary to accomplish her objective and it droned on and on and on and on. And I couldn't figure out a way to cut it off without jeopardizing the fairness of the trial. But that's the only instance where a lawyer has taken advantage of me and they weren't the most ethical lawyers in the world anyhow. They thought they were doing the right thing, but they were...

These were plaintiffs' counsel.

Yes. Another innovation. In a bench trial, civil bench trial requiring lawyers to exchange proposed findings of fact seven days in advance of trial. When they get their opponents', they underline that which they dispute.

Put in parentheses that which they admit. Leave blank that which they admit but deem irrelevant.

I'm laughing because in the...

Why, did I do this to you or you or did you appear before me?

No. No. But... I'm involved, and I think I mentioned to you in the mediation, where I am Special Mediation Counsel for the District of
Columbia. It's a class action pending before one of your colleagues who has also adopted that process.

Judge Richey: One of my colleagues has adopted it?

Mr. Singer: I believe so.

Judge Richey: Good.

Mr. Singer: And my co-counsel who was a full-time employee of the...

Judge Richey: Corporation Counsel.

Mr. Singer: Corporation Counsel as well as the lawyers on the other side when they were obviously struggling to try to settle this case and I think one of the reasons is that they find the process of pre-trial preparation somewhat daunting.

Judge Richey: They do.

Mr. Singer: ... on both sides. It's not a bad result. I'm not suggesting...

Judge Richey: No. It isn't.

Mr. Singer: But it is, in both cases, driving the parties together within the limits of what's really possible by way of settlement. And it's...

Judge Richey: Well, even if it doesn't result in a settlement, let me tell you what it does. You might not realize this off the top of your head. When I first came to the court with this gargantuan two-judge case load that they foisted upon me, I knew I was desperate, I had to devise ways and means quickly and this underlining thing was one of the first I did. But I issued an order directing the parties to meet and confer in person with their adversaries before every motion. Not by telephone. Do you know what? In 1993
that practice was put in the Federal Rules of Civil Procedure and it's in most of the local rules throughout the country under the Civil Justice Reform Act, otherwise known as the Biden Bill. B-i-d-e-n. That's another innovation.

Mr. Singer: That must have made you feel pretty good.

Judge Richey: Oh. It's all in a day's work.

Mr. Singer: [Laughter] That's something. It really makes you feel good and it should. It should make you feel good.

Judge Richey: I have another theory that I've done. If you turn around there, I don't know, there must be twenty books, the red books up in the upper right-hand corner. Those are my published opinions up to a couple years ago. There are many that don't have this practice, but if I have the time, I insist on doing it. I write a legal opinion like a lawyer should write a brief with headnotes that don't say "discussion" "facts" "background". It proceeds from A to Z with a headnote of what follows so that the lazy reader doesn't have to read anything but the headnotes if he or she doesn't have time. And most people don't have time to read everything that's coming out. Particularly in 1996. And I never will forget when I first came here in 1971, that's the way I did my first or second opinion and a law clerk came to be and said, "Judge," can you imagine? "This isn't the way you write legal opinions."

Mr. Singer: This is what the law clerk is telling you.

Judge Richey: Yup. I said, "You know...
Mr. Singer: Is his picture or her picture out there?

Judge Richey: Yes. It is. I'll tell you who it is. He... I said you know, I have a personal friend whose name is Justice Byron White of the Supreme Court of the United States and he tells me that he will let his law clerks argue with him, criticize him, until he signs off on the opinion. And from that point forward, however, "You're my boy." That's an exact quote.

Mr. Singer: Umhumm.

Judge Richey: And so I said to this young man. I don't mind your suggestion, but this is my opinion, not yours, and until you get an Article III commission on the wall with your name on it, it's going to be my way of doing it.

Mr. Singer: Right.

Judge Richey: More and more and more; came up last week here in my chambers.

Judge Richey: Judges are doing that. Not like they should. Not as much as I do, but every important opinion has got headnotes in it. I don't whether you've looked at enough of them, but you'll see..

Mr. Singer: I've read Armstrong...

Judge Richey: Well, I think...

Mr. Singer: And I didn't have any trouble following it at all...

Judge Richey: I think you told me or asked me one time how do you make things complicated so simple, or something like that.

Mr. Singer: Well, what I asked you was whether the case was really as simple as you made it.

Judge Richey: It was to me.
Mr. Singer: And you said yes.

Judge Richey: But it was a struggle to get there. But you know what Charles Evans Hughes, the former Chief Justice of the United States once said? "There was no problem of human endeavor so complicated that the lowest common denominator of our society can't understand." Therefore, the jury system, for all kinds of complex cases of any complexity, science, physics, mathematics, you name it. A juror, a jury can be made to understand it.

Mr. Singer: Last time we were together, I think one of your clerks stopped by. One of your former clerks stopped by or you were on the phone with him and the two of you shared your upset about David Tatel's opinion in the ABC case. Something about dealing with default judgments. No? Maybe I had it wrong.

Judge Richey: No. Uhhhh.

Mr. Singer: And I went back and I read the case and I said why was he so upset?

Judge Richey: Well, David Tatel is one of our best judges.

Mr. Singer: Absolutely. And you and I have talked about David.

Judge Richey: Well, I love him.

Mr. Singer: Absolutely. But it's a case involving ABC and I think the production or failure...it involved...

Judge Richey: Was it one of my cases?

Mr. Singer: No. No. No. It was a case that came from the court...

Judge Richey: OK. I was just discussing it with this law clerk.
Mr. Singer: Right.

Judge Richey: What's wrong with it? What did I say was wrong with it? Or do you have any idea?

Mr. Singer: I didn't really know because I had no baseline reference.

Judge Richey: Uhhuhh.

Mr. Singer: It was a question of the standards to be applied in upsetting a district court's dismissal or entry of a default judgment.

Judge Richey: Well, I wish I could help you, but...

Mr. Singer: OK. I may have had it wrong.

Judge Richey: I know nothing yet that I can possibly criticize that David Tatel has written. On the contrary.

Mr. Singer: Besides, I thought this was, you know, a pretty persuasive opinion

Judge Richey: I'm sure it is. I don't know. Everything that I've read from David Tatel so far is right on the button.

Mr. Singer: Case in the court with Shepherd against ABC.

Judge Richey: I have no idea. Let me see that a minute. Who was the...

Mr. Singer: I don't know who the district judge was.

Judge Richey: He's got some pretty powerful lawyers there. On both sides.

Mr. Singer: Well, that's the American Broadcasting Company and I think somebody...


Mr. Singer: The District Court was reversed.

Judge Richey: Oh. There is some ground for criticism in this opinion. Because David
Tatel pulled out from nowhere, a standard of clear and convincing evidence as distinguished from a mere preponderance which he held to be insufficient.

Mr. Singer: Right.

Judge Richey: There is no…I take back what I said. Not. I don't want to be critical of Judge Tatel because he's a marvelous judge and a marvelous human being. But the clear and convincing evidence standard that he used in part.

Mr. Singer: Yes.

Judge Richey: … to reach his result is wrong.

Mr. Singer: I see. [Laughter]

Judge Richey: But there is no authority for it. That's what you must have heard. And that's right. Read it. Go back. Listen. You owe me a luncheon if you can't get David Eisenberg to say that it's...

Mr. Singer: Milton.

Judge Richey: Milton Eisenberg to say that it's wrong also.

Mr. Singer: OK.

Judge Richey: But he's not to be foretold.

Mr. Singer: I won't chill the bidding...

Judge Richey: I just... you ask... ask Sargent Shriver, your other partner or...

Mr. Singer: You don't ask Sargent Shriver law questions.

Judge Richey: Well, maybe you're right. But you ask some of the litigators in your office. I know. Where did David Tatel get this clear and convincing standard? That's wrong. It's been discussed a lot. I know the case
now. Otherwise, it's a good opinion.

Mr. Singer: [Laughter] OK.

Judge Richey: And, Dan, look. That doesn't make me say I don't respect David Tatel.

Mr. Singer: No. No. And it certainly wasn't what I... but you and your former clerk...

Judge Richey: Oh. It probably was Jeff Liss.

Mr. Singer: I think it was Jeff Liss. He talked with considerable energy about this and I think, gee, I really want to find out what he said that sent Richey over the edge on this.

Judge Richey: Well. It not only sent Richey, but you don't know it but every trial judge that I've ever talked to about it doesn't understand it.

Mr. Singer: Well, I mean... it's out of the world...

Judge Richey: And circuit judges don't understand it.

Mr. Singer: Right. And this is a point you've made many, many times about the disconnect between the real world and what the circuit judges see. We talked about this in... we had a conversation about how do you react when you are reversed. And...

Judge Richey: I react more harshly when my colleagues are reversed. Not because it's a colleague but when they're wrong, just like this.

Mr. Singer: Yeah.

Judge Richey: You won't find any real scholarly basis for that standard.

Mr. Singer: But it seems that frequently it's because of your belief that there's a disconnect between the perception of what really goes on in a trial and
what the Court of Appeals...

Judge Richey: Oh, absolutely. There is a disconnect.

Mr. Singer: Yeah.

Judge Richey: There is a disconnect. You know...

Mr. Singer: That's... I think there will be people who are interested in that.

Judge Richey: Well, let me tell you. The Fourth Circuit requires every new district judge to spend, I think six weeks, before they begin to sit on the Court of Appeals in Richmond in the Fourth Circuit.

Mr. Singer: You'd have it the other way around.

Judge Richey: No question. And we did. Before I came here, the year before I came here, four judges of the Court of Appeals, Warren Burger, later Chief Justice; Harold J. Leventhal, Circuit Judge; two others. Four of them were assigned to sit during the three months of their, four months, or whatever it was of the summer recess. Only one lasted the four months.

Mr. Singer: Sit as district judges.

Judge Richey: Sit as district judges. Trying cases, and that was Warren Burger.

Mr. Singer: He was the only one left?

Judge Richey: Only one of the four. Two of them quit at the end of the first day. Never showed up again. Leventhal tried one case and quit. I don't know what happened to the fourth one.

Mr. Singer: That's interesting.

Judge Richey: We've never been able to get them to come back. Now, Silberman did try a case with Hogan... two cases with Hogan's help. Pat Wald has promised
me since 1978 when she came here -- no way.  But David Tatel, God
bless him, has said to me, "Chuck, I want to sit with you when you try your
first drug case."  Well, do you know what?  I haven't had a drug case
since David Tatel came here.

Mr. Singer:  Uh huh.  But you have it in mind.  You just have to tell him.

Judge Richey:  I sure do.  And he will come.

Mr. Singer:  Sure.

Judge Richey:  I know he will come.  Right now, the last six months, most of the criminal
cases are resulting in pleas.

Mr. Singer:  Isn't that interesting?


Mr. Singer:  They are pleading to misdemeanors?

He's a criminal history category five because of his long record of other
guns, robberies, this and that.

Mr. Singer:  Yeah.  But how does... how do "three strikes" impact on that?

Judge Richey:  Well, that isn't law yet.  That's just the President's proposal.  That's a
political statement.

Mr. Singer:  Ahhh.  It's only... but it is the law in California.

Judge Richey:  It is the law in some of the states.  They've picked up on what the
President said in his State of the Union message.

Mr. Singer:  OK fine.  Now I'm fine.  I mean, I think it's terrible policy but...

Judge Richey:  Oh, of course you do.  I hope.
Mr. Singer: I mean, its impact in California is they may never try a civil case again because of the... everybody... nobody's going to plead guilty.

Judge Richey: Well, the reason they're pleading guilty now is because they're facing these mandatory minimum sentences prescribed by Congress, independent of the Sentencing Commission guidelines. There's only one way out, to turn informer for the government.

Mr. Singer: I see.

Judge Richey: And then get, what we call a 3553 (e) and a 5-K-1 letter from the government which allows us to depart downward even to probation. And there's a new statute. The Congress finally got a little wisdom and passed for first-time offenders, what we call a safe harbor provision that gives us some discretion. They added 3553 (f), small f as in frank, and that allows us to depart. So, we're getting more pleas because of the escape valve due to cooperation. But that's terribly dangerous for the offender. To go out and squeal on somebody and then get shot or be a marked person for the rest of their lives.

Mr. Singer: Right.

Judge Richey: But that's the only alternative they've got because we abolish parole in 1984 with a Sentencing Reform Act and the Comprehensive Crime Control Act which should never have been passed and wouldn't have but for Ted Kennedy's joining with Strom Thurman and asking for it. But, do you see, the Sentencing Guidelines were enacted in the first go-around without reference to mandatory minimum sentences. Then the Congress pulled,
due to political reasons, and enacted this whole host of mandatory
minimum sentences and the guidelines had to be changed to take that into
account. Now if you talk to most judges, most criminal defense lawyers,
they'll tell you the guidelines are awful and very unfair. I'm not one of
those judges that is a vigorous advocate against the guidelines.

Mr. Singer: UhHuhh.

Judge Richey: I feel like a regulatory agency. I'm bound by the rules promulgated by
higher authority but the question is, how do you apply them to achieve a
just result? And if you are creative, interested in justice as mandated by
Rule 2 of the Criminal Rules, highest quality of justice, least amount of
time, lowest possible cost, deterrence and punishment and rehabilitation,
even though the statute took rehabilitation out in 1984. There are all
kinds of ways to achieve justice. Today, this day, January 23, 1996, I had
a conference with the prosecutor and the defendant and they came in and
told me the United States Attorney's Guideline Committee had rejected an
offer of cooperation and a departure. And I said to the lawyers, federal
public defender, a wonderful young woman and this young prosecutor, I
said, "Let me tell you something. Read Chapter 3 of the Guidelines."
"What do you mean?" "Read Chapter 3," I said, "of the Guidelines and
look at the section dealing with minimal role in the offense which
authorizes my departure downward by three offense levels." Well, to
make a long story short, they wanted to plead to a five-year sentence.
With my creativity, it came out with a 63-month sentence. Three months
as against the 10-year maximum. And you know what happened? The defendant took it. 'Cuz he was guilty.

Mr. Singer: No.

Judge Richey: And they were just so happy that this old judge was able to do their thinking for them. That happened this afternoon.

Mr. Singer: And you weren't embarrassed at all by it either.

Judge Richey: Naw. I said it in such a way that it wasn't intended to embarrass them.

Mr. Singer: That's good.

Judge Richey: I didn't mean to do that.

Mr. Singer: Let me ask you again. We've been at this now for a bit. We got a late start and we still haven't gotten to those wonderful...

Judge Richey: Well, you're.....

Mr. Singer: But I can't hold you and I can't hold myself long enough to begin on that so I...

Judge Richey: I haven't looked at it since they were created.

Mr. Singer: Right. And my question to you really is....We agreed kind of last time that we would have one more session in which you.....

Judge Richey: I thought it was two, but I don't know.

Mr. Singer: OK. If it's two, then we should try to figure out when the next one is and start right with those.

Judge Richey: All right. If you want to, that's perfectly all right.

Mr. Singer: I mean, this is too good a resource. You're too good a subject for us not to take advantage of that kind of resource. And one might say that those
are going to survive in a sense, forever.  And anybody can go scrambling, but what I'm interested in is in your reactions, not having looked at them for years.

Judge Richey:  That's correct.

Mr. Singer:  In the creation to go back fifteen or twenty years and see...
ORAL HISTORY OF JUDGE CHARLES RICHEY

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

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

Judge Richey: All right.

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

Judge Richey: Yeah.
Mr. Singer: This volume deals with your nomination.

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

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

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

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

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

Mr. Singer: Probably not the last time but one of the very few times when a nomination
has, in recent history, a nomination has been approved so swiftly.

Judge Richey: There was no particular problem.

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

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

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

Judge Richey: Oh, exactly. Why shouldn't Peter Edelman have been nominated and confirmed. Just because he wrote some law review article for the Hofstra Law Journal or whatever it was. I don't know. I'll tell you something else that I think is significant. I've seen judges come and go over the last quarter of a century, and even before that as a lawyer practicing in this court. And when it comes right down to it, particularly at the United States District Court level, the judges appointed to this kind of a court, a trial court, in my experience, have really not let ideology play a major role. The only place where it does is in cases of first impression involving far ranging questions of, what I will call for the want of a better word, public law where it's an open question. There it might have some effect. But other than that, in
the routine day to day work of a judge, even on the Court of Appeals, it's just whether the application of the law fits. And my observation is that most 99 and 9/10ths of the judges have done that.

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

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

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

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

Mr. Singer: Right.

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

Mr. Singer: In the criminal field. Right.

Judge Richey: Yes. And towards the end, he even got more difficult. But, Holtzoff, in my judgment, was one of the greatest judges ever to sit on this court along with Weinfeld, in the Southern District of New York; Weinstein of the Eastern District of New York, Learned Hand, Henry Friendly.
Mr. Singer: Can you think of instances where you thought it was appropriate for the Senate to, essentially, interrupt the President's appointment process and to say "no" to the President?

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

Mr. Singer: Right.

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

Mr. Singer: I don't remember either.

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

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

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

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

Judge Richey: No, I don't

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

Judge Richey: Here in a...

Mr. Singer: Here in Washington. In the first home rule administration. He was the
City Auditor; he had been with our law firm before he went to the government and thought Haynesworth really had a bum rap.

Judge Richey:: He did.

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

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

Mr. Singer: To the Supreme Court.

Judge Richey:: To the Supreme Court.

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

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

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

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

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

Judge Richey:: And, it's to give advice and consent and listen, and technically, for some reason, is for a woman, pardon me, totally unqualified, I think they ought to defer to the President, whomever that may be. As I say, I thought the Clarence Thomas hearings were a disgrace and the way they handled that, I
thought was awful. That's not to say that everybody would have chosen him to be a Supreme Court Justice, and that's not to say that I agree with all of his views. But I think he was qualified in the broad sense of the word.

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

Judge Richey: Yes. His first case as an appellate judge was one of my criminal cases. He wrote the opinion. As I say it was his first case. I waited until the time expired for a Petition for Rehearing, rehearing en banc and petition for cert. After all that was over, I called him. I'll never forget. I said, "Clarence, I just wanted to thank you for what I thought was a very learned opinion."

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

Mr. Singer: The defendant was in the court room

Judge Richey: Parents

Mr. Singer: His parents.

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

Mr. Singer: Sure.

Judge Richey: Ahhh. It was a wrenching case

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

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

Judge Richey:: Have I?

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

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

Mr. Singer: Did it?

Judge Richey:: For a few days.

Mr. Singer: Right

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

Mr. Singer: Right

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

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

Judge Richey:: Yeah. Even Harold. As great as he was, he just couldn't... didn't like it, couldn't handle it I guess.
Mr. Singer:  Well, it's a very intimate form of contact. Notwithstanding the robes and the elevated bench and all of the paraphernalia of the court room. It's... you can't be aloof in the process or it's much more difficult...

Judge Richey:  Well, that brings to mind something that I want to say 'cuz I think it's important. What is the most important qualification of anybody to be a judge? Whether it be at the trial or at the appellate level? I'm talking about the U.S. District Courts and the U.S. Courts of Appeals. The most important qualification is management ability. If he or she does not have that, then they are going to be less effective and maybe even a failure.

There was a judge in the '60s who was nominated to this court. He lasted about a year and one-half and then was appointed or elevated, as they say, I think that's a misnomer, but, to the Court of Appeals. But he had the same problem there. He couldn't make decisions. Didn't have the management ability to do the work. He worked, as I was telling Mrs. Richey just this weekend, to at least 3:00 every morning here in this building. He had no family life, no life whatsoever.

Mr. Singer:  UhUh.

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

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

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

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

Mr. Singer:  Just couldn't hack it.

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

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

Judge Richey::  Absolutely.  Absolutely.

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

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

Mr. Singer: UhUh.

Judge Richey: So.....

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

Judge Richey: I'd rather not.

Mr. Singer: OK.

Judge Richey: I'd rather not.

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

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

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

Judge Richey: Oh. That's easily discernible.
Mr. Singer: OK.

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

Mr. Singer: Right.

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

Mr. Singer: The check is in the mail.

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

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

Judge Richey: Exactly. Exactly. And, ya know, you talk about the three-part inquiry that you'd make and to determine whether a moving party has standing under Article III and so on and then you go on to the First Amendment and whether
there was, in fact, discrimination, viewpoint discrimination here. At least an academic sort of thing that really had no relevance when you soak [?] to the bottom, but they wanted to get me to agree to discuss that and I wasn't going to do it.

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

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

Mr. Singer: Colgate Palmolive Peet.

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

Mr. Singer: Toothpaste.

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

Mr. Singer: [Laughter]

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

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

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

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

Mr. Singer: Right

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

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

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

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


Mr. Singer: 1971.

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

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

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

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

Judge Richey: No. Not until I see it here. It is by Jack Nelson in the Los Angeles Times.
He must have come from Los Angeles... I had no recollection of that.

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

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

Mr. Singer: That's you.

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

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

Judge Richey: I think of being late. I'm quoted as saying "So the scales of justice will be evenly balanced, I'm telling the U.S. Attorney's office from this day forward that there will be no excuses for being in another court for tardiness, delay and discourtesies because I intend to start invoking sanctions against lawyers for their discourtesies and tardiness. This goes for all members of the Bar."

And so that was the latest in a series of actions that caused attorneys to be muttering to themselves. Well. But then there were editorials praising me on the radio and everything else. The lawyers used to... the U.S. Attorney's office used to park on the Mall and they couldn't get a parking space to get into the courthouse and in court by 8:30 or 9:00. And, of course, we never... I was the first judge to ever sit before 10:00 in this courthouse. Or beyond 4:00. And I used to try cases at night

Mr. Singer: UhUh. Why?

Mr. KAPP: Why? Because I had no... I was so inundated with criminal cases during the day, I had no choice but to try those first. When I came here there were eight
motions to dismiss for lack of a speedy trial. That was the docket I inherited. Some people were languishing in the jail for over two years. It was terrible. And then, there were a lot of people that had civil cases that were important. And so I decided that I was going to break... do anything and everything that I possibly could in order to give those people their day in court. I caused a lot of furor around here by sitting early, sitting late, and some of the lawyers liked it and some didn't

Mr. Singer: How about your colleagues?

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

Mr. Singer: Yeah.

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

Mr. Singer: A zoning case?

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

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

Mr. Singer: Approved your view.

Judge Richey:: No. Gesell's view.

Mr. Singer: Gesell's view.

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

Mr. Singer: What would have been...

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

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

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

Mr. Singer: What did he need?

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

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

Judge Richey:: What?

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

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

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

Judge Richey:: Yeah. It was made public.
Mr. Singer: This is the way we're going to sentence people.

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

Mr. Singer: I see.

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

Mr. Singer: Right.

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

Mr. Singer: I see.

Judge Richey: This is what I think is appropriate.

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

Judge Richey: Exactly.

Mr. Singer: OK.

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

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

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

Mr. Singer: This is Watergate related?

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

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

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

Mr. Singer: Right.

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

Mr. Singer: '71.

Judge Richey: '71.

Mr. Singer: You said '91.

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

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


Mr. Singer: Watergate had already...

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

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

Judge Richey: No. '71

Mr. Singer: The oil and gas leasing.

Judge Richey: Right.

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

Judge Richey: Well, we started in '71 too because the civil suit was filed. Here are the papers right here. Well, this is '72.
Mr. Singer: That's '72. I mean, I remember, for other reasons, that the Watergate starts in the spring of '72. The disclosures start and then there's a lot of stuff. People start looking back at other things that were going on.

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

Mr. Singer: Of the taping operation.

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

Mr. Singer: Yes.

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

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

Mr. Singer: I see.

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

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

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

Mr. Singer: Was it a...

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

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

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

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

Judge Richey: On February 10, 1972 that Secretary of the Interior Morton blamed me vigorously for delaying in the development of our nation's natural resources and that I misconstrued the National Environmental Policy Act. My... Here's
an article by... dated May 17, 1972. I had determined to go visit prisons during my vacation.

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

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

Mr. Singer: They have it right.

Judge Richey: Yeah. They did have it right.

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

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

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

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

Judge Richey: Yes.

Mr. Singer: Would have been Ed Williams.

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

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

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

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

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

Mr. Singer: What was he?

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

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

Judge Richey: Let me find out. Some trust.

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

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

Mr. Singer: All right.

Judge Richey: ... was his attorney. He couldn't believe that I would send a man like that to jail. And he talked down to me as if this was just a five-cent traffic case and I didn't buy it. He was very upset with me. But that's... Here are some
pictures of some nuns. I used to be on the Board before I came here at Immaculate College and they came to the investiture.

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

Mr. Singer: Yeah, I think it is.

Judge Richey:: This is...

Mr. Singer: Yes. I think it is.

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

Mr. Singer: The date of this broadcast?

Judge Richey:: 1971.

Mr. Singer: Umhum.

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

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

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

Judge Richey: Smooth.

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

Judge Richey: Wait just a minute.

Mr. Singer: All right.

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

Mr. Singer: Right.

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

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

Mr. Singer: Oh, really?

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

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

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

Mr. Singer: Very.

Judge Richey: To say the least.

Mr. Singer: That's an understatement.

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

Mr. Singer: In spite of Roger Robb.

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

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

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

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

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

Mr. Singer: Here's one lawyer who applauded that. Now that you mention it, I remember the decision. There was this guy named Scrivener who was one of the parties. He was the head of Perpetual.
Judge Richey::  He was vice-president and general counsel for years.

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

Judge Richey::  Yeah. Yes.

Mr. Singer:  I remember that case.

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

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

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

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

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

Mr. Singer: He described it in....

Judge Richey: Is that in there?

Mr. Singer: ... in some length...
Judge Richey: Then I won't do it again. But, the FBI had improperly wiretapped a lobbyist over there at the hotel across from the Watergate. I mean the Statler Hilton at 16th and K. Fred Black. I'm sure, I remember this, because it said when they called him that I'd go over and he said "I'll be darned." That day I ruled in favor of the Humane Society in an action to prevent hunting which would be detrimental.

Mr. Singer: What was the detriment from hunting?

Judge Richey: Apparently, it had to do with wildlife refuges down in Virginia.

Here's a '74 article about where I allowed the Vietnam war veterans to camp on the Mall. That night when I issued my opinion, right after issuing it, I went out the door and there were about six lawyers for the government standing outside. A fellow named Zimmerman was their lead counsel. And they went upstairs and got a special hearing. Arnold & Porter were representing the...

Mr. Singer: The vets.

Judge Richey: The vets, pro bono. And they were sitting in their offices and never got a call. They heard argument from the government only.

Mr. Singer: The Court of Appeals?

Judge Richey: The Court of Appeals. And then reversed me. On the basis of an unpublished order of Warren Burger, Chief Justice of the United States.

Mr. Singer: Burger in '74 was still a...

Judge Richey: Chief Justice. He was Chief Justice at...

Mr. Singer: He was Chief Justice.
Judge Richey:: Here's the story.  *Washington Evening Star* June 29, 1974.  Ohhhhh...

Mr. Singer: You were not happy about that one.

Judge Richey:: I was not.  I was not happy one bit.  Democrats got 775,000 Watergate settlements and that's just part of it.

Here's where I was sent to Tallahassee to try a drug conspiracy case involving a son-in-law of the late Judge Carswell who had been nominated for the Supreme Court.  He was convicted.

Here's an article from the old *Star News* which pointed out that I was criticized for allowing the vets, the Vietnam war veterans to camp on the mall.  That's all I've got for that.  What's the next one?  Or do want to get another one?

Mr. Singer: Ummm.  Yeah.

Judge Richey:: You can do whatever you want.  I'm here at your service, not mine.

Mr. Singer: OK.  I'd like to...

Judge Richey:: I just hadn't looked at that in twenty-five years.

Mr. Singer: This next one moves you forward.

Judge Richey:: All right.  Whatever.  You're the boss.

Mr. Singer: To July beginning... This volume begins in July 1985.

Judge Richey:: My goodness gracious.  I've just got to...

Mr. Singer: Is that it?

Judge Richey:: Well...

Mr. Singer: It would have to be a Washington dateline.

Judge Richey:: Oh.
Mr. Singer: Here we are. It has to do with the PLO. What's the date of this?

Judge Richey: Yeah. '85.

Mr. Singer: October '85.

Judge Richey: Ummmm. Yes. It does. October 13. On October 11, 1985, I received a telephone call as the duty judge at home. You got this?

Mr. Singer: Yeah. Word for word.

Judge Richey: And, this was from... a fellow named Lawrence Barcella or Barcello of the U.S. Attorney's office, and he was calling from the Command Center at the White House. The ship, *Achille Lauro* had been hijacked by a man named Mohammed Abbas who was head of a PLO faction and he was ultimately charged with the murder of Mr. Klinghoffer on board that ship. The government found out that he was in Italy, Rome.

Mr. Singer: That Abbas was in Rome.

Judge Richey: Yes.

Mr. Singer: Yeah.

Judge Richey: And, they wanted me to hear the evidence as to whether there was probable cause to arrest him, telephonically, and they would record it and then the next day bring out papers for me to sign memorializing whatever I decided. They told me that it was only the second occasion in the history of this Republic where that had been done.

Mr. Singer: Meaning a telephonic hearing.

Judge Richey: Yes.

Mr. Singer: Ex parté?
Judge Richey:: Those are always ex parté.

Mr. Singer: OK.

Judge Richey:: And so I did it. It extended almost 45 minutes, the hearing. And then two FBI agents and Barcella came out to my apartment. They were supposed to be there at 1:00 on Saturday afternoon.

Mr. Singer: You were living as you are now at Connecticut Avenue?

Judge Richey:: Chevy Chase, Maryland.

Mr. Singer: Right.

Judge Richey:: They were late.

Mr. Singer: [Laughter] You found them in contempt.

Judge Richey:: No. I should have, but they... but I was so interested in what they doing, I thought they were doing the right thing. So I issued the arrest warrant, or caused it to be issued, approved.

Mr. Singer: UhhhUhh.

Judge Richey:: They wired it to the Craxi government in Italy.

Mr. Singer: He was the Prime Minister then.

Judge Richey:: A couple good days later, he resigned and the whole Craxi government fell. Meanwhile, Abass escaped to Yugoslavia. He's never been found since, to this moment. He was subsequently indicted, under seal, in this court.

Mr. Singer: What does it mean to indict "under seal"?

Judge Richey:: Well, they didn't want to release it so that he would know that he was a, you know, try to escape.

Mr. Singer: Right.
Judge Richey: And avoid the strictures of the law. About two years went by and some lawyer from the Department of Justice came in one day and said, "Sorry, Judge. You won't like this but we're going to have to dismiss this indictment against Mr. Abass. That was after NBC News conducted an exclusive interview which I saw of Mr. Abass but without disclosing his location. As far as I know, that's the last the public ever heard about him. There was a great tragedy. But, you know, that's the first time I've heard or knew of CNN News. There was a woman standing out in front of our apartment accosting everybody that came and left. "Are you Judge Richey?" "Are you related to Judge Richey?" And I told you they were late. And I was tired and Mardelle and I were there alone so I said, "Let's go for a ride." We did. We came back and she said, "I think I'll go get the mail before we go upstairs." And I was sitting in the passenger side of the car and all of a sudden I see out of the corner of my right eye a big television camera and a couple of people. And at that point, Mardelle was racing in front of the car to get back in the car. She had obviously discerned before I did that the press was out there. I learned then that CNN had the largest news presence in the Middle East and that's how they got wind of this top, top secret. I mean, Dan, they told me there was nothing more secret in the entire government of the United States than this arrest warrant. And, of course, I was totally surprised that the press had gotten a hold of it through CNN News.

Mr. Singer: Sure.
Judge Richey: Anyhow, that's another tragedy. A real tragedy.

Mr. Singer: Well, in reflecting on it. Do you think the government...essentially are your reactions to the...

Judge Richey: Oh, I thought it was terrible they dismissed the indictment. And I told them so. It's a sealed record, but I don't... the world ought to know it. That it.....

Mr. Singer: When did the world find out?

Judge Richey: I don't know whether they ever have.

Mr. Singer: I see.

Judge Richey: But it's, it's... I just... you look at all these clippings through this period in 1985. The Italians let him out and let him loose. And it was wrong.

Mr. Singer: What the Italians did was wrong.

Judge Richey: Yeah.

Mr. Singer: For sure.

Judge Richey: Certainly. And he should have been brought to justice in the United States for killing this American citizen. We have special jurisdiction in this court to try a terrorist like that.

Mr. Singer: Under what authority?

Judge Richey: Well. It's some statute that Congress enacted. That's why they have the secure courtroom next to mine here.

Mr. Singer: UhUh.

Judge Richey: And, it's been tested.

Mr. Singer: But that's not under... I mean the crime, I think, was committed on the High
Judge Richey:: That's right. And the Congress in the early '80's created special jurisdiction in our court to try people like that.

Mr. Singer: I see.

Judge Richey:: You talk about a world-wide effort vowed to apprehend Abbas with all the resources of this country and, for example, the Israeli intelligence community. I learned in that case that Israel has the best Intelligence of any country in the world, including our CIA and all the...

Mr. Singer: Certainly with respect to the things that are of importance to them.

Judge Richey:: Well, anyhow. Now we're bringing me to Paul Thayer.

Mr. Singer: What about Paul Thayer? I mean, that's....

Judge Richey:: What to do you want to ask me about him?

Mr. Singer: Well. It was a high profile trial, this guy was... if I remember correctly, he was a Deputy Secretary of Defense.

Judge Richey:: Deputy Secretary of Defense.

Mr. Singer: And he was basically... was he trading stock or giving tips to his girlfriend about something?

Judge Richey:: Yes. Inside information.

Mr. Singer: Right. And it was the stock of his prior company in Texas?

Judge Richey:: Well, companies of which he was a director. And the SEC got onto him. He pled guilty, I think, believing that I would give him, since this was a white-collar offense, and in view of the fact that he had an outstanding war record, former president of the U.S. Chamber of Commerce who made the
Vietnam War Memorial here in Washington a reality, raised the funds for it, major funds. I would give him a slap on the wrist and he got, this is why I don't think Robert Fiske is the man that the press today thinks he's such a great man. I don't think Fiske is such a great man because he got all of these Republican leaders, such a Cap Weinberger, President Gerald Ford, former Secretary of Defense Melvin Laird, people I barely knew. And there were about 75 letters. "Dear Judge Richey. Please give Paul Thayer probation. He's a great American." And so on. And it angered me. I called my then secretary in and said, "Take this order. The Clerk will make the attached letters a part of the official file in this case. Signed Judge and date." Ha. As a result of that, the National Press Corps was in my courtroom on the date set for sentencing. And, I gave him three years. Robert Fiske talked down to me. And….

Mr. Singer: What's the content of talking down to you? What kinds of things? I mean, it's kind of a dumb thing for a lawyer to do under any circumstances. To talk down to anybody. Certainly the juries don't like that as far as I know.

Judge Richey: Juries don't like it. Judges don't like it. But...

Mr. Singer: People don't like it.

Judge Richey: It was just a haughty... to summarize, it was just a haughty "I'm better than you are, Judge" or you're just a five cent flunky here and "I'm from Wall Street and I know. I know better than you."

Mr. Singer: UhhUhh. But you've seen enough lawyers around and including Wall Street lawyers, haven't you, so that that's, I don't want to know that it's aberrational
conduct, but these are Wall Street lawyers who don't do that.

Judge Richey: Well, more of them do than don't. More of them do than don't.

Mr. Singer: Why does that sound like Arthur Liman?

Mr. KAPP: Arthur Liman's got... he's an exception. Arthur Liman is one of the greatest lawyers of all time, and a protégé of Judge Rifkind.

Mr. Singer: Correct.

Judge Richey: But. That's not the rule of the day from New York Wall Street law firms. Arnold Bauman was another exception. But he'd been a trial lawyer in the U.S. Attorney's office and so on before he went on the bench, then left because of, to go to Sherman and Sterling. He was not that way. But, most of them could have appeared...

Mr. Singer: Did you know my one-time partner, Leon Silverman at all? Leon was...

Judge Richey: I think I had him a couple of times over the years. He's very good.

Mr. Singer: He was with the...

Judge Richey: Deputy A.G.

Mr. Singer: Right. To Walsh.

Judge Richey: I think I had some limited contact with him. He was great. Let me just see here. Here is the Kansas City Times.

Mr. Singer: And then there's George Spielberg, of course. The founder of our law firm.

Judge Richey: I don't believe I know him. "Judge Richey Wasn't," the Kansas City Times.

Mr. Singer: Date?

Judge Richey: March 11, 1985. His was a kind of life the American system rewards and many Americans strive to emulate.
Mr. Singer: "His" being yours.

Judge Richey: Thayer.

Mr. Singer: Thayer?

Judge Richey: “Former Deputy Secretary of Defense had done well attending the University of Kansas. He'd been a Navy Ace in World War II. A highly successful head of our TV corporation and an all-around exemplary business leader. When he was sentenced this week in U.S. District Court for four years in federal prison for perjury, nearly 70 influential friends pleaded for parole for Thayer. To his credit, the judge in the case was not totally mesmerized by the power of Thayer's friends. Judge Charles Richey explained that a jail sentence was necessary to deter other white collar criminals, and in a comment worth repeating to preserve, quote the one sacred thing we have in this country, our system of justice, unquote. All too often people of power, money and influence become seduced by their status into thinking laws do not apply to them. Or if they get caught, they can use high-priced legal talent to soften the punishment." Robert Fiske. "Judge Richey could have given Thayer five years, maximum for the charge. He chose instead a lighter sentence, meaning Thayer would be eligible for parole in about a year. The lesson is that the powerful cannot expect to play by a different set of rules."

Mr. Singer: Is that Thayer's hometown newspaper? Was he from...

Judge Richey: Texas. Dallas. I remember...

Mr. Singer: Dallas was where LTV was. Didn't they say that Thayer had gone to the
University of Kansas?

Judge Richey: It did. Yeah. I don't know where it is, but it was the *Miami Herald* which wrote praise of me and said that I ennobled the system of justice by not capitulating to your friend Fiske.

Mr. Singer: [Laughter] My friend Fiske?

Judge Richey: There is a group called the Synanon S-y-n-a-n-o-n. They allegedly were a drug rehabilitation group that had cult-like qualities. IRS took away their tax-exempt status. The case was tried before me and I ruled in favor of the government.

Mr. Singer: Now you know the...

Judge Richey: Got a lot of praise for that.

Mr. Singer: ... the Scientologists are still in existence.

Judge Richey: This is another religious group. And then the Scientologists, ohhhhh. They were indicted, criminally indicted, the Scientologists. My court. We'll get to that in a minute I see. Oh, here. My goodness gracious.

Jillions of press clippings involving the D.C. Homeless Shelter a couple blocks from the courthouse which I... you see, in Reagan's, Ronald Reagan's second campaign for the presidency, he made a promise in some speech or press conference that he would fund the shelter with $3 million. And, of course, later he changed his mind and wouldn't do it and this lawsuit was filed. I got the case. I upheld Mitch Snyder and the homeless. And I'll never forget it. Before the opinion was released, I decided I was going to try to get the attention of the President. So I sat down there at my desk and
wrote about four pages saying that this case cried out for a solution to a social problem rather than a bunch of legalisms. And that the President of the United States should call a national White House conference on the homeless problem to try to come up with a solution rather than a political football. And I went on and on and on about how he should use his friends who are captains of industry and business and so on to help assist in this. And a young man named Robert Veith, whose father had been Managing Partner of Arnold & Porter, dear friend of mine, was my law clerk at the time and he just gave me holy heck by saying: "Judge, you can't do this. This is inappropriate for a judicial decision."

Mr. Singer: That judges shouldn't write to Presidents?

Judge Richey: Well yeah. Except I do feel he was correct. But I said, "Bob, I don't care. I'm going to do it anyhow. I feel so strongly if these people need help then there's got to be a solution. I'm going to do this because the press will pick it up and maybe it will get in the press summary to the President and he might read it." Well, he said, "Well, that doesn't justify doing what you're doing as a judge." I did it anyhow. You see a lot of publicity about it but it didn't really get to the attention of the President; it didn't work. Dan, this is why I respect Robert Bork so terribly much. It went to the United States Court of Appeals and I was affirmed, 2-1. Guess who dissented. Robert Bork. And all that obiter dictum which I put in the opinion, which shouldn't have been there, Judge Bork said, "The views of the District Court below are set forth in the following note." And he put it in a footnote. Now he had
an opportunity to lambaste me from coast to coast, pillar to pillar, but he didn't do that. He just made one comment and put that stuff in a footnote. Now, Dan, a lot of liberals opposed Bob Bork. But when I saw that, knowing that I was wrong, I said, "There is a man of good judgment and good common sense." He didn't take it out when a man was down. He didn't take the opportunity, which was his, to jump on somebody and I respected him for that. I thought it was a tragedy they turned him down for the Supreme Court because he had superior qualifications. You don't agree with that, I know you don't, but I do.

Pardon? And I said at the time to my friends. The liberals are going to rue the day that they opposed poor Bork and Clarence Thomas and the excesses they engaged in with respect to those nominations will come back to haunt them. And you mark my word, if Clinton nominates somebody of his own views, or a liberal elite.

Mr. Singer: Well, he nominated two people of the liberal elite and they both went through rather handsomely.

Judge Richey: Who's that?

Mr. Singer: Ruth and...

Judge Richey: Steve Breyer?

Mr. Singer: ... Steve Breyer.

Judge Richey: Well, Ginsburg and Steve Breyer are not of the liberal elite. You're wrong.

Mr. Singer: Why?

Judge Richey: Both of them are not liberals. I mean they are liberal in a broad sense of the
word, but they are not...

Mr. Singer: Ruth was after all general counsel to the ACLU.

Judge Richey: Of course. But that wasn't generally known. She was a very conservative judge on our Court of Appeals.

Mr. Singer: Concur. But when...

Judge Richey: Judge Bazelon, she by her own admission to me and said Judge Bazelon looked very disappointed on my service on the Court of Appeals. She told me that.

Mr. Singer: Well, that's probably because she didn't just swallow everything David was saying about her.

Judge Richey: No, she didn't. Unlike me, but ahhhh...

Mr. Singer: [Laughter]

Judge Richey: You know how... here's a Wall Street Journal article. Just to prove that judicial activism isn't dead, "Federal Judge Charles R. Richey this week ordered the federal government to develop a plan to eliminate homelessness in the Nation's Capital." unquote. August 23, 1985.

Mr. Singer: Do you ever feel frustrated that this order of yours eleven years ago...it seems to me...

Judge Richey: Wait a minute. The last paragraph says that "If Judge Richey is intent on being an activist, and his past record leaves little doubt of that, why not be an effective judicial activist? Question mark. Why not find occasion to rule that the District's rent controls are an unconstitutional taking of private property. If the courts could ever get that principle established, the colossal housing...
problem the judge worries about would start healing itself.” The *Wall Street Journal* is giving me heck.

Mr. Singer: That's certainly true.

Judge Richey: What?

Mr. Singer: That's true.

Judge Richey: They were giving me heck.

Mr. Singer: They were.

Judge Richey: Oh, yeah. They always have. I'm not one of their favorite judges. Who cares?

Mr. Singer: That's an Article III [?].

Judge Richey: Mary McGrory wrote a column on August 16, 1985. This was in Frankfort, Kentucky; it was also in the *Washington Post*. She said... it's entitled "Love in the D.C. Courtroom" where Snyder tried to get himself arrested when I was conducting the Saturday afternoon hearing in that case. And they got him to the door with two marshals and I said, "Marshal, do not do that. Bring him back." And when he came back I invited him to the lectern and I said, "You can say anything you want. "Stirring speculation that Snyder might have added contempt of court charges to his quarrel with the President. The Judge, it seemed, welcomed the outburst. He needed someone who would help him grope his way through the legal thicket of the decent thing. Snyder certain in his denims, the Judge troubled by his black robes, fell into an amazing exchange. We need your help in these times,' said the agitator. Richey replied humbly, 'Mr. Snyder, I can only do so much. I know I will have your
respect and you will have mine regardless of how this comes out.'  Snyder, 'You will have my love.'  'Sir,' said the Judge, 'You will have my love.'  And the Judge said, 'You will have mine.'"

Paragraph.  Last paragraph.  "Love was not in the headlines of either side.  Nor is it an item in the Reagan budget.  But it had made its way into the courtroom.  Snyder who was embraced by his lawyer said, quote 'The Judge is a wonderful man and he's just like the rest of the country.  He doesn't want to think about the homeless but knows we have to.'"  You are laughing.  Why is that?

Mr. Singer:  But…..

Judge Richey:  Huh?

Mr. Singer:  Who was she quoting at the end?  That knows he has to?

Judge Richey:  That's herself.  That's Mary McGrory.  It's in all the papers.  Editorials.  All over the country.  The man who spoke out and the Judge who listened.

Mr. Singer:  He was…

Judge Richey:  When pleading the case of the homeless, try love.  Huh.  "Thrashing between plight of the homeless and presidential pledge."  Wilmington, Delaware paper.

Mr. Singer:  Very interesting...

Judge Richey:  Aw, people have been accusing me of that for over a century.

Mr. Singer:  Yeah.  [Laughter]  What's the answer?

Judge Richey:  I don't know the answer.  Just, just... I just got them.  I didn't seek them out.  It's....well, you're rolling your eyes.

Mr. Singer:  No.  No.  I'm trying to think about how to phrase the question.  I mean I.....
Judge Richey: The cases are randomly assigned.

Mr. Singer: I know that...

Judge Richey: There is no Mickey Mouse to it.

Mr. Singer: In the Court of Appeals, I remember they instituted a... they had a...one of those shakers from pool tables which had numbered little balls in it and they would shake. Each judge had a number and that's the way the panels were made up and I always thought that it was an absolutely fair shake and I do to this day. How do they do that in this court?

Judge Richey: You know something. It's absolute random. I know people have tried to evade the system of getting cases assigned to various judges, but it's never been... the code has never been broken so to speak.

Mr. Singer: UhUh. UhUh.

Judge Richey: And I know it's honest.

Mr. Singer: Well, I mean...

Judge Richey: Harold Greene once said to me, "It's not the case that you get. It's what you do with the case once you get it."

Mr. Singer: Would that suggest that there were probably half a dozen judges who could've essentially opened the homeless issue or any one of these?

Judge Richey: Well, the easy thing to do would to have been close it down.

Mr. Singer: But, no, I mean in terms of... addressing in an imaginative, aggressive way, the homeless issue. There were constant series of cases that anyone of a half dozen judges could've used as a platform in the way you used Mitch Snyder's case.
Judge Richey: Not very many people would have done it.

Mr. Singer: That I understand. But at least the opportunity... what you're saying is the opportunity was there, what Harold Greene, you're saying.

Judge Richey: Yes.

Mr. Singer: These cases present themselves routinely on every judge's calendar or on many judges' calendars and most judges seem just to pass them off; that to ignore those issues that lurk within these cases and other judges, called activist judges, tend to reach out.

Let's revert now to where we started the day when we talked about it not making much of a difference except in cutting edge cases. The work of judges that... most of what most judges do is quite ordinary or routine.

Judge Richey: It is. But when you get that opportunity, if you're so inclined, you seize upon it.

Mr. Singer: Right. And it's that quality that a President should be seeking out when he makes appointments?

Judge Richey: Well. I suppose if you took a referendum of the American people today, they would say that they should exclude people like me for that tendency.

Mr. Singer: Well, that's where I was kinda going with that...

Judge Richey: I know what you're going to. You don't think I don't know that. C'mon. But, on the other hand, I think in addition to management ability, you ought to have somebody with experience and a record of social consciousness that enables a judge to recognize these kinds of problems and help, not to legislate, but to solve problems. The law is not a static barrier to achieving some good
for society as a whole when you have public questions of broad public law. I guess that makes me a judicial activist as the *Wall Street Journal*, and I have a record of that, I guess.

Mr. Singer: You don't reject that label at all?

Judge Richey: No. I couldn't care...

Mr. Singer: You could wear it as a badge of honor.

Judge Richey: I do. I could care less what they think.

Mr. Singer: How many Judge Richeys do you think a court of this size can digest?

Judge Richey: Oh, a couple.

Mr. Singer: Couple.

Judge Richey: Couple.

Mr. Singer: A couple more.

Judge Richey: I would hope.

Mr. Singer: Yeah.

Judge Richey: Ahhhh. Judge Gerhard Gesell was widely recognized about the country in many respects. He was always in competition with me in these high profile cases.

Mr. Singer: UmUm. UmUm.

Judge Richey: And, until the end, the last couple of years before he died... I think he... it's fair to say, that Gerry resented me in many respects. You see, in the early days.

Mr. Singer: Was there a pedigree in some sense?

Judge Richey: Oh, yes. That's it. Pedigree. His father is a famous doctor.

Mr. Singer: Oh, I know, Arnold Gesell. [Laughter] We worshipped those people in that
field, worshipped at the Gesell Institute. Major law firm.

Judge Richey: Here's a quote about me. I don't know where it comes from. The National Resources Defense Council quotes me as saying, every time I see somebody like the NRDC coming to my court, I say "thank God" because I know I'm going to have competent counsel that does not represent the government or proprietary interests.

Mr. Singer: Is that the definition of competent counsel? Surely you'd have trouble with that.

Judge Richey: That's an accurate quote. All I can tell you. Here's a lot of publicity about my book.

Mr. Singer: Which of your books?

Judge Richey: My first book on EEOC.

Mr. Singer: UmUm.

Judge Richey: Here's some material about the organization of the Washington Council of Lawyers. Pro bono workshop.

Mr. Singer: Right.

Judge Richey: March of '86.

Mr. Singer: Let's go back to Gesell for a minute.

Judge Richey: Yes.

Mr. Singer: Recognizing this, what I call for the moment tension that pre-existed between you and Judge Gesell and what I characterized as a pedigree problem in part and he would be Washington's figure of a Wall Street lawyer for sure.

Judge Richey: Gerry.
Mr. Singer: Yeah. In your lexicon, I mean he...

Judge Richey: No question about it.

Mr. Singer: And yet you recognize him as an activist and as I think a positive force within the court and with a commitment.

Judge Richey: Oh yes. Oh yes. No question about it. He was a man that notwithstanding his background, representing the National Football League and...

Mr. Singer: Right. Du Pont.

Judge Richey: And Du Pont...

Mr. Singer: Du Pont was his great victory in the cellophane case.

Judge Richey: Right. Won by one vote in the Supreme Court of the United States.

Mr. Singer: UmUm.

Judge Richey: Yes. But he was honest. EEOC originally and helped in those areas.

Mr. Singer: His daughter was, I think, she was a pro bono lawyer for a long period of time.

Judge Richey: Is that so? I didn't know her. As children we used to talk about them occasion when we were on trips together, but...

Mr. Singer: Are there others who you would identify, perhaps whether or not they are sitting at...

Judge Richey: There was Judge Louis Oberdorfer is my idea of a great judge who's independent, who's compassionate and who, at the same time, applies the law even though he might disagree with it. But he'll get a barb in if he doesn't agree with it.

Mr. Singer: UmUm.

Judge Richey: I think...
Mr. Singer: He'll 'get a barb in' is what I think...

Judge Richey: At the injustice of the law that he is required to apply.

Mr. Singer: Right.

Judge Richey: He'll do that.

Mr. Singer: Right.

Judge Richey: So will Judge Harold Greene. Not unlike me. If I have to apply law and I don't think it's fair or I like it and don't like the policy reasons in favor of it, I'll say so.

Mr. Singer: Bill Bryant fit that?

Judge Richey: Not really.

Mr. Singer: UmUm.

Judge Richey: Bill doesn't write much.

Mr. Singer: And yet you have to write to take this role.

Judge Richey: I've got a whole shelf full of published opinions over there. More than any other judge here in the last twenty-five years. The fact of the matter is, a couple weeks ago I went in to see Judge Royce Lamberth and he had a... the chamber in his office was just overladen with piles upon piles of unresolved motions and matters. And he cursed me out by saying that, "Back in 1971, Chuck, you started to write opinions and were the first one to start that practice. Now the Court of Appeals requires all of us to do it and I blame you for part of my backlog."

Mr. Singer: You're sure he was ... [Laughter] ... good natured...

Judge Richey: He was not being good-natured, but you know, he was telling the truth. I did
start the practice of writing opinions, of almost everything I did. And I still
do it. And here are my reasons. Carl McGowan who was the insurance
commissioner in the state of Illinois and Adlai Stevenson's principal advisor
and speech writer, great judge on our Court of Appeals said to me one time,
"When I came here, Chuck, the District Court Judges used to write, "Grant" or
"Deny" on a Motion to Dismiss or in the alternative for Summary Judgment."
When you'd see "Grant" or "Deny" only, you didn't know which one they were
granting.

Mr. Singer: UmUm.

Judge Richey: I sucked that in and I didn't think that was fair. Didn't think it was proper
for the litigants to not know just to get rid of a case on a peremptory fiat was
improper. I didn't like that as a lawyer. I determined when McGowan said
it, I was going to do something about it. So I did start that. Lamberth was
correct. Laugh if you want, but that's what I did.

I don't know. What year do you want to go to now?


Judge Richey: Oh. This is 1986. Ten years ago I got the American Law Institute to start
teaching employment discrimination and civil rights and my dear friend and
colleague, Judge Sol Schreiber, Magistrate Judge in New York, was my
intermediary with the ALI. Here are the pictures of the first program we
had. I guess it was in Los Angeles. December 1986. We've done that all
over the country. As a matter of fact, in December, I did one called
advanced employment discrimination.
Mr. Singer:     December 1995. Just a few months ago?

Judge Richey:    '85. This was first started in December of 1985. December of 1995 they had an Advanced Discrimination Law Institute here and the faculty grades you just like law students grade their professors. I got the highest grade of anybody on the faculty for an evidence segment I did at that seminar.

Mr. Singer:     That feels pretty good.

Judge Richey:    Yeah. Pretty nice. There were a hundred and eighty-seven lawyers there from thirty-seven states.

Mr. Singer:     Tells you where the money is. Where the money is.

Judge Richey:    Not as much as you think, even though it's probably the largest area of litigation today at this moment. I know that's going to change, but it's more money today because of defense than it is for the plaintiff's.

Mr. Singer:     Well, that doesn't really distinguish it from the whole lot...

Judge Richey:    No. But you said money and...

Mr. Singer:     Well, for the first, I mean... given the way legal fees are over there. Not just in terms of the awards to plaintiffs' counsel in litigating the cases but the impact in settled cases of the attorneys' fees makes them, I think, fairly attractive Title VII litigation; has attracted a fair amount of talent into this kind of activity.

Judge Richey:    It has. Do you know who did that? Brought that about? Charles R. Richey. It's section...

Mr. Singer:     I never doubted it for a minute.

Judge Richey:    It's Title 42, Section 1988, providing for the prevailing party to get attorneys'
fees. Charles R. Richey and Judge Harold Leventhal. I testified before Senator Kennedy in the Senate Judiciary Committee. I got Harold Leventhal to go to the House side. And we did this over the objection of the Carter Administration.

Mr. Singer: That's interesting.

Judge Richey: Who wanted to create a federal ombudsman to represent plaintiffs in civil rights employment discrimination cases. I said, "No, you don't want a government bureaucracy. You want the independent bar to undertake this, provided they can get their costs back and attorneys' fees if they prevail."

Mr. Singer: Right

Judge Richey: That was my theory. Kennedy bought it hook, line and sinker and we got it through over the opposition of the current Carter presidency and his administration. I don't know why Jimmy Carter didn't buy this, but he was very strong in that view.

Mr. Singer: Hard to tell.

Judge Richey: Here's a speech at the National Archives in the Rotunda in front of the Declaration of Independence and the original Constitution, and Congressman Lantos of California was one of the speakers with me.

Mr. Singer: But Section 1988 has gotten scope well beyond employment.


Mr. Singer: Ahhh. That's correct. I'm sorry.

Judge Richey: That was a natural follow-on of that statute. Here's some publicity about a new organization in 1987 called the Plaintiff Employment Lawyers'
Association. PELA. I helped organize that.

Mr. Singer: Were you actually active in its organization or just kind of?

Judge Richey: Well, supported it and I spoke, encouraged them and so forth. Ahhh, this is about the D.C.….

Mr. Singer: Firefighters?

Judge Richey: Yes.

Mr. Singer: What was that case about?

Judge Richey: Whether there had been discrimination in hiring and promotions within the D.C. Fire Department.

Mr. Singer: You mean discrimination against Blacks?

Judge Richey: Right

Mr. Singer: This is ten years ago.

Judge Richey: Blacks. Right. You know that case is now pending certiorari review by the Supreme Court of the United States.

Mr. Singer: How long a life is this case going to have?

Judge Richey: Not unlike many of them. They have fifteen, twenty years. I've got a case that started in 1972 involving the migratory farm workers headed by a lawyer from Austin, Texas. A guy named Tuddenham. He was in my court last week for a consent order against an apple orchard company for a judgment about the... they have collected, he told me, something like $16 million as a result of my decision.

Mr. Singer: They being the plaintiffs then, the class of which he has... out of which he sent a number of his own kids to college I suspect.
Judge Richey: I suppose. Well, he's a public interest group. *NAACP v. Brennan* it started out to be. It's now *NAACP v. Wright*.

Mr. Singer: I see.

Judge Richey: I didn't know it amounted to that amount of money.

Mr. Singer: That's why I think that many of these cases are very attractive, even to fancy law firms if they...

Judge Richey: Well, if the fancy law firms would devote that many years to this process, sure. But, they're going to incur a substantial overhead all through the years and the trouble with big law firms, even like the one you came from. If they got a case like this, I know what would happen. They'd over-staff it in the beginning. That's really true. And they would probably quit or look for some way to quit before it was really concluded because of the expense. That's why we need the Washington Lawyers Committee for Civil Rights Under law, the NAACP Legal Defense Fund and organizations like that because private law firms can't do it. And that's why I take such great credit in putting forth the idea that prevailing lawyers ought to get attorneys' fees. That's what enabled this process to work.

Mr. Singer: Oh, and how.

Judge Richey: And I count myself really primarily responsible for that.

Mr. Singer: You list that among the top three, top five things that...

Judge Richey: Oh, yes. I certainly do.

Mr. Singer: You would be proudest of...

Judge Richey: Oh, yes. Absolutely.
Mr. Singer: Has there been a down side to that at all? If you can...

Judge Richey: Well, I don't like...nobody likes to go through bills, time charts and stuff like that. And fixing attorneys' fees when there's a dispute.

Mr. Singer: Well, the down side is the detail work that follows behind that.

Judge Richey: Oh, yes. It's awful.

Mr. Singer: In a broader context.

Judge Richey: Oh, it's exhilarating. It's fun. And it's a means of vindicating the public interest, a broad public interest for disadvantaged people who don't have access otherwise to the courts. That's why I think Rule 23, class actions is so important. And there's an attack on that now going on all over the country.

Mr. Singer: Well...

Judge Richey: In academia, would you believe. Who sold out to the insurance companies and so forth.

Mr. Singer: Well passing the insurance companies, but how...do you have any kind of uneasiness about the...I mean, ask the question in terms of the American Trial Lawyers Association and the plaintiffs' bar in the medical malpractice area in connection with the breast implants suits and things like that where there is...

Judge Richey: An alleged abuse of the class action device.

Mr. Singer: Right. Right.

Judge Richey: There's a simple answer to that. You tell me, what is the alternative to handling these mass torts? Toxic tort disasters. Or breast implant, Dalkon
shield, and so on. What is the alternative? And, to my knowledge, and I've attended many conferences on this...

Mr. Singer: Well, I know that.

Judge Richey: No alternative has ever been put forward. This is not, when I say what is the alternative, that's not original with me. My friend Kenneth Feinberg is the one that made the speech on this.

Mr. Singer: Right

Judge Richey: But I mentioned in Cincinnati, Ohio at a Mass Torts Conference, state and federal judges, academics, lawyers, and Jack Weinstein was on the program.

Mr. Singer: Could I ask you what Jack Weinstein thinks about this?

Judge Richey: Generally favorable. It's the same as my view. We're going to do a Mass Tort seminar here in Georgetown and according Feinberg, he just said it's going to be you, Weinstein, and some guy from Cincinnati. I don't know what.... In any event, after Ken made that speech in Cincinnati, the last speech, I said to Jack, I said, "Wasn't he absolutely magnificent this morning?" And I won't use the exact words of Judge Weinstein, but he said, "That SOB could sell ice to Eskimos."

[Laughter]

Judge Richey: He's one of the... Ken's great fans, but nevertheless he said the SOB could sell ice.

Mr. Singer: Feinberg recently had a role in one of these mass tort cases.

Judge Richey: Oh. He's running all over the country doing nothing but arbitration and special master work.
Mr. Singer: Right. That's what I...

Judge Richey: And very successfully. One of my law clerks was in one, a big mass tort case in New Jersey. She's a young woman and she said, after it was over, "Mr. Feinberg, you did a brilliant job. You're almost as good as my former boss."

He said, "Who's that?" And she told him me. He said, "Well, there's one difference." "What's that?" "He's got a robe and I don't."

Here's something you ought to look at. I want you to read this letter.

April 6, 1987 from the National Law Journal: Read that.

Mr. Singer: From the National Law Journal? To whom?

Judge Richey: It's an editorial.

Mr. Singer: Oh, an editorial.

Judge Richey: Called "The Shock Troops".

Mr. Singer: "The issues with which a federal judge must wrestle on a routine basis are among the most complex in society. A complete list would be endless; a partial list would cover toxic waste, employment discrimination, pollution, housing, discrimination, rights of homosexuals and heterosexuals, religion, educational criteria, AIDS, and more. And the shock troops, as it were, are the federal district judges, the trial judges before whom these issues arise long before they are riveted in the nation's consciousness by a major Supreme Court pronouncement. A recent speech by Judge Richey, one of the judicial shock troops, reminded us again just how important these jobs are." The rest of it, if you want to direct it to... [Laughter]... into the record yourself. But that's what judges do.
Judge Richey: Well, after all as Judge Richey noted, federal judges form a bulwark against tyranny, a calling that requires, at the minimum, a full complement of competent jurists.

Oh, here's a lot of publicity about the Adolescent Family Life Act which I struck down as unconstitutional on its face and as applied because it provided for federal monies to go to religious schools throughout the country to teach anti-abortion policy. And it was put in that law by former Senator from Alabama named Denton. Republican Senator. It was defeated.

Mr. Singer: Jeremiah Denton?

Judge Richey: That's right. That's the guy.

Mr. Singer: An establishment clause case.

Judge Richey: Correct. Between the time of my decision, since it involved the constitutionality of a statute, there is only a direct appeal to the Supreme Court of the United States.

Mr. Singer: Even from a one-judge court.

Judge Richey: Correct. If a one-judge...a single judge holds something, a statute unconstitutional, it goes right to the Supreme Court. Between the time of my decision and the time it was heard in the Supreme Court, Chief Justice Warren Burger resigned, Anthony Kennedy from the Ninth Circuit was appointed and as a result, I was reversed on the facial invalidity of the statute 5 to 4. Blackmun, I believe wrote his most brilliant opinion.

Mr. Singer: Who did?
Judge Richey: Harry Blackmun.

Mr. Singer: Blackmun.

Judge Richey: Wrote his most brilliant opinion in dissent that he ever wrote. One of the things he said in the footnote was, "I hope the trial judge won't tire of this case.

Mr. Singer: [Laughter] Nobody's known Judge Richey to tire of anything, I don't think.

Judge Richey: In any event, that was a great blow for liberty, I think. And I would have been upheld had Burger stayed on the podium.

Mr. Singer: Oh, yeah. Burger was an active bear on establishment courts. It was a very good area.

Judge Richey: But...

Mr. Singer: And it was clear here when he was on this court. On the...

Judge Richey: Is that true?

Mr. Singer: Yeah.

Judge Richey: I didn't know that.

Mr. Singer: Absolutely. It was the one area...

Judge Richey: You can count on it.

Mr. Singer: ... in which I found myself quite comfortable. I mean, it sounds a little arrogant for me to say that, but I really thought his views were very...mine were congruent with his in that area. I don't know what it was coming out of Minnesota that led to that. I remember...

Judge Richey: You've got to understand something, Dan. You're disclosing a bias. People like me from the Midwest are the most populist of most all people.
Mr. Singer: Absolutely. I know. I feel that.

Judge Richey: I feel you're indicating that in a left-handed or right-handed way, whichever you choose, to say, well, those Midwesterners are generally in [?].

Mr. Singer: No. It's called…. Minnesota has the greatest tradition of populism and that they have a real kind of...

Judge Richey: Would you say more so than Wisconsin?

Mr. Singer: I'm sorry. I was thinking of basically they were the same place. They would follow...

Judge Richey: They are.

Mr. Singer: ...tradition in the upper Midwest. There's no question about that.

Though I'm not sure I'd apply that to Ohio, Mother of Presidents, and such great...

Judge Richey: Well, some of the presidents they provided us were not of that tradition.

Mr. Singer: And a good many are...

Judge Richey: Ohio's produced a lot of populists, but... and I think I'm one of them.

Mr. Singer: That's OK. I mean...

Judge Richey: I don't care if Sol Schreiber calls me the "Midwestern populist."

Mr. Singer: That's OK. That's good.

Judge Richey: Well, some people don't think it's good. I had to dismiss some sleeping charges against park...Lafayette Park protesters across from the White House.

Mr. Singer: Have any of your clerks gone on to be judges yet?

Judge Richey: No. But they've come that close. Some of them. A couple of them.

Mr. Singer: Right.
Judge Richey: One in Minnesota, believe it or not.

Mr. Singer: Good.

Judge Richey: But she didn't make it. Oh, my goodness. There's Charles Horsky who did the investigation of me for the American Bar Association and Alan Morrison head of public interest group in some judicial conference.

Mr. Singer: Both great men.

Judge Richey: That man [Morrison] has done more as a private lawyer than a hundred judges and a hundred members of Congress. Oh, he's very special. He sure is. And, I don't know what this is about.

Mr. Singer: Must be about you, you think?

Judge Richey: It must be. I don't have any idea.

Mr. Singer: That's your two juries stuff that...

Judge Richey: Appellate Record of Judges District of Columbia Circuit.

Mr. Singer: Well, there you are. How'd you make out?

Judge Richey: Number two.

Mr. Singer: Which way do you count?


Mr. Singer: And that's just because you decide more.

Judge Richey: That's exactly right.

Mr. Singer: What about...

Judge Richey: And 84%.

Mr. Singer: 84%

Judge Richey: He was 87.
Mr. Singer: Gasch?

Judge Richey: Yeah.

Mr. Singer: Look at that picture you have over there, and he really looks terrible.

Judge Richey: Yeah. That's the latest court.

Mr. Singer: Oh my.

Judge Richey: You know, that isn't bad for a cottonwood like him.

Mr. Singer: We talked earlier about most of what most judges do most of the time is affirmed?

Judge Richey: No. No. No. Most of what judges do most of the time, never gets to the...

Mr. Singer: Right. OK. Sorry. That gloss is correct.

Judge Richey: This proves that if you write opinions, at the trial court level, it takes a lot of extra effort. You're probably going to have a much better fare in the court of appeals

Mr. Singer: Does Gasch write a lot of opinions? I bet he's got a better percentage than you have.

Judge Richey: Yes. He didn't have as many cases, but that's all right. I don't know.

Mr. Singer: A lot of judges, I would guess, believe that writing opinions gets you in real trouble.

Judge Richey: Ahhhh, that's the old theory. No, that really is. Don't write opinions so that the government can adopt whatever position is most salable.

Mr. Singer: Right.

Judge Richey: To the particular panel on the Court of Appeals. Now that's the old school of thinking.
Mr. Singer: Yeah.

Judge Richey: You ought to know that from your work as a clerk on the Court of Appeals. But that isn't the way it really should work, and there again, I think in the last twenty-five years I've changed that.

Mr. Singer: Yeah. It was always much...

Judge Richey: I'm serious.

Mr. Singer: ...much better for us to be able to deal with substance and not to guess what the judge was doing.

Judge Richey: Sure.

Mr. Singer: That was clear.

Judge Richey: "Equal opportunity is right not radical."

Mr. Singer: Is that quoting you?

Judge Richey: Yes. In USA Today. What's the date? September 15, 1982. This was about the State Farm case in California where they had a judgment of $1.3 million against them for sex discrimination. On the same day in Washington, D.C., a federal judge ordered the U.S. Information Agency to pay up for past discrimination for more than 4,000 women who applied unsuccessfully for jobs may receive compensation. That case is still pending. 1982.

Mr. Singer: UmUm.

Judge Richey: The government let eight years go by before they attempted to appeal my decision on liability. And what do you think happened? Under 1292(b) last year, about a year and a half ago, the Court of Appeals granted an order for collateral review of that decision. And what happened was, they didn't deal
with the issue of liability, but they remanded it for redetermination of the class
certification under Rule 23 for these poor women.

Mr. Singer: On a collateral attack?

Judge Richey: Yes. Eight years later. And two dear friends of yours and mine were on the
panel. It is the craziest decision you ever saw. And you know what? In
May of this year, it's going to be reargued.

Mr. Singer: En banc?

Judge Richey: No. Panel. But Judge Wald is somehow or other not going to be on the case
anymore.

Mr. Singer: Is that because of senior status or...

Judge Richey: She's just no longer on the panel. Sad, but, anyhow, her name is on the
opinion. Some law clerk wrote it for her.

Mr. Singer: Oh, come on.

Judge Richey: I'm teasing.

Mr. Singer: I suspect that.

Judge Richey: Pardon?

Mr. Singer: I just said, that's not nice.

Judge Richey: I don't want...

Mr. Singer: Actually, I said she...

Judge Richey: She's one of the greatest judges of all time.

Mr. Singer: I saw Pat and Bob I guess last weekend, we ran into them at Starbuck's up on
Connecticut and R.

Judge Richey: Well, this week I asked her secretary where she was. She said she's in
Mr. Singer: That's exactly right. And we saw her, the two of them went from their cup of coffee out to...

Judge Richey: The airport?

Mr. Singer: Out to the airport. And she got on the plane to Bosnia.

Judge Richey: What in the world is Pat doing there?

Mr. Singer: She's meeting with some judges from, some European judges on how to set up a court system in Bosnia. Not a trivial undertaking. And Bob, you know, is the Chairman of the Board of the Romanian American Enterprise Fund.

Judge Richey: I know that.

Mr. Singer: That's fun. I think they're wonderful.

Judge Richey: Well, you couldn't be more right. But, after my experience in 1994 of cutting up the delegation to England to ostensibly teach the British judges how to deal with employment discrimination damage actions for compensatory and punitive damages, I don't want to do that anymore. Because they were so far behind the United States and so biased and bigoted towards minorities, that I got sick and I almost quit and came home in the middle of it. It was just awful. God bless Bob and Pat for doing what they're doing but I'm not of that variety that wants to... I'll pick on the odd state, but I'm not interested in what goes on in Europe. Dick Schifter had us to dinner a couple of years ago and there was some guy from Romania, some minister, and we had a long discussion at their lovely dining room table afterwards, and I asked this man a
question and he said, "Judge, I don't know."  "Why?"  "Because I don't know whether I'll be in office tomorrow morning."

Mr. Singer: A problem.

Judge Richey: This is some more of that establishment clause case. Here's somebody who wrote me, I don't know who it is 'cuz it's not... I struck down and caused to be removed from Washington, D.C. the Palestine Liberation Organization office in Washington on the basis of a new statute Congress had enacted that had never been discussed or ruled on before. And somebody is writing me saying that it appeared in the India I-n-d-i-a Times in New Delhi.

Mr. Singer: UmUm.

Judge Richey: Oh, here is an interesting case. Rochon. R-o-c-h-o-n. A picture of him in the New York Times I held the FBI was engaged in discrimination against him on account of his race.

Mr. Singer: Black?

Judge Richey: Black. And they admitted it in part. Major part. And that resulted in a multi-million dollar settlement.

Mr. Singer: He was a class rep.

Judge Richey: Sir?

Mr. Singer: He was a class.

Judge Richey: No.

Mr. Singer: He was all on his own?

Judge Richey: All on his own. Yeah. He was a big... Look at this. "The racial storm that rocked the FBI." There's his picture.
Mr. Singer: Yeah.

Judge Richey: It would be teaching sentencing guidelines. This is all EEOC stuff, raises fees for public interest lawyers.

Mr. Singer: Ha.

Judge Richey: Oh. This is a seminal decision. When Judge Royce Lamberth was the head of the Civil Division in the U.S. Attorney's Office here, he adopted the view that the government should never be required to pay more than $75.00 an hour for EEOC and Civil Rights lawyers. And there should be no award for enhancement or enhancement of a lodestar factor for success. And in an environmental case involving the Equal Access to Justice Act, I held that Yablonski and his firm were entitled to an enhancement for success. And, believe it or not, I was upheld, 1988.

Mr. Singer: Well, I believed it.

Judge Richey: And it's still cited.

Mr. Singer: It sure is.

Judge Richey: That's the seminal case for the whole country. Here it is. A note from Alvin Rubin sending me pictures and a plaque. Here's the class action notice in that Hartman v. Wick I was talking about a while ago.

Mr. Singer: That was Wick who was head of USIA.

Judge Richey: Here's a speech I gave in 1980 to the D.C. Bar on what every young lawyer should know. Got it over there. How each program... speeches and stuff.

Mr. Singer: Well, tell me how you've enjoyed your walk down memory lane here this morning.
Judge Richey: Oh, this is another headline in the *Washington Post*, 1989 is it?

Mr. Singer: March.

Judge Richey: When I struck down the curfew law. I did it not once but twice. They went back and did it over again and I still struck it down. Now, that same issue is before this court. Not me, but Judge Sullivan. It will be very interesting to see what he does. Well, oh, have I enjoyed it?

Mr. Singer: Yeah.

Judge Richey: Oh, so, so.

Mr. Singer: That figures.


Mr. Singer: Oh, other people will care. I mean...

Judge Richey: I hope so.

Mr. Singer: In terms of the resource for...

Judge Richey: I repeat again, I've not looked at these.

Mr. Singer: Yeah.

Judge Richey: Since they were…?

Mr. Singer: That's why they're interesting.

Judge Richey: I have to look at them, you know. As you saw.

Mr. Singer: Right.

Judge Richey: I see what they were saying. It didn't take me long, but lots of times I didn't know what the heck they were...

Mr. Singer: Well, but the idea was to bring back, as I said, we walked down memory lane to see what kinds of memories they brought back and I thought it was a
worthwhile...

Judge Richey: Well, great.

Mr. Singer: It's... we've been at it two and one-half hours.

Judge Richey: Let me take you to lunch. May I do that?

Mr. Singer: I can't let you do that today. Thank you very much.

Judge Richey: Why?

Mr. Singer: We have some work going on in our house and my wife and I are jockeying...
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Charles R. Richey

Court: United States District Court for the District of Columbia
Name: Honorable Charles Richey
Position: District Judge
Appointed: 1971
By: President Nixon
City: Washington, D.C.

Born: October 16, 1923 in Logan County, Ohio
Died: March 19, 1997 in Washington, D.C.

Education
Case Western Reserve University Law School, Cleveland, Ohio,
LL.B., Bachelor of Law, 1948
Honors: Omicron Delta Kappa
Ohio Wesleyan University, Delaware, Ohio, B.A.
Bachelor of Arts, 1945
Honors: Delta Sigma Rho
Fraternities/Sororities: Pi Delta Epsilon, Phi Gamma Delta, Phi Delta Phi

Past Positions
Maryland P. S.C. General Counsel, 1967-1971
Charter Revision Commission, Montgomery County, Vice Chairman, 1967-1968
Montgomery County Board of Appeals, Chairman, 1966-1967
Montgomery County Board of Appeals, Member, 1965-1967
Montgomery County, Maryland, Special Counsel on Redistricting, 1965-1966
D.C. Urban Renewal Council, Affiliate Member, 1961-1964
Citizens Housing Committee, Affiliate Member, 1961-1964
Law Offices of Charles R. Richey, 1949-1964
Francis P. Bolton, M.C., Legislative Counsel, 1948-1949
War Department, Contract and Personnel Specialist, 1944

Awards and Honors
Montgomery County for Outstanding & Dedicated Public Service, 1960 and 1968
Certificate of Distinguished Citizenship from the Governor, 1971
Outstanding Federal Trial Judge - U.S. Association of Trial Lawyers of America, 1979
Annual Award of Merit, Administrative Law Judges of the U.S., 1979
Humanitarian of the Year - Howard University Law School Alumni Association, 1980
Fellow, American Bar Foundation, 1979-Present
Honorary Member, Montgomery County Bar Association
Honorary Member, Lawyers' Club
Supreme Court Justice Harold Burton Award - Cleveland Club of Washington, 1990
Moultrie Award for Judicial Excellence, D.C. Area Trial Lawyers Association, 1990
Instructor
Speech and Debate Coach, American University, 1954-1955
Instructor, Administrative Law, National Judicial College, 1973-1975
Adjunct Professor of Trial Advocacy and Practice, Georgetown University Law School, 1975-1997
Faculty, National Advocate Institutes of the American Trial Lawyers' Association and American Bar Association's CLE National Institutes
Faculty, Federal Judicial Center
Faculty and/or Chair, Trial Practice and Evidence and Employment Discrimination Law and Civil Rights Actions in the Federal and State Courts, ALI-ABA
Faculty, United States Attorney General's Trial and Appellate Advocacy Institutes

Writings
A Modern Management Technique for Trial Courts to Improve the Quality of Justice: Requiring Direct Testimony to be Submitted in Written Form Prior to Trial, 72 Georgetown Law Journal 73, 1983
Rule 16: A Survey and Some Considerations for the Bench and Bar, 126 F.R.D. 599, 1989
Rule 16 Revisited: Reflections for the Benefit of the Bench and Bar, 139 F.R.D. 525, 1991

Affiliations
American Bar Association
Member, Council of Criminal Justice Section, 1976-1980
National Conference of Federal Trial Judges
Chairman, 1980-1981
American Bar Association
Council Member, Judicial Administrative Division, 1981-1982
Administration of the Probation System
Member, Judicial Conference Committee
American Bar Association
Member, House of Delegates, 1981-1985
Bar Associations of the District of Columbia
Member
Maryland Bar Association
Member
Ohio Bar Association
Member
Supreme Court Historical Society
Founding Member
American Judicature Society
Member
Charter Revision Committee of Montgomery County
Vice-Chairman, 1967-1968
American Bar Association
Chairman, Committee on Alcoholism and Drug Abuse, 1974-1976
American Bar Association
Chairman, Committee on Sentencing, Probation & Parole, 1976-1977
United States Court of Appeals, District of Columbia
Member (Sat by Designation), 1972-1975, 1977-1985
Temporary Emergency Court of Appeals
Member, 1983-1984
Association of Trial Lawyers of America
Member
District of Columbia Circuit
Member, Judicial Council, 1989-1994
Judicial Conference, District of Columbia Circuit
Chair, Arrangements Committee, 1975, 1992
Edward B. Williams American Inn of Court, District of Columbia
Founding Member, Master, 1989-Present
Sentencing Institute, District of Columbia First and Third Circuits
Co-Chair, 1984
Sentencing Institute, District of Columbia, Third and Seventh Circuits
Co-Chair, 1992
Immaculata College, Washington, District of Columbia
Trustee, 1970-1973
Suburban Hospital Association
Trustee, 1967-1971
Boys Club of Greater Washington
Member, Board of Directors and/or General Counsel, 1957-1971
Potomac Conservation Foundation
Trustee
Young Republican National Federation
Executive Director, 1949-1950
Case Western Reserve University
Member, Society of Benchers
Sidwell Friends School
PTA Chairman, 1968-1970
Potomac, Maryland Elementary School
PTA President, 1966-1967
District of Columbia Bar Association
Member
Mason, 33
American Bar Association, Project Advocate
Chairman, Advisory Board, 1976-1979
Judicial Conference of the United States
   Member, Committee on Criminal Law & Administration of Probation System, 1984-1989

Judicial Conference of the District of Columbia Circuit
   Member, 1970-Present

Civil Justice Reform Act
   Ex-Officio Member, Advisory Committee, U.S. District Court, 1991-Present

The Counsellors
   Member

United States Presidential Campaign
   Assistant Director, Republican Youth Activities, 1948
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Present Position
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Legal Education
Yale Law School, LL.B., 1954
Editorial Board, Yale Law Journal; Director, Thomas Swan
Barristers Union; Legal Aid and Public Defender; Yearbook Board

Admissions
Court of Appeals of the State of New York - December 3, 1956
U.S. Court of Appeals for the Third Circuit - June 3, 1957
U.S. District Court for the District of Columbia - October 21, 1957
U.S. Court of Appeals for the District of Columbia Circuit -
December 6, 1957
Supreme Court of the United States - December 7, 1959

Legal Experience
September 1987 to date
Counsel - Fried, Frank, Harris, Shriver & Jacobson, Washington, D.C. (Partner-
January 1965 - August 1987; Associate - 1958 - 1964)

July 15, 1957 - June 30, 1958
Law Clerk - Judge George T. Washington
United States Court of Appeals for the District of Columbia Circuit

August 1, 1956 - July 13, 1957
Motions Clerk - United States Court of Appeals for the District of
Columbia Circuit

Other Legal Activities
1985 to date: American Arbitration Association, National Panel of Commercial
Arbitrators; Large Complex Case Panel; Corporate Counsel Committee

1989 to date: Mediator, U.S. District Court of the District of Columbia

June-September 1993: Poznan, Poland - volunteer legal specialist with the
Central and East European Law Initiative (a project of the American Bar
Association funded under a contract with U.S. Agency for International
Development)

1960 - 1970: General Counsel - Federation of American Scientists

1973 to date: Executive Committee, Washington Lawyers' Committee for Civil
Rights Under Law

October 1965 and November 1966: Volunteer attorney, Lawyers' Committee for
Civil Rights Under Law, Jackson, Mississippi

1984 - 1990: Board of Directors, University Legal Services
Publications
Note, "Discretionary Administrative Jurisdiction of the NLRB under the Taft-Hartley Act," 62 Yale L.J. 116 (1952)

Non-legal Activities
1988 to 1991: Board of Managers, Swarthmore College
1986 to date: Director, American Society for the Protection of Nature in Israel (President, 1986 to 1990)
1986 to date: Governing Council and Executive Committee, American Jewish Congress (National Vice President, 1988-1992)
1988 to 1991: Board of Managers, Swarthmore College

Pre-Legal Education
Swarthmore College, B.A. with honors; 1951 Open Scholar; Editor-in-Chief, weekly campus newspaper; Chairman, Men's Executive Committee; Student Council; Varsity Tennis and Junior Varsity Soccer; International Relations Club; Dormitory Proctor; Intercollegiate Conference on Government; Book and Key (Senior Men's Honor Society); Permanent President, Class of 1951

Military Service

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