

Judge Brian D. Lynch (Oral History)

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SPEAKERS

Kathleen Shoemaker, Judge Lynch

Kathleen Shoemaker 00:00

Hi. I'm Kathleen Shoemaker, a bankruptcy attorney and now Chapter 7 trustee and it's Wednesday, April 3, 2024. I'm in the United States Bankruptcy Court for the Western District of Washington at Tacoma, in the chambers of the Honorable Brian D. Lynch. Judge Lynch, thank you for inviting me to speak with you about your history for the Ninth Judicial Circuit Historical Society to preserve. Good morning.

Judge Lynch 00:28

Good morning. No, thank you, Kathleen, for doing this for me.

Kathleen Shoemaker 00:32

It's my pleasure. You mentioned to me previously that you hope during our conversation to share some history of bankruptcy, as well as local history. Why is it important to you to share that history, in addition to your own story?

Judge Lynch 00:50

Well, I've been thinking about this. And what I realized is that I knew nothing about what bankruptcy practice was like under the Bankruptcy Act, which lasted until the Bankruptcy Code came into being in 1978. And there, when in the prior version of bankruptcy law, there were bankruptcy referees, but no judges, bankruptcy judges, and I realized that I was one of the few still around who'd practiced in front of the original bankruptcy judges created by the Bankruptcy Code of 1978. And in the old venues. When I started doing bankruptcy, around 1980, all three of the bankruptcy judges in Seattle, Judge Treadwell, Judge Volinn, and Judge Steiner had small courtrooms on the second floor of the Nakamura Courthouse where the clerk's office was also located. And in Tacoma, Judge Skidmore had a courtroom in the Post Office Building. So it made me think I better put it down. Or it may get lost just like the time when we had referees before that, because we're all getting older and the individuals from that era have mostly left us.

Kathleen Shoemaker 02:10

Right? Can you tell me what you remember about that time period practicing in the 1980s and 1990s? And how did your bankruptcy practice develop?

Judge Lynch 02:21

In the early 1980s, the credit market was deregulated. Legislation called the Garn-St. Germain Act was enacted, and there were some other rules which followed on it. Creditors started to realize that there was money to be made, other than the old formula of banks and savings and loans making money on the spread between the interest rate they charge on loans versus what they paid on deposits. So we started to have new types of entities, mortgage companies started taking a bigger part of the mortgage market, finance companies started making real estate loans to lesser grade borrowers. Automobile companies started financing vehicle purchases, with different grades and rates. Those loans were financed by the secondary market, Fannie Mae, Freddie Mac, commercial paper. The mortgage companies made money on servicing the loans for the secondary market, and selling products like mortgage insurance and warranty contracts, and the like. Those are a lot of my clients, finance companies, mortgage companies, automobile credit companies, and a certain percentage of those loans, an increasing number of loans went bad. And the Bankruptcy Code had given consumer debtors new tools to deal with those loans. Which is why Chapter 13 became much more prevalent over time.

Kathleen Shoemaker 03:55

And you were fortunate enough to have practiced before each of the judges in the Western District. In preparing for this interview, it doesn't seem that much of the history of the earlier judges is readily available. Were there judges who had an influence on you? And is there anything you'd like to share about any of those judges?

Judge Lynch 04:17

The one who had the most influence on me was Judge Tom Glover. He took over for Judge Treadwell in 1985. When he came on, he took on all the Seattle division Chapter 13s and they were growing rapidly. Soon after that, the Seattle venue which had outgrown the space in the Nakamura Courthouse, moved to the Park Place Building and the Tacoma bankruptcy court first moved to temporary space in an office building and then moved to Union Station when it was renovated and opened as a federal courthouse in November of 1992. Around 1988, the Ninth Circuit created another bankruptcy judge position, and Judge Don Howard was chosen for that position and it was split 50/50 between Seattle and Tacoma. In time Judge Skidmore was succeeded by Judge Phil Brandt. When Judge Howard retired in 1996, he was succeeded by Judge Paul Snyder. But Judges Brandt and Snyder agreed that Snyder would take the full-time position in Tacoma and Brandt would split his time between Seattle and Tacoma.

Over time the bankruptcy practice took on a kind of rhythm. Fridays was always the day that the Seattle judges would have their Chapter 7 and 11 motion calendars in the morning. It would be a scrum of attorneys coming over there to get their orders signed or work out deals or to argue their motions. In Tacoma, they'd have a calendar on Thursday, and later when they had two judges, Wednesday and Thursday and they'd typically meet every other week. The Friday calendars in Seattle were held every

week. The Seattle division Chapter 13 calendar was every Monday, at 1:30pm every week, and Judge Glover presided over that “rocket docket” which is what we used to call it because he went through it rapid fire. And then of course, there were monthly calendars out in the satellite places. Once a month, there'd be an Everett calendar and Vancouver calendar and a Port Orchard calendar. But I would like to go back to Judge Glover. He was a great judge for chapter 13. He was practical and he was decisive. He made the attorneys cut to the chase. He had a line that he used to say as well, tell the debtors attorneys, “creditors want to know how much they're going to get and when they're going to get it.” And the chapter 13 community quickly learned how he operated and knew what he was going to do in most cases. And you knew it was important to him that Chapter 13 work for debtors. A lot of us practiced before him, like Mike Fitzgerald, and Gloria Nagler, who you used to work for, Kathleen, and Virginia Burdette, who used to represent debtors in Chapter 13s. Virginia is now Chapter 7 trustee and Chapter 12 trustee. But we really cut our teeth in the Chapter 13 arena. And I think we all found it empowering because we knew how important it was to Judge Glover.

Kathleen Shoemaker 07:45

Before we move on to the next part of your career, is there anything else you want to share about that time period?

Judge Lynch 07:52

Well, I worked for a small firm Bishop and Lynch. For most of that time it became Bishop Lynch & White. Before I emphasized bankruptcy I had tried cases. I was kind of the litigation attorney for the firm. But bankruptcy just became more and more of my practice. And I also did some litigation in bankruptcy court. And I enjoyed it a lot because the people that were my adversaries were my friends. And I think that's a common feeling in bankruptcy.

Kathleen Shoemaker 08:40

I tend to agree. So pivoting, tell me how it is that you became a Chapter 13 Trustee?

Judge Lynch 08:48

To start with, I became close friends with Mike Fitzgerald, who was the first staff attorney for the Seattle Chapter 13 trustee at the time, for a man by the name of Todd Satterlee. Things had gotten so busy that Todd realized he needed a staff attorney. And then also there was a man by the name of David Howe, also a friend, who worked for Todd as well. Todd was really the first modern Chapter 13 Trustee in this region. He embraced technology. He ran it like a business. Mike Fitzgerald succeeded Todd as Chapter 13 Trustee. Dave Howe became the Chapter 13 Trustee down here in Tacoma. So from all that, I realized what a great job it was with a lot of independence. And in 2003. Diane Tebelius who was the United States Trustee for this region at the time, was at a bar function and she mentioned to us that the Chapter 13 Trustee in Portland, Oregon, Rick Yarnall was leaving Portland to go take a 13 Trustee job in Las Vegas. And I applied because those jobs don't come around too often. So I went through the process, interviewed with Pam Griffith from the Portland, US Trustee office and Gail Geiger, who worked for the US Trustee in Eugene, and Roy Hilmer, who was a familiar face for the Seattle US Trustee office who oversaw the region's Chapter 13 trustees. Later, I had to interview with Ilene Lashinsky, who became the temporary US Trustee when Diane Tebelius left the job to run for Congress. So after all that, I was chosen to be the Portland Chapter 13 trustee, and moreover, I was

asked to be the Chapter 12 trustee for Oregon as well, the family farmer trustee, which was not a big job at the time, but a great job as it turned out, I was very fortunate.

Kathleen Shoemaker 11:03

How was your experience as trustee?

Judge Lynch 11:07

It was a wonderful experience. You know, at first, they were a little leery of the Seattle guy coming down to handle their Chapter 13 practice, particularly a guy who was a creditor attorney. But I think they quickly came to realize that that was where I was from, and it didn't matter nearly as much as how much I was committed to Chapter 13. The Portland division had a great consumer bar, the judges encouraged collegiality within the bar. They would meet every month or so at the courthouse to discuss consumer bankruptcy issues over pizza and sandwiches, at what came to be known as the Circle of Love. And I learned that there was more than one way to run a Chapter 13 practice. I had a great office staff. One of my staff attorneys, Wayne Godare, became the trustee when I left to become a judge. One of my young managers, Naliko Markel later came to be the Eugene Chapter 13 Trustee, and another young manager for me, Kirsten Wilkinson, served as Assistant Circuit Executive and is now the Clerk of the Oregon bankruptcy court.

I realized too, that running the business of Chapter 13 was as important as the challenging legal issues. It really changed my perspective. When I became a judge, I took a lot of things that I learned down there with me. And as an added bonus, I got to learn how to administer family farm farmer bankruptcies, which were unique and interesting. I also, because of my background, in representing creditors, was asked by the NACTT, the National Association of Chapter 13 Trustees, to be on the board of their National Data Center, which is a nonprofit they established to house all of the data of the trustees in one location and make it available to debtors for free to see how much they'd paid on their 13 cases, which creditors got the money, how much was owed on the claims, etc. The creditors got the same kind of access for their particular cases in one location, but the creditors had to pay a fee for that, and that's how we funded the National Data Center. During the time I was on the board and later its president, almost all the trustees started sending their data to the National Data Center. Thanks in no small part to George Stevenson, the trustee from Memphis, who we made our unpaid CEO. In fact, all of the trustees that worked on the NDC and all these extra activities were unpaid. It was pro bono, but it was sophisticated and made for a great operation. I was also asked to be on a small group of trustees to work with mortgage servicers, and Fannie Mae and Freddie Mac to address servicing problems. This was right at the outset of the Great Recession, which had a huge effect on the real estate market. And in turn on Chapter 13. I ultimately was asked to chair a working group by the Department of Treasury to develop procedures to allow debtors in bankruptcy to participate in what was called the HAMP program, so that they could do modifications with mortgage servicers. All of those things I think and the empowering aspect of being a 13 Trustee, made me think seriously about applying to be a judge.

Kathleen Shoemaker 14:59

I can imagine that must have been such an interesting time to become a trustee with BAPCPA soon enacted. I'm curious what you remember about that time?

Judge Lynch 15:13

Well, what I remember was that there was a huge runup of cases before BAPCPA became the law. BAPCPA took away some of the advantages of Chapter 13. And then, of course, after it became effective there was a dramatic fall-off in filings. In Portland, we had a 341 meeting room to ourselves back then, part of the space I leased, but during that time, we actually shared it with the Chapter 7 trustees, right at the end of the pre-BAPCPA Code, because they were so busy, their location was overbooked. Then immediately, we had to learn the new Code, which had big changes. So it was dramatic. But even more than the BAPCPA changes, the technological changes that were taking place in bankruptcy were huge. When I was still in Seattle, thanks to the initiative of Judge Glover, we became an early adopter of CM/ECF, Case Management Electronic Case Filing, where all the documents were filed electronically, which was a dramatic change in practice. When I became Chapter 13 and 12 Trustee in Portland in May 2004, they still had not adopted CM/ECF. But soon after they did, and it really helped that I had learned the ropes of CM/ECF in Seattle. Also, at the same time, my office became an early adopter of paperless files, which was a huge change in practice. The bankruptcy community overall was an early adopter of technology. No more lines of attorneys asking the judge to sign their orders and give them a conformed copy. No more keeping track of paper files, losing them, no more scheduling of hearings on big red books held by the judicial assistants of the judges. Everything was handled electronically. So it was a heady time between BAPCPA and the technological changes. That period when I was trustee from 2004 to 2010, was dynamic.

Kathleen Shoemaker 17:50

And another interesting part of that time was the great recession. What did you see at that time? And how did that change the bankruptcy practice?

Judge Lynch 17:59

Well, it started happening about 2007. It was a boon to bankruptcy. I mean, when I started as a judge June 1 2010 it was the busiest time ever in bankruptcy nationally, and in our district. When lenders got skittish, given their liberal lending practices, there was a tightening of the credit market, which affected the real estate values, which in turn resulted in unprecedented numbers of bankruptcy filings. But starting in about 2012, the numbers started declining. And that continued right through COVID to the surprise of most of us. It's turned around a little in the last year, in 2023 and 2024. But I suspect it will not ever return to the days when I started this job. And we just witnessed the fact that I'm not going to be replaced when I retire May 31 of this year.

Kathleen Shoemaker 19:02

And neither is Judge Barreca's position, right. Right. So big changes for our district. And why is it that you did choose to apply to be a bankruptcy judge?

Judge Lynch 19:16

Well, to start when Judge Brandt announced he was retiring in 2009, there'd been no new bankruptcy judge in the district since Judge Snyder in 1996. So 14 years had passed. And the Circuit let it be

known that given the volume and distribution of cases it would be a full-time Tacoma position. I would say being Chapter 13 Trustee was generally not thought to be a path to becoming a judge. There were a smattering of us trustees around the country who became bankruptcy judges but the general view was that attorneys from big firms who have Chapter 11 experience can figure out how to handle consumer law in Chapter 13. But they weren't so sure about the reverse. I felt like that my experience as not only a practitioner but as a Chapter 13 Trustee and Chapter 12 Trustee had really filled out my resume, and given me a certain confidence that I can handle the judge job. And unlike a lot of bankruptcy practitioners, I had a lot of trial experience before and during my bankruptcy practice. So, I was one of the three chosen by the local committee to recommend to the Ninth Circuit. In December of 2009, we went down to San Francisco to interview with the Circuit court's Court-Council Committee, which was comprised of four Circuit judges, plus the chief of the chief bankruptcy judges. And I was thrilled and grateful when I was chosen in 2010, and started June 1, 2010. And the turnover happened rapidly after that. Judge Barreca took over for Judge Glover about 45 days after me, Judge Dore came in the following year to succeed Judge Steiner. A few years later, Judge Alston succeeded Judge Overstreet. And finally Judge Heston succeeded Judge Snyder.

Kathleen Shoemaker 21:29

How do you feel about being the first Chapter 13 Trustee appointed as a bankruptcy judge in the Ninth Circuit and how has it been as such as overall?

Judge Lynch 21:41

First and only Chapter 13 Trustee to my knowledge. I think in part it's due to the realization that running a Chapter 13 trusteeship has become a more sophisticated job and has drawn more quality applicants. A lot of new judges realize that a big part of their workload is Chapter 13. In my baby judge class, during our trainings, hardly anyone had any background in Chapter 13, other than me, so I got lots of questions at our class trainings about how it works. And the answer to the bigger question how the job has been, it's been great. I remember telling the interviewing Circuit judges when they're asking me about the job because they also knew very little about Chapter 13 Trustees, and said, "I'm hoping it's the second best job that I'll ever have." It's challenging. It's interesting. I like trying cases. I like handling mediations. And from my experience with Judge Glover. I tried to decide matters ASAP. And the Tacoma division is a particularly collegial group of judges. Through the initial efforts of Magistrate Judge Creatura and now Magistrate Judge Christel, we meet most weeks on Tuesdays for soup lunches: the district judges, magistrate judges, and bankruptcy judges. I've also been very lucky to serve as Chief Judge for the Western Washington Bankruptcy Court for five years, and also served in 2017 as the Chair of the Ninth Circuit Chief Bankruptcy Judge Conference. I've been selected to be on the Circuit IT committee for two terms. I served a term as the Ninth Circuit representative at the Bankruptcy Judges Advisory Group. And most recently, as the bankruptcy judge representative on the IT Security Task Force. I've gotten to work with a lot of federal judges, smart, cordial people, great colleagues. And I want to specifically mention Judge Snyder, and Judge Heston. We have become good friends and our chambers have been very close. And that collegiality has really sustained me, and I think all of us, here in Tacoma.

Kathleen Shoemaker 24:20

Nice. You've received the Honorable Ralph Kelley Award. What's been your motivation to be active on several committees nationally, especially as related to the Chapter 13 practice?

Judge Lynch 24:30

Thank you for that question. Yep. Ralph Kelley was the former Mayor of Chattanooga, Tennessee, and he was later appointed a bankruptcy judge. He really was a towering figure in Chattanooga and among national bankruptcy judges because of his political background, and especially in the field of consumer bankruptcy and Chapter 13. I'm proud of my activity nationally as an advocate for Chapter 13. Writing and speaking. You know, some academics have written articles critical of Chapter 13. And there are legitimate issues with it. But I think they have been misleading in terms of success. Both when I was trustee in Portland and here in Tacoma, I've kept close track of statistics in terms of Chapter 13 success. And I found that if you measure the cases that get confirmed after they're vetted by the trustees and judges, and proceed to confirmation, the success percentage of confirmed cases has been in the high 60s and 70s, or has been in both here and in Oregon. The NACTT has the Ralph Kelley award, and they give it out occasionally to people who have contributed greatly to Chapter 13. And in 2018, they gave me the award. And I'm very proud of my work as Chapter 13 Trustee, and later as a judge. I've been able to serve as the National Conference of Bankruptcy Judges Chapter 13, Liaison Committee chair, also the UST Liaison Committee chair. The Chapter 13 trustees are a great community.

Kathleen Shoemaker 26:18

Well, congratulations for that award as well deserved. I know you to have been a mentor, and you seem to have enjoyed training law clerks. Why has mentorship been important to you?

Judge Lynch 26:31

You know, I knew even before I became a judge that I wanted to have law clerks who work for me, and then go off to practice in bankruptcy. When I was a bankruptcy trustee, I never had a legal assistant. So I knew it was possible to function without one, given all the new technology. That way, I could have two law clerks, one a career law clerk. And then I could rotate a second law clerk every couple of years, what we call term clerks. Laurie Thornton was my career law clerk and she now manages the Western Washington and Alaska US Trustee offices. And I'm proud to say that both you and she have served or are serving as circuit representatives of the Western Washington bar at the Ninth Circuit on behalf of this district. Most of my law clerks have gone on to bankruptcy practice, which makes me very happy. And it's a two-way street. The energy of new law clerks coming into our office was healthy, not just for them, but for me. And the chamber as well. They bring positive new energy and I am thoroughly glad I handled it the way I did.

Kathleen Shoemaker 27:57

And speaking of that youthful energy, you and I had a conversation when I was a law student. You were an attorney of the time and kind enough to offer me advice, knowing what you know, after your career as a bankruptcy attorney, trustee, and now judge, what advice might you have for a law student interested in bankruptcy today?

Judge Lynch 28:21

Well, Kathleen, I would tell them what I told you. If you really want to understand how bankruptcy works represent debtors. Attorneys like me, who represented creditors before I became a trustee, generally focus on their clients' particular collateral whether it be real property or equipment or vehicles. Attorneys representing debtors have to learn to deal with all of the debtor's problems, not just their home and their cars, but their taxes, their student loans. It's harder, but you become and are more valuable to the system. I find that the attorneys who represent debtors also make really good trustees. And the other thing I do is encourage them not to not be afraid to argue in court. Yes, it can be intimidating at first. But soon enough, if you approach it civilly, and you prepare, the judge really appreciates you when you represent your clients, and the other side realizes that you're not afraid to go to the mat when necessary. That's probably the two good pieces of advice for someone thinking about bankruptcy practice.

Kathleen Shoemaker 29:41

Absolutely. Well, wrapping up our conversation this morning. Why has it been important to discuss stories about transition and change not only those in your personal career, but in bankruptcy overall? And are there other changes you'd like to see?

Judge Lynch 30:00

Before I answer you, I want to say that I am very proud of my kids. They are doctors and educators. One of my kids is a lawyer. And he doesn't do bankruptcy practice anymore. But thank God, at least one of my four kids wanted to be an attorney.

Those of us who practice in the bankruptcy field, realize what a great community we practice in. We have judges who to a large extent are experienced and knowledgeable about bankruptcy law. And they've dealt with us for many years as practitioners, sometimes as trustees. And learn quickly that honesty and integrity are the coins of the realm. Because we so often deal with each other, I think there's a heightened sense of treating each other fairly. I also think bankruptcy has been very agile and evolving under BAPCPA and, and with the new Subchapter V small business chapter. Yes, I would like to see a couple of things change. I'd love to see the *Lamie* decision from the Supreme Court overturned so debtors can file Chapter 7 and pay their attorneys over time, like they do in Chapter 13. Mostly I'd like to see us have more tools, and less busy work in consumer and business bankruptcy. I think BAPCPA had some good positive changes. But a lot of the changes I think didn't help, just added to the bureaucracy.

And especially in business bankruptcy, we need to fix the venue system, which unfortunately allows business debtors to essentially pick where and in front of whom they can file bankruptcy. Bankruptcy courts have had to become bidders for the big bankruptcy work in terms of practices in their area. And parties have to go to far flung places as opposed to their home communities to deal with bankruptcies of companies that are in the local communities. It's adversely affected the business bankruptcy practice here.

But I don't want to end on that note. Bankruptcy practice, as a lawyer and as trustee and judge, has been very rewarding to me. And I know I'm going to miss working with my friends.

Kathleen Shoemaker 32:41

On behalf of the bar, I'll say that I know you will be missed. And it's been a privilege to know you and work with you all these years during my career and thank you for what you've done for the profession. And thank you for inviting me to speak with you this morning.

Judge Lynch 32:59

My pleasure.