

NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY
ORAL HISTORY PROJECT

JUDGE JOHN E. RYAN

An Interview Conducted by

Evan Smiley
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Oral History Project

INTERVIEWEE: JUDGE JOHN E. RYAN

INTERVIEWER: Evan Smiley

DATES: December 7, 12, 18, 2006, January 19, 26, 2007

I. Growing Up in Massachusetts

[Begin Tape 1, Side A]

ES: This is the oral history of Judge John Ryan. Today's date is December 7, 2006, at about 3:15 p.m. I want to start by asking you, Judge, a number of questions that will go over the course of several days. Why don't you go ahead and give me your full name as you were born.

JER: All right, I was born in Boston, Massachusetts, January 22, 1941, and my parents gave me the name John Edward Ryan.

ES: What hospital in Boston were you born in?

JER: I don't know. I just know that I was born in Boston.

ES: Were your parents from Boston?

JER: Actually, my mother was from Dorchester, which is part of Boston and my father grew up in Amesbury, Massachusetts.

ES: What about your grandparents? Where were they from originally, and what were their names?

JER: On my father's side, my grandfather was John Ryan, and I was named after him. He was born in Amesbury, and was a dentist there. My grandmother was Alice

Ryan, and she actually was born in New Haven, Connecticut. My grandfather met her while he was going to dental school at Temple. On my mother's side, my grandfather was Edward Burke, and that's where I got my middle name. He grew up in the Boston area.. I don't know the specific town that he came from, but he had a plumbing business in Boston, which was very successful. As a matter of fact, he provided the plumbing for many of the major commercial buildings in the Boston area during the '20s and '30s. My grandmother on my mother's side was Gertrude, and her last name was Foley. She also grew up in the Boston area.

ES: So let's go back to your parents. What year were they born?

JER: Okay, my father was born in 1908 in Amesbury, and my mother was born in Boston in 1914.

ES: Are they still living, either one of them?

JER: No, my mother, as a matter of fact, passed away a couple of years ago, right after her ninetieth birthday.

ES: How old was your father when he passed away?

JER: Dad passed away when he was seventy-six years old.

ES: What type of business was your father in?

JER: My father was a lawyer, went to Harvard Law School, and had a defense insurance practice in Boston, represented Allstate, primarily, as defense counsel, over a long period of time. Actually, my Uncle Joe was a senior person *at* Allstate, so that helped, in terms of the business relationship between my dad and Allstate.

ES: A little nepotism?

JER: Yes, it helps from time to time, and it puts food on the table.

ES: How many siblings did your father have? Did he come from a large family?

JER: My father had a sister, Dorothy, and a brother, Donald. Dorothy married William Lovell, who was a dentist, and he had his practice in Norwood, Massachusetts. My Uncle Donald was in the construction business in the Massachusetts area.

ES: What about your mother?

JER: My mother had a sister and three brothers: a sister, Alice, who was a year younger than my mother—my mother was the oldest—and she married my Uncle Dick, who graduated from West Point, and ended up as a colonel in the Army, fought in World War II with the 82nd Airborne Division. As a matter of fact, he went in on the D-day invasion in a glider, which crashed, and as a result, he was severely injured. He later became the head of the Maritime Academy at Kings Point in New York.

My Uncle Paul, who was next in line, ended up graduating from Holy Cross, and ended up in the oil services business after moving to Texas.

My Uncle Joe was the one who was a senior vice president at All State.

And then my Uncle Bud, unfortunately, died shortly after World War II. All of them served in World War II, as a matter of fact, in the Navy. Uncle Bud's service was especially stressful as he was on a minesweeper.

ES: What type of work did your mom do, besides raise all the boys?

JER: Well, that was a full-time job. I had three brothers. We were very active doing various things, especially sports. She was a housewife and mother until we all

left. Then she got into the real estate business. She became a broker and did that for some time.

ES: What are all your siblings doing these days, or what types of careers did they have?

JER: Well, let me begin with Allen who was the next in order. I was the oldest in the family. Allan was a little over a year younger than me. Allen went to Bowdoin College up in Maine, and really fell in love with Maine. As a matter of fact, that was my dad's undergraduate school, so there was a real connection in terms of following in my dad's footsteps. As a matter of fact, he joined the same fraternity as my dad. When he graduated from Bowdoin, he wanted to stay in the Maine area. While looking for a job, he saw that there was this paper company called the Oxford Paper Company. Of course, Maine has a lot of woods—timber—and paper is a major business up in that area. He thought, "That'll keep me in Maine." Well, the first thing they did was send him to New York City for sales. He *hated* New York City and couldn't wait to return to Maine. So he worked his way north, first going to a food business in Massachusetts. And then a company called Kirshner Food, a meat business in Augusta, Maine wanted to start a small wholesale business. They hired Allen to start the business, and he grew it \$5 million in sales in a couple of years. They sold to hospitals and restaurants and so forth. A British company decided to buy Kirshner Foods, but they weren't interested in Allen's small operation. Allen asked if he could buy it from them, and they said yes,. Allen mortgaged everything he had, received family loans, and got a loan from a local bank to buy the company. He later turned it into about

a \$120 million business. A few years ago he sold it for about \$38 million. My brother Allan is now down in Florida enjoying retirement with his wife Dianne.

ES: What about your other brothers?

JER: My brother Paul went to Holy Cross and then to B.U. Law School. He is now a lawyer in Boston, handling primarily probate matters. He lives in the house we grew up in Beverly, Massachusetts. And my youngest brother, Mark, graduated from Harvard, and then went into the navy like as a radar intercept officer, flying in the backseat of the F-4 Phantom. This was the same plane that I flew in the Navy. As a matter of fact, I think one of the reasons he did this is that visited me when I was in San Diego, and I took him up in the F-4. I think that might have sold him on flying. In any event, when Mark got out of the navy, he got a business M.B.A. at M.I.T. and joined IBM. He had a very successful career there rising to a vice president position. So they've all done quite well.

ES: It sounds like everyone in your family is well educated and successful. Who was your most influential relative?

JER: Well, I think I'd have to say my dad. My dad had a very strong influence on me. First, he challenged me to be the best that I could be in all the activities that I got involved in. We never got an allowance, so if we wanted any spending money, we had to earn it. Now, there were a couple of ways we could earn more money. He kept a running account for each of us. We're not talking big dollars here. We're talking nickels and quarters. We could do chores like mowing the lawn and so forth. We could also get good grades. If we brought home an A, we got a nickel. I remember always coming home and showing them my grades. He

would say, “Good job,” and put a nickel on my account for each A. As for sports, he was always there for us; he was very supportive. I think that family structure and warm support was very influential and positive during my formative years.

As a matter of fact, you know, those nickels added up. When I became sixteen, we didn’t have a second automobile at the time, I went to my dad and said, “Dad, I want to use the money in my account to buy a car.” He said, “Okay, if you can afford it.” I did not have enough to buy a car, so I went to my mother and said, “Mom, if we go in fifty-fifty, maybe we can get a car.” She was very much in favor of this because that would give her a car to drive. By pooling our funds, we bought a 1951 blue Chevy. I loved that car. When I go to these rallies of old cars, I look for that specific car, because that was my first and most treasured automobile that I have ever owned.

ES: You’ve spoken a lot about sports. What sports did you enjoy the most growing up?

JER: I frankly enjoyed three sports, and it’s tough on me to say I enjoyed one more than the other. As a kid then, it was really before there were organized sports at that level. We used to go down to the park and with a bunch of my buddies, we’d play fumble with a football. We’d choose sides and play basketball. Or, we hit baseballs and catch fly balls, things like that. The first organized sport that I got involved with was Little League in Salem, Massachusetts, when I was ten years old. That’s when they began Little League baseball. I made the team, the Phillies, and played when I was ten, eleven, and twelve. That really began a more formal relationship with sports. In junior high school, I played football,

basketball, and baseball. And then in high school I played all three sports and lettered in all three sports, all three years.

ES: That must have taken a lot of time.

JER: It did, but I look back on it, and it was some of the best days of my life, because of the friends that I made, the lessons that I learned from team sports such as sacrifice, effort, teamwork, and setting and achieving goals.

ES: What position did you play in football?

JER: In football, I played end on offense, and safety on defense. That might sound somewhat contradictory. Today, play one side or the other. But Charlie Walsh, who was our high school coach, believed that because I was used to guarding players in basketball I could cover receivers in football. I hope that I proved him right. He was a very successful coach at Beverly High School. As a matter of fact, during my three years, I think we lost only three games. In my last year, we went undefeated and were state champions Division I.

ES: What type of student were you in high school?

JER: I was a good student. I think I ended up number 5 in my class. My mom and dad always made sure that I finished my homework even if I was tired after practicing sports.

ES: Were you a good kid? Did you get in trouble in school?

JER: I was pretty well behaved. I mean, I liked girls. If I could get away with making out with a girl from time to time, I would do it. But that was about it.

ES: I know you have an Irish background. Tell me a little bit about your connection to Ireland; how many generations back, and whether you are 100 percent Irish?.

JER: Yes. As my wife says, I'm 100 percent Irish. We have a cute story on that.

Terri's mostly English. Our daughter Jenny one day was looking in the mirror, and she was real young, and asked Terri what half was Irish. (chuckles)

ES: Who gets to call the shots?.

JER: She does, of course! (laughs) Any married man who says differently—well, you might question where he is from.

ES: I understand.

JER: On my dad's side, Katherine Ryan came over during the potato famine, in the 1840s, and she was a widow arriving with her two sons, Michael and Thomas. She settled in Amesbury, Massachusetts, because the Merrimack River goes through that area of Massachusetts and provided the power for a lot of the mills stationed along the river. And that was our connection to Amesbury. My grandfather was the son of Michael. That's the Irish story on my dad's side. On my mother's side, the Burkes came over in the early 1800s. I don't have an exact date on that. One of the Burkes—just for your information—Thomas Burke, a gold medal winner in first Olympics in Athens in 1906. He ran for the Harvard Club in Boston, which provided a number of the runners who competed in that event. He ended up winning two gold medals.

ES: Well, tell me a little bit about who served as a role model for you.

JER: I'd have to say there were two teachers. One was my English teacher. She pushed me to write often and to read the classics. And then my physics teacher really forced me to think about science and its importance in our everyday lives. Those two teachers really challenged me.

ES: Even then, your father only gave you five cents for an A, and no allowance, what type of jobs did you have growing up?

JER: Well, as I you know, I really enjoyed athletics. I remember working two summers as an instructor at one of the local parks. I would take the young kids and teach them various sports and games. Therefore, I was able to be outside and enjoy teaching something I loved.

ES: Did you get outside of Boston a lot, or travel a lot, or leave the States?

JER: No, we didn't really travel much. My dad worked awfully hard, and I don't remember many vacations. On his twenty-fifth Bowdoin reunion, we went up to Brunswick, Maine and celebrated the event. We then went over to Bar Harbor and stayed at a grand old eighteenth century hotel. We took a cruise around the harbor and the islands. We had a wonderful time that is still fresh in my mind. Usually, we spent our summer vacations at Situate, Massachusetts, on the South Shore. My Grandmother Burke had a summer house in Situate. We would go down there and spend a week or two, with all my cousins. It was really exciting because often my Uncle Dick and Aunt Alice would come and describe their travels in Europe since he was in the Army. I remember them coming back from from Turkey. My cousin, Mike, who was a year older than me, telling us about his adventures. Our summers at Situate were quite idyllic. It was a wonderful beach community. I remember seeing "Gone With the Wind" at the small summer theater. We would play baseball and I would caddy at the local golf club. We also had plenty of lobster. Those were good times..

ES: What year did you graduate?

JER: 1959.

ES: And did you go directly from high school to college?

JER: Yes. I had an NROTC scholarship to Princeton, and was pretty set on my going there. However, I was contacted by the Naval Academy and asked if I was interested in applying. They were interested in me for football.. I knew Arnie Allen, a center on the football team my sophomore year, who went to the Naval Academy. I remember talking to him about the Naval Academy, and his experiences. It raised an interest in applying. I also had an interest because I loved to watch the Army-Navy game. There was also a tradition of the navy in my family: my dad and all my uncles had been in the navy. Also, going back to the Civil War, I had a relative who served on the *Monitor*. So there was an interest. In any event, I was going to go Navy one way or the other, because I had the NROTC scholarship. The more I thought of it, the uniqueness of the Naval Academy, its traditions, and its history, the more the idea appealed to me. I applied and was accepted.

II. The Naval Academy

ES: Did you always know you'd go on to college, or was it even an option in your household?

JER: It wasn't an option. I mean, it was expected, no question.

ES: Did you go into the Naval Academy to be a member of the navy or to help pay for college?

JER: Well, I knew that if I could get a scholarship, that that would help my parents paying for college for all of us. Therefore, I felt an obligation to do that. My dad never said, "John, I'd like to try and get a scholarship." I had just had that desire to do it if possible. I also thought that serving in the Navy was something that I wanted to do

ES: Were your parents supportive of you joining the military?

JER: Yes, I think they were very proud that I decided to do that, and had that opportunity. So I think they just wondered which direction I was going to go. I was lucky enough to have those choices .

ES: Tell me what it is like to be a student at the Naval Academy.

JER: Midshipman.

ES: A midshipman at the Naval Academy.

JER: It's a unique experience, one that challenges you at each level. You begin as a plebe. As a matter of fact, you report right after you graduate from high school. This is your plebe summer. You are the lowest of the lowest. Many of the instructors are second-year midshipmen who have already gone through this experience. Along with naval officers, they provide this boot camp experience. The first thing you hear, while standing at attention in your civilian clothes, is the superintendent saying, "I want you to take a look to your left, and I want you to take a look to the right, because when you graduate, one of those persons won't be there." He was right. We started with 1,200 and we graduated 800. Obviously, the statistics proved true no matter how selective the process is. From year to year, there is that kind of attrition, and the greatest attrition is during plebe

summer. What they are trying to do is to see who has what it takes to survive the rigors of academy life. As a matter of fact, I shared a room with Dick McKenna, who I met the day before we reported at a motel pool. I ended up rooming with him for four years. Our other roommate was a fellow from Sheboygan, Wisconsin. He didn't make it past Christmas.

ES: Was it all male back then?

JER: All male. It was a lot of physical activity, a lot of learning the traditions of the navy. You had this plebe book which you had to memorize from the first page to the last, and if you were ever asked a question, you had to respond with the right answer. You also had to stand at attention in the presence of a senior midshipman or officer. You had this hazing process during the whole plebe year. Now, the benefit, if you played sports, was that during the time you were playing the sport, you could eat at a table and not have to sit at attention which was the normal eating position. If the Navy football team beat Army, which was played the first Saturday in December, all hazing ceased until after the two-week Christmas break. Interestingly, during my four years from 1959 to 1964, we beat Army each [year] which had never been done before. Now, we had Joe Belino and Roger Staubach, two all American players and Heisman Trophy winners to help the cause. This was the class of 1963's claim to fame until the class of 2007 achieved the same goal this year..

ES: Were you on the football team?

JER: I played plebe football at the Naval Academy, but then I didn't continue beyond that. I played basketball for two years, and baseball for two years. As you can

see, a win over Army was important to the plebes. All the hazing is designed to teach you to handle things under pressure. It is all done to prepare you to be a naval officer.

ES: What was your major at the academy?

JER: Well, at that time, everybody graduated with an electrical engineering degree. Today, they really have opened it up. You can even get a Bachelor of Arts degree in a variety of subjects.

ES: Did you hold a part-time job outside of school?

JER: No, it's full time. They don't let you do that. When you're there, you're *there*. And then as you go up the ladder in years, you get a little more freedom such as weekend privileges

ES: Were there any influential teachers or friends that stick out in your mind at the Naval Academy?

JER: Well, no one special. I have still a number of contacts from my class. The thing about the navy is once you graduate from the Naval Academy you and your classmates are spread around the world. So it is difficult to maintain relationships under those circumstances.

ES: So did you actually take any law practice or legal practice classes while you were at the Naval Academy?

JER: No. Again, most subjects were in the science, physics, electrical, and mathematics areas.

ES: Did you know what type of job you wanted with the Navy upon graduation?

JER: No, I didn't know exactly what I wanted to do. But, one of the benefits is during the summers they put you in a position to see the different options. For example, during my first summer, I was on the cruiser, *North Hampton*,. They picked a number of us from the plebe class to be on the *North Hampton* along with others from different classes. The idea was that the *North Hampton* would take President Eisenhower to Russia for a conference with Nikita Khrushchev. As a matter of fact, we accelerated some of our courses and were just about ready to take exams when Gary Powers was shot down flying over Cuba in a U-2 aircraft. He was shot down by a SAM missile. That blew up the summit conference between Khrushchev and Eisenhower and cancelled our trip to Russia. We were very disappointed. My summer was spent on the *North Hampton* in the Atlantic.

My second summer was spent down at Quantico playing marine and in Corpus Christi flying. I remember going up in a jet with a pilot named Roger Ryan. He was a really great guy and let me fly the plane. I knew right there that I wanted to fly.

Also that summer, they took us over to Newport.

ES: Newport Beach, California?

JER: No, Newport News, Virginia, where we went down in a World War II submarine. Within about five minutes, I knew that was not for me. No question about that! It's a helpful process. Generally, everybody gets a feel for what they want to do. During some time off in the summer, my roommate Phil Dean and I spent time in Spain and France. We also hooked a ride over to Hawaii on *Air Force 1*. We got to speak with Vice-President Johnson on that trip.

ES: How did you get to do that?

JER: Well, we were out at Andrews Air Force Base, and went standby. An officer saw that we wanted to go to Hawaii, and *Air Force I* was going to Hawaii. He said, "How'd you like to hitch a ride with Vice-President Johnson?" We said "sure." So that's how we did it. That's one of the benefits of service life.. You could, if you had the time, go to any air force base, and hitch a ride.

ES: Was that just for the Naval Academy, or just officers in general?

JER: Officers in general, and even enlisted persons have that opportunity. I remember between my junior and senior year, we went back over to Europe and we got motorcycles and traveled throughout Europe before meeting our ship in Italy.

ES: Was that your first time really traveling abroad?.

JER: No. Earlier we went to Spain and France. Remember, one benefit of the Navy is to see the world.

III. Active Duty in the Navy

ES: When did you graduate from the Naval Academy.

JER: 1963.

ES: And where did you go from there?

JER: From there, I went to Pensacola for pilot training. The highlight is when you fly solo for the first time. If you do well enough, you may get selected to fly jets. I was given that opportunity and was sent to Meridian, Mississippi, for primary jet training. Do you know where Meridian is?

ES: No, I don't.

JER: It's not on the coast.

[End Tape 1, Side A – Begin Tape 1, Side B]

JER: If you saw the film “Mississippi Burning,” you may remember, in that film, that they are looking for the bodies of the three civil rights workers who were. You will see they’re searching a pond or a lake area, and there are sailors doing the searching. You might ask, “How come there are sailors doing the searching in the middle of Mississippi?” The answer is that those sailors came from the Meridian Naval Air Station. At Meridian, we flew the T-2 jet. We learned all the elements of military flying, including section flying, navigation, instrument flying, and landing aboard the *Lexington* aircraft carrier. From there, I was sent to Beeville, Texas, which is about 200 hundred miles south of Houston, for advanced training. At Beeville, we flew operational jets, including the F-9 Cougar and F-11. We learned more advanced flying techniques including air to air combat and bombing. My last flights were in the F-11, which is an after burner aircraft. The first time you fly it you are alone . It was a real gut check. After finishing the syllabus at Beeville, I got my wings. That was a special moment. The whole training cycle takes about 18 months.

ES: What do you mean by afterburner?

JER: Did you see “Top Gun”? (ES: Yes.) Okay. And do you remember when the jet, the F-14, was taking off, and the tailpipes of the jet were wide open and flames pour out of the tailpipe nozzle?. That’s the afterburner kicking in which provides at least twice the normal power for takeoff. The engine is burning about four times the normal amount of fuel Everything happens so much faster, as you can imagine. The first time you experience this power is an unbelievable feeling.

From Beeville, Texas, I went to Jacksonville, Florida, and learned how to fly the F-8 Crusader, and then got stationed down with an F-8 squadron at Guantanamo, Cuba. I was stationed there for about 18 months. At the time the Vietnam War was heating up, so I asked to be transferred to the west coast. I was assigned to VF-121 which is the training squadron for the F-4 Phantom. After completing my training at VF-121, I was sent to VF-154, the Black Knights, who had just returned from a cruise to Vietnam on the *Ranger* (CVA-61).

ES: What happened then?

JER: After a lot of training with the pilots of VF-154, we prepared for our cruise on the *Ranger* to Vietnam.. We were to embark from Alameda where the *Ranger* was home ported.. My parents came out, and we drove up to San Francisco by way of Yosemite. We had a wonderful time. The night before we were to leave my parents and I joined my Uncle Dick and Aunt Alice for dinner at the officers club at the Presidio. It was a nice way to say “goodbye.”

ES: Is that in Alameda?

JER: No, it's in San Francisco looking out at the Golden Gate Bridge. My Uncle Dick, was at that time in charge of the Army's language school at Monterey. The next morning I waved goodbye to my parents from the deck of the *Ranger* as we steamed west pass the Golden Gate Bridge. It was exciting looking up at that red bridge as we passed under it.

ES: When did you first land on an air craft carrier?

JER: Back in basic training with the T-2 Buckeye. I landed aboard the old *Lexington*, an old World War II carrier that they used for training purposes.

ES: How do you get prepared for that?

JER: Well, there is no way to experience the effect of a carrier takeoff. They *tell* you what it's like, but your first experience is definitely unique as you go from zero to 140 knots in about 100 feet. You cannot move because of the "g" forces on your body until the plane is released from the catapult and you are flying. The same is true with the landing phase of carrier operations. You do practice touch and goes on a runway. You use the Fresnel lens at the field to fly the plane in a controlled crash to a specific point on the ground. You do this by keeping an orange ball centered between green datum lights. If you do this, you will fly the correct glide slope that will cause the plane to hit the right spot on the deck to catch a wire that will stop the aircraft on the carrier. However, the first time you actually catch a wire and experience the sensation of going from 140 knots to zero in about 300 feet is when you first do it. As you can imagine, it is a violent stop when it happens. You're really thrown forward to a screeching halt.

ES: How long was the trip to get to Vietnam?

JER: Oh, the trip took about two weeks, including the excitement of steaming through a typhoon. The carrier was up and down like a toy. My quarters were near the bow and the sound of the crashing waves was relentless and scary. However, we had it easy compared to our escort destroyer which spent most of the time underwater. I am amazed that it survived the storm. The typhoon was so violent that actually damaged the bow of the *Ranger* so we had about three weeks of repairs Yokuska, Japan, before we were able to proceed to Yankee Station off North Vietnam.

ES: Were you apprehensive going over there?

JER: I don't remember being scared, no. I believed in the training that I had received from the Navy. It's interesting how the navy trains its pilots,. They train you in an aircraft until you just start to feel comfortable and then they push you to the next level of aircraft where you start all over again. By the time I had transitioned to the F-4, I felt very confident that I could handle the challenges of that high performance jet in the combat environment. Let me give you an example. To qualify in the F-4, I had to land the F-4 aboard a carrier. As luck would have it, we were off the coast of San Diego with a miserable low ceiling, drizzly night, black a night as they come. I told Jim Spencer, my radar intercept officer who is fling in the back seat, that I am going to put the plane down. "You know, Jim, my landings might not be the prettiest, but I am not going around in this muck." I landed it five straight times without a bolter. From that day on, Jim never questioned my flying even though I put him in some tough situations. Night landings are very difficult. There is always a high level of tension with night landings. You don't have all your senses to guide you when it is pitch black..

I don't remember having a fear. I felt comfortable, and I trusted the people around me. We had an excellent squadron. Following my second cruise where we did not lose an aircraft, we were awarded the CNO safety award for all Navy fighter squadrons..

ES: How long were you over in Vietnam?

JER: It's a six-month cruise, so we were there from November of '67 to May of '68, and then the second cruise was, again, November of '68 to May of '69.

ES: At that point did you think the military was going to be your career? Or did you view it as a short-term step towards something else?

JER: I don't think I ever viewed it as short term. I had at least a five year commitment as a pilot. Because of need, we were all extended a sixth year. During my second cruise, I started to think, "What do you want to do now?" I had actually asked for graduate school, but they needed pilots in the training command. Felt like I was getting older and needed to get additional education. It looked like that would not occur with the Navy for some time. I started to think about going to law school.

ES: How old were you then?

JER: Twenty-nine..

ES: Why don't we end our discussion for today because we are out of time and continue our discussion later.

JER: Okay, good.

ES: Thanks.

[End Tape 1, Side B – Begin Tape 2, Side A]

IV. Georgetown Law School

ES: This is the oral history of Judge Ryan. Today is December 12, and we are going to continue from our last discussion. What gave you the interest or the idea to apply to law school?

JER: Well, my dad was a lawyer, so I had great familiarity with the law, and always enjoyed conversations with my dad when he would talk about various cases that

he was involved with. But actually, I loved the navy, I loved flying, and I had a decision to make in terms of whether to stay and make the Navy a career. One of the deciding points for me was to get additional education. So I requested graduate school from the Navy, but because of the Vietnam War and the shortage of pilots, they said that I would have to go into the training command and instruct new pilots for a time. That just wasn't satisfactory to me, so I applied to law schools and got accepted to Georgetown, and left the Navy in June of 1969.

ES: Now, when you were thinking of getting further education, did you always know at some point that you wanted to be a lawyer, or was it just something that came up while you were flying over in Vietnam?

JER: I don't think I thought strictly in terms of going into the legal profession, but I knew at that time of my life that I wanted to get a broader education and get some graduate training, because I felt that would open up new opportunities for me.

ES: How did you decide upon Georgetown?

JER: Well, it was an excellent school. I mean, I applied to Harvard, Georgetown, and U.S.D. in San Diego. I did not get accepted to Harvard, but did get accepted to Georgetown and U.S.D.. I did want to get back to the East Coast, because I'd been away from my family for the past six years, and so Georgetown was an outstanding opportunity for me.

ES: So you started law school in what year?

JER: I began law school in 1969, and graduated in '72. Those were very interesting times back in Washington. I can remember crossing the bridge from Alexandria, Virginia, where I lived, to go to law school and seeing the national guard on each

side. There were a lot of demonstrations in Washington during my years at Georgetown, against the Vietnam War. Washington was a center for a lot of the antiwar demonstrations. So it was interesting to see that reaction, having participated in Vietnam while I was in the service.

ES: What was your reaction, how did it make you feel, after you'd just come from Vietnam?

JER: Well, I was disappointed. I mean, we were doing what our country asked us to do, and to see that kind of reaction to the war and our service was disappointing. We returned, and nobody was saying "good job" or patting you on the back and saying "thank you for your service," so it was disappointing.

ES: So tell me a little bit more about law school. What were some of your favorite courses in law school?

JER: I remember enjoying my corporate courses: corporations, partnerships, and antitrust. I also enjoyed a new course in environmental law. This was just when the EPA had been formed and there was new environmental legislation, so it was interesting to speculate on how this new law might affect businesses in their operations. So those were some of the courses that I enjoyed. I was also on *The Law Review*, so I spent quite a bit of time in my first year writing. And then I was the articles editor on *The Law Review*, so I review other articles for submission to *The Law Review*.

ES: Articles editor, is that where you reviewed outside articles from professors and scholars from outside of the school?

JER: Right. We had a very interesting symposium, based on President Nixon's program to distribute more funds to the states from the federal government, a revenue-sharing arrangement. So we did a symposium in which we had Governor Nelson Rockefeller of New York write about the program from a governor's standpoint. We also had an article from Vice-President Spiro Agnew on the basic why the federal government should distribute funds to the states for certain needs. I believe that we also had a local writer address how local communities might use the funds to address local needs. I remember going up to New York to get the article from Governor Rockefeller's staff, and parking out in front of the state building there, going up and spending about an hour getting the article and talking to his people. And then coming down and looking and saying, "*I know* I parked my car there," and going around the block trying to figure out where my car was, and discovering that it had been towed. I was about ten minutes late, because of the meter. That's an experience, trying to get your car out of hock in New York City.

ES: Especially in New York. Did you meet with the governor, or his staff?

JER: I met with the staff. I also remember, because I was the lead person in putting all this together, going over to the Executive Building, right next to the White House, and working with a fellow by the name of Gold, who was the chief of staff to Vice-President Agnew, and coordinating the article with him. So it was a neat experience to be involved at those levels, putting together that symposium.

ES: How did you get these individuals to write for the symposium? Were there connections to these folks within the law school, or did you go out and seek their input?

JER: Actually, we had some connections at the law school that we used to set up the initial conversation. They were very proactive in terms of this program, because it was new to the relationship between states and the federal government. Normally the federal government held onto funds and did not distribute, and this was the beginning of what is still today a mechanism by which the federal government distributes funds, whether it's for education, for environmental needs, and for other causes.

ES: Were there a lot of veterans that were your classmates at that time, coming back from Vietnam?

JER: We had a few. I remember we had a study group, and one of the persons there was an ex-marine who had been over to Vietnam. It was interesting, we had a fellow, Pat Raher from Notre Dame, who I met in line as we were signing up. Raher and Ryan were fairly close in terms of the alphabet. There were five of us: Steve Weinberg was another member of our study group. And interestingly, at the end of my first year, in May of '70, when we were about to take exams, that's when President Nixon ordered troops into Cambodia. Campuses across the country were engulfed with demonstrations. Many schools did not require that the students take their exams, and Georgetown gave everyone a choice to take the exams home with them and do them during the summer, or take them on time. As a group, we decided to take our exams on time. Interestingly, we all did very

well. I have a theory that if we had taken our exams home with us, and tried to manipulate the process, we probably would not have done as well.

ES: Right. Did you make a lot of friends in law school that you still stay in touch with today?

JER: A few, but because of the distance, it is difficult. Most of them are back on the East Coast. As a matter of fact, you asked about veterans . Another good friend of mine was Gene Sullivan who went to West Point. He and I shared a lot because of going to the academies. He later clerked for an appellate judge in the St. Louis area, and then became chief judge of the military court of appeal. I still talk to him quite a bit, as well as Pat Raher, who's a very good friend.

ES: Have many of your classmates went on to do significant things?

JER: Well, I forget her name, but one of my classmates went very high up in the Securities and Exchange Commission. I'm sure a number of them did other things. Pat Raher as a matter of fact, is a senior partner at Hogan and Hartson in Washington, D.C., and has done very well.

ES: Now, did you also work in addition to law school? Did you carry on some type of part-time job?

JER: No. Well, I guess it could be considered part-time. I became a naval reservist flying with an F-8 squadron out of Andrews Air Force Base. That provided me with some additional income, along with, of course, veteran benefits for schooling. Basically, I was able to not have to borrow anything to go through law school.

ES: When would you have time to serve in the reserve? Would it be on weekends, or during the summer?

JER: Both weekends and usually one day a week. I would fly at night to get in some night flying, instrument flying, and so forth. And then during the summer we would have a two-week period where we would fly to a particular location, operational base, and renew all of our flying requirements that were necessary so that we could be inserted into an actual combat operational group if necessary.

ES: Was there any time during law school you were worried that you might be called up and have to leave Georgetown?

JER: I really didn't think in those terms, to be honest with you. At that time, of course, we had the draft, and I think that they were able to fill their requirements without having to tap the reserves. Additionally, I think at that time the reserves were really viewed as a last resort, in terms of an all-out war, and that certainly wasn't the situation with Vietnam.

ES: As a young man, you grew up right in the middle of all the protests and dissention that took place in the '60s. What did you think about that time? During the '60s did you think that that was just how things were going to be in the future, or that it was just a difficult time in the nation that we'd get over?

JER: It was *very* difficult. You really have described the conflict for a person like myself. I mean, I grew up in the '50s, where everybody had short hair. The worst thing you did, probably, was drink beer. You came from a local community which was cohesive, together, supportive of its young people. The sports teams were admired and cheered for, and fellows who participated in sports were

recognized, and the local community always stood behind you. And it seemed like a lot of that was disintegrating in terms of this counterculture movement, and opposition to the war. And in addition, we haven't even talked about civil rights. I mean, this also was a period in which there was tremendous change in terms of the civil rights movement in the South, which then permeated up to even Washington, D.C., and areas of the North and Midwest. You had all of this turmoil, and in addition, drugs came on the scene, and this sort of acceptance by young people, within my generation or the generation just following me, of doing these things which seemed so counter to the foundation upon which my views were formed. So it was difficult to comprehend, understand, and accept.

ES: So looking back on it now as an adult, do you think it was good for the country, that dissention in the '60s, or was it destructive? How do you view it now?

JER: I think overall I would say it was positive, but I think it was very difficult in terms of living through that, and the extremes, to some extent, to which these groups went to achieve their goals. Maybe that was necessary in order to create these breaks, so that there was wider acceptance of these problems within our society, from which the bridges could then be built to heal. But it's difficult when you live it and see it, especially if you don't accept the degree to which these forces conflict.

ES: Looking back now as an adult on Vietnam, knowing what you know now, do you think that if you were president at that time—and hindsight is 20-20—do you think you would have done things differently?

JER: Oh, I would have done things differently. I don't think the United States should have gone into Vietnam. I think we had this view that every time there was a movement supported by Russia or China—Communism—that we had to take aggressive action to stop that. I think that we also, in terms of Vietnam, did not fully understand the nature of the movement from the North, vis-à-vis the South. I don't think the people fully understood the corruption within the government of the South that created a fertile environment for the North to use in terms of its aggressive actions against the South. The problem with dividing a people with an artificial line in Vietnam is that it [was a mistake?] from a historical standpoint. So hindsight is always 20-20, and I think most people would say that Vietnam probably was not the appropriate place to spend our blood or our wealth.

ES: Let's get back to law school. During law school, tell me what happened in terms of your career move. Did you interview on campus, or how did you end up with your first job as a lawyer?

JER: Well, I interviewed in Boston, because that was my target location. I wanted to get back to the Boston area, since I had left at age eighteen, and now I was thirty-one, graduating from law school. So I wanted to get back to my family, closer to my family, and Boston's a great town, so I focused my interviews there. Hale and Dorr was one of the leading law firms in Boston. So when I got accepted to Hale and Dorr it was an easy decision to say yes.

ES: Did you go there during a summer program, or did you interview with them?

JER: No, I just interviewed with them the fall of my last year, and got accepted in November or December. I had acceptances from some other law firms, and I had

worked during the summer in Rochester, New York, for Nixon, Hargrave, Devons, and Doyle, which at the time represented Kodak and a lot of the other high-tech companies in that area. I actually had gone there because I knew it was a good law firm and I'd have an excellent experience. But I wanted to be close to Canada, and the parents of a friend of mine, Terry Ryan, who I flew with in the F-154. They had a summer cottage in Canada.

ES: This is a different Terry Ryan than *the* Terri Ryan?

JER: Yes. Terry Ryan was quite an extraordinary person. He was a graduate of Notre Dame, and the first time I saw Terry, we'd just gotten back from my first cruise over to Vietnam. We had a party, and Terry walked in with this green scarf on, just like a World War I type fighter pilot. I looked at him and said, "Who the heck is *that* character?!" So I walked up and introduced myself and we talked for a while, and I then went over to Harley Hall, who was the operations officer, and I said, "I want Terry Ryan as my wing man." Going on my second cruise, I would have a wing man, whereas my first cruise, I flew wing on Harley Hall. And Harley said—we were good friends—"Okay." The next morning, we briefed for a flight, and I said, "Terry, we're going to go up to about 35,000 feet over the ocean, and we're going to split, and I'm going to see what you've got." So I thought this kid would probably be a piece of cake, and he's just a lot of talk. We split at 35,000 feet—.

ES: What do you mean by split?

JER: You fly together, and then you split, and then you call "turn in" when you're separated maybe about five or six miles, and then you go head on, and you

perform air combat maneuvers to see who can get on the other guy's six o'clock.

We ended up about 4,000-5,000 feet over the ocean, still headed up on each other.

ES: Sounds like a game of chicken.

JER: No, it's what you do as a fighter pilot. That's the only thing you have between saving your life and prevailing, is your ability to fly that aircraft to its maximum. Usually you go through—and I had had a *lot* of these training exercise-- and here was this kid who had just come out of the replacement air group and he was as good as I was in terms of maneuvering that airplane and flying it to its max. He was a natural pilot. The tragedy was that during his second cruise, while I was in law school, and during a carrier launch off Vietnam his front wheel collapsed as he was being catapulted off the carrier. Of course by the time he went off the bow, he didn't have enough air speed to go airborne, and his plane stalled. His RIO ejected, and by the time Terry ejected, the plane had gone into the water. They didn't recover Terry at the time. So when I learned this, I went up and saw his parents, and that's how I formed that connection with them, and they were very fragile with the whole thing.

So one of the reasons that I went to Rochester was to be closer to them, and share some of the summer with them. About a year after that, a fisherman off of North Vietnam pulled up his fishing nets, and pulled up Terry's ejection seat. Terry was still in the seat. So his parents finally had his remains to bury and find closer. He was buried in the cemetery of a small church near their camp. It was sad but necessary closure. There's the long story as to how I got up to Rochester, New York, that summer.

V. Meeting Terri

ES: At the end of law school, did you take the Massachusetts Bar, or D.C. Bar, or what?

JER: I took the Massachusetts Bar. I took it two days, Wednesday and Thursday, at B.C., Boston College. And then my brother and I flew out of Boston Friday morning so that I could get married to Terri in San Diego on Saturday.

ES: Wow.

JER: I had met Terri—.

ES: This is another Terri Ryan.

JER: This is *my* Terri. (chuckles) I met my Terri my last year of law school. The way that happened was that, as I told you, I would go out to fly in the reserves a lot of times on the weekends, and there was this elderly lady at the desk who had beautiful gray hair.

ES: Is that the desk at Andrews?

JER: The desk at this apartment complex where I lived.

ES: Out here in California?

JER: No, this is in Alexandria, Virginia. So for a year, we would talk, and I learned that she had grown up in Massachusetts when she was a young girl, so we had a lot in common. One day I needed to get snow tires, so she opened the storage area. She, then, as I was getting the tires, said, "Would you like to meet my granddaughter?" I'm thinking to myself, "Oh, yeah." What do you say?

(laughter) And so then she showed me a picture. Here, I'll show you the picture right here.

ES: Very nice.

JER: So I said, "You're darned right I'd like to meet your granddaughter!" So she told [her name was] Terri, and she gave me Terri's number. Of course Terri didn't want to meet me, and she had kind of a rule about not dating anybody in this apartment complex and so forth. But we had a first date.

ES: Did Terri live in the apartment complex?

JER: Yes, she did. And there were a lot of young men there looking for pretty young girls. So I guess she'd gotten hit on quite a bit, and had this rule. So she was not too happy about her grandmother setting her up with me. So we had a first date, and then I asked her for a second date. She said yes, but then called me and said that she didn't think that was a good idea, and so forth. So I thought it was over, and I went to—.

ES: You went back to Grandma?

JER: Well, no, I went up to . . . I was just leaving that summer, this was just toward the end of my second year . . . so I went up to Rochester, New York, as I had previously indicated, wrote her a letter telling her I thought she was really a nice girl, and I'd like to get to know her better. So when I came back at the end of August, she was just leaving the pool, and my buddy, John Love, who was an FBI agent, ran over and said, "Hey, Terri's leaving." John knew about Terri because we had double-dated that first date. Matter of fact, John had his first date with

Jeanie, who he ended up marrying as well. So this was a pretty positive first date for both of us.

ES: Was Jeanie a friend of Terri's?

JER: No, they didn't know each other. Getting back to the pool, I ran over to the fence, "Hey, Terry, doing anything tonight?" So she said, "No." I said, "Well, let's go out." We went out, and that was it. I asked her to marry me six months later. As I said, I finished the bar, and flew to San Diego to get married.

ES: So how long were you dating before you got engaged?

JER: Started dating in September, and I asked her to marry me in February.

ES: Short period of time.

JER: Yes. I liked her a lot.

ES: What was she working in?

JER: She was working for a law firm in Washington, but she had worked for Eastern Airlines, and she actually had plans to go to San Diego and work for PSA, which was an airline here in California. Her parents were out in San Diego, and she was located near them. But I sort of changed her plans.

ES: And then when did you get married again, what year was it?

JER: We got married in '72. Let's see, that would have been July 1, 1972.

ES: Where was the wedding?

JER: It was at Miramar Naval Air Station, at the chapel there.

ES: Which Miramar is that?

JER: In San Diego. That's where I was stationed when I was flying with the VF-154.

ES: Where did you go on your honeymoon?

JER: Well, that's interesting. I had to get back to Boston, because I was starting with Hale and Dorr. It was *her* plan—this is the truth—that we would camp across Canada for our honeymoon. I hadn't camped much at all growing up. I mean, I wasn't a Boy Scout or anything like that. For my dad, the furthest thing from his mind would be to pitch a tent.

ES: He liked hotel rooms.

JER: Right, he liked hotel rooms. (chuckles) I said, "Oh, fine!" So we bought the camping gear. As a matter of fact, her dad was from Maine, and he was a real nature lover, fisherman and so forth. We decided the first couple of days of our honeymoon to go up to June Lake and spend some time with them, because I hadn't even met her parents before we got married. I didn't know anything about her family or anything like that. So we went up to June Lake, and here's a city kid, he doesn't know anything about fishing. Her dad hands me a fishing pole and there's a stream right near the cabin. I go out to the stream, and I throw the line in. All of a sudden, boom! I get a hit, and I reel this fish in, and by God, I had a trout! But you know how I got that trout? The trout ran into my hook. The hook was in the *side* of the trout. That's my claim to fame. Her dad couldn't believe that's how I caught this trout. (laughter) We camped all the way across the country, going up through Canada, and just had a marvelous time. We've got some great stories of that trip.

VI. Private Practice

ES: So you started, I presume, Hale and Doyle, around September or October of that year?

JER: I think it was the middle of August of that year, and stayed at Hale and Doyle for about three and a half years.

ES: What department were you in at Hale and Doyle?

JER: Started out in the corporate department, working on IPO offerings. At that time, it was a great time to be in the Boston area, because Route 128 had developed as an incubator—this is the highway around the Boston area—of small companies in the high-tech area. Of course in the Boston area, it's a center for outstanding educational institutions. A lot of the people from Harvard and M.I.T. were getting involved in these high-tech companies areas, like Analog Devices, Computervision, Polaroid, and so forth. Hale and Doyle represented a lot of these companies and taking them public. As a result, I got involved in some of those offerings early on.

But then in October of 1974, there was a terrible recession. I think it is said to be the worst recession since the Depression. The stock market, in one day, Black Market Day, went down, I think, almost a third. Obviously, as a result, nobody was going to the market with any IPOs. As so often happens in the law, where there's a downturn in one area, there's an upturn in another. Well, the upturn was in bankruptcies. So Fred Fisher, head of the bankruptcy department at Hale and Dorr, asked for some help.

ES: At that point, had you taken bankruptcy in law school?

JER: No, the furthest thing from my mind was taking a bankruptcy course, or going into the bankruptcy area. I knew absolutely nothing about the Bankruptcy Act, etc. But I *did* know that I wanted to be busy, and they needed some help, and so I volunteered and went over and worked with Fred Fisher. It was just a great experience. The responsibilities we had, in terms of dealing with banks and small companies, and even big companies, in bankruptcy at that time, was tremendous.

ES: Representing mainly creditors or debtors?

JER: Creditors, debtors, trustees, and creditors' committees.

ES: Creditors' committees under the act?

JER: Under the Act, there was no Chapter 11. Reorganization was under Chapter 10. However, by rule there was a change that allowed the debtor to remain in control without the appointment of a trustee, the forerunner to Chapter 11. And so this was new in terms of the bankruptcy area. It also had the novel concept of a creditors committee. And that was back during the days where the referee was much more involved in terms of what was going on with the company.

ES: How so? I mean, compare it to a bankruptcy judge today.

JER: Oh, I mean, it was like night and day. We would go in with the principal lender and maybe a key creditor and sit down and talk with the judge and tell him what's going on and what needs to be done.

ES: No court reporter?

JER: No. And he'd say, "Fine, okay." I mean, the referee back then really had a hands-on approach to what was going on, and making sure that the creditors were

getting paid, the payables were being paid, and the debtor was making progress with the key creditors. I mean, this was all done, not in the courtroom, but in the chambers of the referee. It was a totally different scenario. Today, of course, as you know, the bankruptcy judge resolves disputes. But back then, the bankruptcy referee was intimately involved in the operational aspects of the debtor in reorganization.

ES: What do you think is a more effective system, having referees or having judges, based on your experience?

JER: In the *perfect* world, I guess I would say having the cooperation of everybody in that chambers, with the referee—. The referee was not there as a judge. The referee was there, like a referee in a game, to try and make sure everybody's working on the same page.

ES: More as a mediator?

JER: Yes, sort of a mediator.

ES: Would the referee be able to make decisions like a bankruptcy judge does today?

JER: That's the problem: the perception was that if the referee had so much information and had this close connection to the attorneys and the principal players, that the referee could then not step away and put on the hat of a judge and adjudicate the way we normally have matters adjudicated in court, with an impartial judge. So it really came down to a choice between the benefits of that collegial interactive process versus allowing the parties *without* the judge to try and accomplish the same result, and then if unable to accomplish a resolution, bringing it to the judge for adjudication. There had to be a decision, which way to

go. The decision by Congress was to isolate from that interactive process and leave the judge as the ultimate adjudicator of the issues.

ES: Going back to Hale and Dorr, when you started in the bankruptcy department, was this your first experience going to court?

JER: Yes.

ES: Did you enjoy going to court?

JER: I did. But again, we didn't go to court that often, because we basically resolved 95 percent of the issues, talking to the referee. We'd go in with an idea, we may be very close, and with additional discussions with the referee, bingo, reach a resolution, walk out, document it, and go forward.

ES: Were most of your appearances in the Boston area?

JER: Yes. I went to New York on a few matters, but back then, my sense was that if the case arose in Massachusetts, it was handled in Boston . . . unlike today!
(laughter)

ES: So how long were you practicing bankruptcy at Hale and Dorr before you left?

JER: Oh, probably a couple years.

ES: Were you thinking at that time you'd like to be a referee or a judge?

JER: No, I really wanted to learn more about the business side of the equation. I mean, I felt that I had a pretty good sense of the legal parameters, but I didn't have a good sense of the influences on the business side that affect decisions and outcomes. Therefore, I wanted to get more experience on the business side.
When I came out to pass the bar in California, my primary [focus]—.

[End Tape 2, Side A – Begin Tape 2, Side B]

ES: You were talking about coming out to California.

JER: Yes, when I came out to California and passed the California Bar, my main focus was to go in house with a public company to acquire more understanding of how public companies operate, the business side of the equation.

VII. Valerie and Jenny

ES: So you went from Hale and Dorr to your move to California?

JER: Right. Terri and I had then two daughters, Valerie and Jenny—young daughters—and decided after slipping and sliding for three or so years in the Boston area, that California looked real good. We had come out and visited Terri's parents, who lived up in Santa Barbara, each year. Really, I renewed my love for California, and she wanted to come to California and be closer to her parents, so we made a decision to move to California.

ES: So tell me . . . I'm trying to do this chronologically . . . when was Valerie born?, who, I believe, is your oldest.

JER: Valerie was born December 13, 1973, and it was a wonderful day.

ES: Tell me a little bit about Valerie, growing up, interesting stories, and what she's doing today.

JER: Well, Valerie was very easy daughter to raise. She took direction well. She wanted to learn. She was an excellent athlete. She then came out here, as I say, distinguished herself with her grades and with her athletic achievements. She went to UC-San Diego, played basketball on the UC-San Diego basketball team, graduated with honors, then went with Anderson Consulting, which later became Accenture. She worked with Accenture for four years. She had volunteered for

an abuse center, and saw the ramifications of that. When she graduated as a political science major, she said, "I'm not sure I want to go to law school." And I said, "Well, don't make that decision unless you're really convinced that's what you want to do. It's too difficult a journey, and too expensive, to do it on a whim. If you are meant to be a lawyer, you'll know at the right time." So when she was at this abuse center, she decided that she wanted to be an assistant D.A. and prosecute those who would commit these kinds of crimes against women. She's also very strong on women's rights so this is an aspect of her that came out, in terms of this volunteer work. She decided at that point to go to law school. She went to Cal Western-San Diego, got a full ride scholarship all three years and graduated number one in her class. (ES: That's great.) And she's now an assistant district attorney in San Diego. So she got the fire in the belly, as I call it, and that's what she needed to make that decision and accomplish what she accomplished in law school. She's doing what she really wants to do.

ES: Any grandkids yet?

JER: No, we're hopeful. She's married to Patrick Farrell. She met Patrick at Accenture. Patrick is head of the I.T. department at a small company in San Diego. They have a nice house in Normal Heights in San Diego. I think they have a "contract" where she will get pregnant, and hopefully we'll have a healthy grandchild here in the not-too-distant future. I haven't been told exactly when that contract time arises, but I think it's getting close.

ES: Tell me about your second daughter.

JER: My second daughter is Jenny, and Jenny is a very warm-hearted young lady.

ES: When was she born?

JER: She was born May 16, 1974. Jenny is the type of person who wouldn't hurt a butterfly or a bee. She'd save a bee, even though it might sting her. She has always been the quiet one of the three. I don't think it is uncommon with the middle child. Obviously, competing with Val, if she had chosen to do that, would have been a very difficult task, so she chose not to do that, in many respects. She has created her own road, and she teaches the fourth grade at Rock Springs Elementary School, which is the same school Terri teaches at, so they have a nice interactive connection.

ES: What grade does Terri teach?

JER: Well, she actually teaches special education for young boys and girls who have problems and need additional help to survive that environment. She's done that now for about twelve years.

ES: Is Jenny married?

JER: Well, Jenny just got engaged, which makes her very, very happy, and we're very happy for her, although it probably means that she'll be moving to Texas, where he believes he has the best opportunities for both of them. That's going to be somewhat difficult . . . probably more for Terri than necessarily for me, because she and Jenny are so close. Terri's been there as her guiding light through all these years, and as a result, Jenny's become so critically important, emotionally, for Terri.

ES: When is she leaving?

JER: Well, they've scheduled to be married September 21, so she'll finish her teaching this year, and then I think he's going to be leaving this Christmas to go back to Oklahoma where his parents are, and then try to get a job in the Texas area. I think she'll apply for a teaching position wherever they end up. And then she'll probably move, my guess would be August of next year.

ES: Tell me a little bit about your third daughter, Keely.

JER: Keely! (chuckles) Keely was born on May 17, 1979. She's our California girl. The other two were born back in Massachusetts. Keely was always going to make her own way, no matter what. She has a very strong personality. As a matter of fact, as Terri would describe it, she had to give Keely choices. So if Terri were going to go to her school and be seen, she'd have to put three dresses on the bed, and have Keely choose the dress that she would wear. You get the idea. (chuckles) Keely was the one, as a young child, who always tried to push, push us away. She wanted to make all of the decisions and so forth. But she did very well in school, and did well in athletics, and went to UC-Davis, and now works for Medtronics up in San Francisco.

ES: Which is a pharmaceutical company?

JER: Yes. Well, it's actually a medical device company. The primary product in the area that she's working is spinal devices. If a person has a spinal injury, needs an operation on the spine, she goes in for the operation and actually assists the surgeon, providing the devices for the operation. She really enjoys that. She had worked in the pharmaceutical area for Eli Lilly, but I don't think that gave her the same sense of accomplishment as what she is doing now. But she stayed up in the

San Francisco area, she has a lot of friends there, and Terri and I keep trying to get her down south, but we'll see.

ES: Is she married?

JER: No, she's not married.

ES: So I have to ask . . . I grew up in a similar situation. What is like growing up with four boys and now being surrounded by all girls?

JER: And a female dog!

ES: And a female dog! So what's that like?

JER: I think the good Lord was getting even with me. I had it real good with my three brothers, and being in the majority in my family. It's been a real education. I had to learn a lot about women, girls. I guess the best way to say it is I've come a long way. I'm more sensitive, I say "I love you" a lot more. I don't get as upset if they're taking time shopping. I also reach all kinds of compromises and accommodations keep the peace and have tranquility with the other sex. We are not the same. I don't care who says that we are, we are not. And it is definitely a learning experience for, I think, every male. Certainly for someone like me who came from a family of boys. I never had to worry about the seat on the toilet, if it was up or down (laughter) at my house when I was growing up.

ES: Well, that's probably a good place to end it today, so we'll conclude then.

JER: Well good.

[End Tape 2, Side B – Begin Tape 3, Side A]

VIII. California Law Practice

ES: This is Tape 3 of the oral history with Judge Ryan. Today is the eighteenth of December, and I think when we left off last, you had talked about moving here to California from Hale and Dorr. I think you talked about *why* you came out here, but please tell me where you ended up at your first job here in California.

JER: Well, my father-in-law was in the environmental area with Santa Barbara. He had retired from the foreign service, and his second occupation was initially with the new environmental department in San Diego. Then, he became the director of environmental affairs for the County of Santa Barbara. He knew that I was interested in coming out here, and he had a good friend, Mickey Oguri

ES: How do you spell that?

JER: O-G-U-R-I. Mickey worked with an environmental group at USC. They had an extra \$10,000, and he was willing to take me on as an attorney to assist them while I studied for the bar exam and took the California Bar. This was a key for our moving. So we came out here in late November 1975, and I went down to U.S.C. and began working with Mickey, and Dorothy Soule, his partner. There company was involved in marine biology and marine affairs. It was a great situation, and I thoroughly enjoyed working with both of them. I got the opportunity to study for the bar, which I took in February 1976. Once I passed the bar, I became in-house counsel to C.F. Braun, which was a large engineering construction firm in Alhambra. I worked there for a little over a year, and then became the general counsel for Altech-Lansing, which was a company in Anaheim. I worked there for two years.

ES: What kind of company was that?

JER: Altech-Lansing was one of the pioneers of audio speaker systems here in the United States. They had both commercial and retail speaker systems that constituted their primary products. While working at Altech, I attended Pacific Christian College and got an MBA in business to improve, again, my business knowledge, which was one of my objectives.

ES: Where were you living during this time period?

JER: Well, when I was working at U.S.C., we lived at Redondo Beach, had one car, and two bikes. I remember taking our two daughters with Terri on the bikes to the beach. It was really fun. It was a nice situation, and we had a two-bedroom apartment. We were very close. It was an enjoyable time.

When I went with C.F. Braun, we bought our first house in Fountain Valley. I remember the price, \$69,500. A good deal, when you look at prices today.

ES: Yes, a very good deal back then.

JER: We had to stretch to make that work. But I had a good time at C.F. Braun and learned a lot. We did some public financing, something that I had done initially at Hale and Doyle. I also got to litigate a few commercial cases with them, rather than put that out to bid to outside counsel.

However, I always had my eye on getting back to San Diego. A company called Oak Industries advertised that they were moving to Rancho Bernardo, California. It was a public company out of the Chicago area, and it had multiple product lines. It had a switch division, so it provided a lot of the switches and

electronic gear to the industry that made stoves and washers and dryers and so forth. It also, on a more interesting front, developed the first cable box for the then fledgling cable TV industry. This was before Motorola and Scientific Atlantic had gotten into cable boxes in a big way. So Oak was a leader at that point. And as a result of *that*, it developed a technology called over-the-air subscription television. It felt that because of the cable industry and its operation of over-the-air subscription television in the Los Angeles area, that it would move its headquarters to the West Coast. This created an opportunity for me to be the senior attorney for Oak Industries.

ES: How long were you with Oak Industries?

JER: Oh, probably three years or so, and then I left and went with the law firm of Jennings, Engstrand, and Hendrickson.

ES: What made you go back into private practice?

JER: Well, a couple of things: one, at that point in time, the subscription television business, and the business of Oak started to take a turn for the worst because cable television expanded so quickly, a lot quicker than the business people thought it would. The advantage of cable television at that time was that it could offer multiple channels, whereas over-the-air subscription television could only offer a single channel. We actually, during my time there, negotiated the pay-per-view fights that you might remember: Cooney-Holmes and Leonard-Hearns and Durand-Leonard, Bonitas-Hearns. Negotiating these fights were very interesting, because I got to meet Don King and Bob Arum, who controlled the rights to these fights. But ultimately, over-the-air subscription television could not compete with

the multi-channel cable industry, and I could see that. Thus, I started to look for other opportunities, and that's how I got to be part of the Jennings, Engstrand, and Hendrickson firm in San Diego.

ES: How long were you with the Jennings firm?

JER: Oh, about two years, and then I applied for the judgeship position. Actually, I applied first for the judgeship position that a good friend of mine, John Hargrove, got, down in San Diego. But as so often happens, when you have a negative, a positive develops. When the position here opened up, I applied. They remembered me at the Ninth Circuit, based on my San Diego application. I think that helped me at least get to the final selection that went up to the Ninth Circuit for approval.

ES: What type of work did you do for the Jennings firm?

JER: I did a lot of corporate and commercial work and some bankruptcy. As a matter of fact, Ross Pyle, who had been a bankruptcy judge in San Diego, joined Jennings. I got to work with him on some matters. Attorneys Jerry Sims and Michael Bush, who are now part of the Pyle firm, were also with Jennings. These were good people.

IX. Going on the Bench

ES: Did you always know you wanted to be a judge, or was it just an opportunity that you thought about at Oak Industries or with the Jennings firm?

JER: No, I didn't really have that as a key focus or goal. I think that when the opportunity came, I looked at the things that I had done and felt that I had a lot of

experience in a lot of different areas, and that that might be a positive in terms of judging, because you get so many varied issues and matters that come before the court. My interest had been primarily in the business-commercial area with some early bankruptcy experience as a background. So I thought that combination would be helpful as a judge.

ES: In what years were you in the Jennings firm?

JER: '84-'86. I got the position as bankruptcy judge in October 1986.

ES: Tell me about the application process. You said you applied for it once before. Did you apply when you were back at Oak?

JER: When I was at the Jennings firm. I remember, in fact, interviewing with Judge Wallace, who I did not know at the time. I had heard *of* him, and found out in our conversations that he had a Navy background, so we had some things in common. He was very encouraging, in terms of my application and so forth, so I felt that if I tried again, I might have a good shot at maybe getting the position.

ES: Were you worried about the income, I presume reduction, at that point? Was that going through your head, or did you just feel the need to serve in the public sector?

JER: I didn't really focus on the income potential vis-à-vis the two positions. I don't think I ever really was focused in that direction. It was more doing something that I enjoyed. We didn't live high off the hog, by any stretch of the imagination. So I didn't have huge mortgage expenses that would create an impediment to taking the position.

ES: How did you find out that you had received the appointment?

JER: Actually, I think my wife found out first, because she talked to the person who was handling it. She knew him on a first-name basis. When I got the position, he called her and told her, because she was planning a little party to celebrate. And as only Terri does, she gets all her ducks in order. I walked in, and there's a group of people all dressed in robes! And I'm looking, "What's going on here, a pajama party?" (laughter) I remember Jenny, my middle daughter, going up and down like a gavel, and I said, "Oh, my goodness!"

ES: Did you know back in 1984-85 that you would finish up your career as a judge, or did you think it was just something that you were going to do for a few years and move on to something else?

JER: No, I didn't look at it that way. I saw it as a wonderful opportunity, and something I wanted to do. Obviously, if it wasn't something that held my interest and challenged me, I don't think I would have stayed. However, it's been a great ride, and I've fully enjoyed the experience. I've not gotten bored with the job or the issues and challenges. The people have been great. We have a strong support system and an environment that fosters success.

ES: It sounds like your first experience with bankruptcy was at Hale and Dorr, or your most significant experience with bankruptcy was at Hale and Dorr. So what did you do between the time when you found out that you were going to be appointed, and your actual oath of office, to re-familiarize yourself, or update yourself in bankruptcy law?

JER: I did a lot of studying. I really did. I mean, I read a *lot*. When I took the bench, I had a pretty good idea of what those changes were, and how to at least frame the

issues for research. I think the grounding that I had at Hale and Doyle, in terms of the Act, was obviously very important, because it served as a foundation to understand what was taking place under the '78 Act, which caused many changes. I think if somebody comes in without having an understanding of the Act prior to '78, there's a certain gap in understanding how Chapter 11 works, and how it became what it is today and how some of the Chapter 7 issues arise and should be resolved. It wasn't as though I was coming in the situation without any experience, and had to learn everything new. I did have a background that allowed me to build on that foundation to understand the nuances and the legal issues.

ES: Do you remember your first day on the job?

JER: I do.

ES: Okay, why don't you tell me about that.

JER: I was sitting over at 34 Civic Center, I had—.

ES: This is the old building, right?

JER: That's the old building. And we were on the fifth floor. We had two courtrooms, and we had a center area which the two judges shared. Judge Elliott was the other judge. I took over the position that Judge Pacter had held. He was the successor for Judge Phelps, and the chambers involved a fairly small room, and I emphasize *small*. And then off to the right, opposite the doorway entering into the small judge's chambers, was the door leading into the courtroom. So it wasn't much of an effort to get up from the desk, put on your robe, and then go right into the courtroom. I remember feeling as though I was ready. I don't know why, but

I just felt confident about the job, probably foolish confidence, but nonetheless I remember not feeling that nervous when I went out on the bench that first day. I had things, at least *I* thought that I had things pretty well organized. I think the attorneys were good to me. They didn't create any difficult moments that first day. But my recollection is it went very well, and from that day on, I've felt comfortable going out on the bench. I can't quite explain it, but that's how I felt.

ES: When you first got down here, I presume you had the ability to pick a law clerk and a judicial assistant?

JER: I did.

ES: Tell me a little bit about that process.

JER: I was lucky. I was really lucky. Nancy Garoutte has been with me the past twenty years. She had worked for Judge Phelps and Judge Pacter as a judicial assistant. I thank God that she was willing to stay on with me. I hadn't really met her beforehand, but when I came up, maybe a day or two days before, we sat down and she indicated that she would be willing to stay on. I really didn't have any plan, in terms of finding somebody else, or had any person in mind. So given her experience, and the fact that she appeared to be very nice and collegial, I said "yes." I think that, no I don't think, I *know* that was the best decision that I've made as a judge. She's been absolutely fantastic in that position. She is *so* good working with people and the attorneys and helping them. We really don't get any flack in terms of we didn't do this, or we didn't do that. I think if we blow something, they work it out with her, and get the issues resolved, without it ever having to come to me. I just don't have to deal with those types of issues. She

has a way of solving those type of issues and problems. We have a lot of fun with each other and kid around. She is a Raider's fan which gives me a lot of material. It's been a great ride with her.

As for the law clerk, I was still at the Jennings firm when I got a call from Bill Malcolm, who was a law clerk for one of the judges up in Los Angeles. That judge was retiring, and he wanted to continue as a law clerk to complete a full year and would I be interested in talking to him. I said sure. He came down and I liked him right away. He was a graduate of Santa Clara, and we shared an interest in sports. He had just gotten married and had a new baby on the way. It just seemed like a nice fit. So I didn't even solicit resumes for my first law clerk position. I just hired Bill, and that was a great decision as well. A great start, I was two for two from the start. Without having to really think about anything, they came to me, and I just lucked out.

ES: Tell me about your first big Chapter 11. Obviously, I presume, as a judge, although you enjoy the consumer work, you like working on the larger Chapter 11 cases.

JER: I don't know if I could tell you the first big Chapter 11 case. I'll tell you one of the most contentious Chapter 11 cases that I had, that lasted quite a period of time, and had its own notoriety. Shortly after I took the bench, I got a case called Entertainment Specialties. Entertainment Specialties involved the business of putting on these motocross events. Bill Lobel, who's a fairly famous Chapter 11 attorney here in Orange County, filed the case. He also filed an attendant case for a fellow by the name of Michael Goodwin. Well, the case *Entertainment*

Specialties wasn't going to go very far, and it was fairly obvious, because the two principals of Entertainment Specialties were Michael Goodwin and his partner Mickey Thompson. They had a falling out, and Mickey Thompson had gotten about a \$500,000 judgment against Michael Goodwin. He was like a mad dog biting at a leg. He was determined to collect. It was personal. I remember him in court quite often, and the attorneys started to take on the emotions of the partners. It was very acrimonious. And I remember setting a trial date for Mickey Thompson's complaint to have Michael Goodwin's discharge denied. Two days before the date of the hearing, Mickey Thompson and his wife were gunned down at their residence. That was shocking, obviously, to everybody involved. It then became a situation where I had to, because of certain actions of Michael Goodwin in the case, appoint a trustee. The case involved multiple trustees, multiple alleged threats, all kinds of contentious hearings. Michael Goodwin left the jurisdiction for two or three years, and various judgments issued pertaining to property and claims. Later, Goodwin returned and through his attorney tried to unwind these judgments and so forth. There were multiple appeals. This was one of those cases that does not appear to be a problem at the outset, but ends up turning into a horrendous case, spinning off all kinds of acrimonious litigation. So for a new judge, just taking the bench, this was quite an introduction to the bankruptcy arena and some of the kinds of emotional issues and acrimonious proceedings that can emanate from bankruptcy.

The areas that really create this emotional type of proceeding and case usually involves an ex-husband and wife, ex-partners, business failings, and fraud issues.

ES: I believe as we speak, Michael Goodwin is on trial in Los Angeles right now for the murder of Mickey Thompson.

JER: Yes. At this moment I think they're winding down with respect to his trial. I almost had to testify, but the prosecutor, I guess, took pity on me even though he subpoenaed me. Evidently, they got the testimony they wanted through other witnesses.

ES: How do you deal as a judge with the emotional impact of people, on their livelihoods, etc.? Was that something you contemplated when you took the bench?

JER: No, I don't think I fully appreciated the emotional elements of these cases in bankruptcy. I don't having the emotional element of these cases in my own practice. I don't think I appreciated the extent to which hate drives some people and the extent they will go to destroy that person. I'll give you an example. I've had an ex-wife bring both a complaint to deny the discharge of her ex-husband, *and* to have the claim determined nondischargeable; proceed on the denial of discharge, rather than the nondischargeability of the claim, to cause her husband to not get a discharge of all those debts. Now, you tell me, is it to her advantage to have all those other debts discharged so he can afford to pay on her claim or not?

ES: No.

JER: There's no rationale for that, other than extreme bitterness.

ES: Tell me a little bit about your interactions with the other judges. Obviously during your twenty years on the bench, you've seen a lot of judges come and go. Why don't you describe it, initially . . . well, I think you told us which judges were on the bench back then . . . but the judges you've worked with, and a little bit about them, here in Santa Ana.

JER: Well, in Santa Ana, as I indicated, Judge Elliott was the other judge when I came aboard. He was a wonderful judge and highly respected in the community. Unfortunately, he got sick very early in terms of our relationship. He had cancer and ultimately died as a result of that. So I didn't really get an opportunity to know him well, although I had him speak at my induction, because I knew of his outstanding reputation and how he was held in such high esteem by the Orange County community.

Then Judge Jim Barr came from Los Angeles to take Judge Elliott's position. Jim and I were the two judges here for a few years, and had a great relationship. Jim is one of my favorite persons, and I think so highly of him and all his contributions to Orange County. He was a wonderful human being, so generous with his time. I think the attorneys and the other professionals in the community really appreciated his giving nature and willingness to bend over backwards to help people.

Then we expanded to three judges, and Jack Wilson came over from Riverside—the San Bernardino-Riverside court—where he had been there for a few years. Jack took a courtroom on the sixth floor, so we built out a courtroom

on the sixth floor at 34 Civic Center, and the three of us were together for a while. And then it actually expanded to four judges, because of the demand here. This was in the early '90s, I think.

And Lynne Riddle, who was originally from Orange County in terms of her practice, had, I believe, replaced Jack Wilson in Riverside, came over from Riverside to take that fourth judge position. So this was the high-water mark for Orange County in terms of the number of judges and cases. Lynn was a great addition, and added a women's perspective to the male court, which was most needed and appreciated. We got along very well.

We always had monthly meetings. Each month we'd get together at the beginning of the month to discuss issues and talk about things. I think we were always willing to help each other whenever someone needed help on a matter, or to fill in for vacation or other absences. I think it was a very collegial court in that regard. I don't remember any difficulties in terms of the way people interacted. When Jack Wilson left, I became the senior judge, and we continued the tradition of monthly meetings.

ES: What would happen at these monthly meetings? Was it to discuss cases on the calendar of interest, or hot topics in bankruptcy law?

JER: First we would have an agenda. We'd always have an agenda, and we had the head of the clerk's office here at our meeting at the beginning, and she was able to put on the agenda whatever items that she wanted to have discussed. A lot of items were informational. Sometimes, it involved decisions in terms of how the clerk's office handled certain matters. Then the clerk's office personnel would

leave and we'd talk about specific matters that involved just the judges. We always had a representative on the executive committee, and the executive committee would usually meet the Monday before our Wednesday meeting, so our representative judge could report on what took place at the executive committee meeting. This was an excellent way to keep everybody was up to date on what was going on from a district-wide perspective. We would then talk about issues specific to Orange County, various bar association activities and so forth. We then would talk generally talk generally about maybe an interesting case or issue that we had and on occasion seek input from the other judges. We would normally go from around noon until 1:30, when most of us then had calendar. So it was a good way to interact both officially and informally.

One of the things about judging is that it's a fairly lonely enterprise. You have your own case load, and you're dug in on that, and just trying to survive. So you don't really spend a lot of time socializing or walking around to the other chambers, talking about different things. This was an excellent way to force us to interact at least on a monthly basis.

ES: Let's talk a little bit about. . .being a judge, I would think, is a rather solitary type of position. Was it a big adjustment for you to come out of the private sector to become a judge, socially, with friends? I guess it may have been a little different coming from San Diego, than it would have been, had all of your friends and colleagues been here in Orange County. Why don't you talk about that a little bit.

JER: That's an interesting perspective. I think it *was* much easier for me than it was, for example, Jim Barr. Jim grew up here, in terms of his practice. And most of

the attorneys knew him. And so for him, it was probably a more difficult separation. As a judge, you really have to draw that line in terms of social interaction. We can socially interact at bar association functions, which are open to everybody. However, we really cannot, on a private basis, interact with those who appear before us. So if you're extremely well connected to the community, I could see where it could be a real negative and difficult experience to create that barrier. I didn't have to do that with the people here in Orange County, because I came up from San Diego County. The loneliness of the job is really offset by the teamwork that you create within the court system. You have your intimate team, with your judicial assistant, law clerk, externs, and clerk's office team. You become *very* close to them, at least I did in *my* chambers. We interact on just about every level. We eat lunch together. When I was more athletically capable, I used to play basketball, handball, or other physical activities with my law clerks. I had get-togethers at my place in terms of interacting with the law clerks. You also get close to the clerk's office people, and so they're more extended team in terms of your job.

The job is very demanding in terms of time and effort and the days go by quickly. At the beginning, we were a two-judge court here. We had Chapter 11s in the hundreds. We were handling *substantial* caseloads. Also, for me, there was a learning curve. So my day was long, getting up about 5:20 in the morning, and many times not getting home until 8:00, 8:30, with a train ride back to San Diego. You can do that when you're young. It's tougher when you get a little older.

But in answer to your question, you form your own close-knit team and social relationship within the court system. And that extends also to other judges within the district, as well as throughout the Ninth Circuit, so that there's a court "family," and I think that's a good way to describe it.

ES: Let me go back to another question, because I think I may have interrupted you before. You were talking about the other judges, and I think you left off with Lynne Riddle. I think you worked with some others, such as Judge Robert Alberts.

X. Changes in the Bankruptcy Court

JER: Judge Alberts came in after Lynne Riddle left. We didn't replace—. Let's see, Lynn—. I'm not sure, we went down to three judges at one point, but I don't remember whether that was when Lynne left. Bob might have come in and replaced Jack Wilson, when he left. Bob Alberts, who had been a trustee, was an attorney here in Orange County with Rutan and Tucker. I had Bob appear [before] me a number of times on different matters. He was extremely well qualified. He started out in Los Angeles, then went to Riverside, and made the trek over here . . . again, I think replacing Jack Wilson. We had four then, including Bob, and then Lynne Riddle left, and we didn't replace Lynne with a judge. So we went down to three. I believe that's how it went. And that was merely a matter of numbers.

I was fortunate to have Bill Lasarow as my chief judge when I joined the court. Bill is a tremendous person, warmhearted, a very highly regarded

bankruptcy attorney who fought the battles between the district court and the bankruptcy court, during a time when the bankruptcy court was trying to get recognition and acceptance. He is a real warrior. You wouldn't think that when you meet him, because he's so soft spoken and genteel, but he is a real fighter. He has the highest moral ethical code of just about anybody I've met.

When Bill left, Cal Ashland became chief judge. And Cal, again, a warmhearted, very highly regarded, exceptional bankruptcy judge, became the chief judge, did a wonderful job of herding twenty-one judges. At that point, the court had expanded. When I joined the court, it was twelve, and expanded to twenty-one judges, so that's quite a reflection of the increase in bankruptcy work in the central district during this time frame. And then Cal, unfortunately, got sick and later died. It was a real tragedy for all.

[End Tape 3, Side A – Begin Tape 3, Side B]

ES: Geri Mund became a judge—.

JER: Geri Mund became chief judge, succeeding Judge Ashland. Geri had been with the court before I joined it, and she was elected chief judge. That's the way it's done within the Central District Bankruptcy Court. And if you know Judge Mund, she lets no grass grow under her feet. She is a hard charger and very proactive in terms of issues and moving the court forward. So she did a great job in taking us into the technological era of the court. You have to understand that when I joined the court, it was just at the very beginning of the computer age in the judicial system.

ES: I want to ask you . . . that's actually one of my questions. Let's start with just how technology in the legal profession has changed during your career, and then specifically how it's changed here at the court.

JER: Well, when I joined the court, they still had a typewriter. Nancy had just gotten, shortly after I joined the court, her first computer. The computer had been around now for maybe ten years. I mean, we're talking '86, '87. I guess the first Apple probably was late in the '70s, and IBM early '80s. I remember getting a computer system for myself in the early '80s. I'm talking about personal computers now. I mean, I remember at Hale and Doyle, where they had centralized word processing, where you would submit your dictated material, and you would get back a draft from this pool source. But the judiciary was later, in terms of this transition. So word processing there was very basic, and what I would do is I would dictate and give it to Nancy—a cassette—and she would then type that up on the word processor, and we would be able to make the modifications and so forth.

Later, we got our first computer in the judge's chamber. In other words, both the judicial assistant and the judge got a computer. Also, we had the new age of being able to do legal research on the computer. Although 95 percent of the research back then in chambers was basically done through the books. We had the law books, the Ninth Circuit and the bankruptcy case materials, Collier's

and some other treatises in chambers. Well, you know, you were a law clerk before we had the Internet research that we have today. So there was a transition, I would say, in the early '90s. And then, of course, the Internet type of access has been an incredible benefit for legal research. This occurred when the Administrative Office really became much more proactive in terms of technology within the court system.

As for the clerk's office, we had back then the Bancap system, which was a very primary type of docketing and administrative system connected to our computer in chambers. This allowed us to get certain file information. But again, it was very basic. That then evolved later into a system called NIBS and that was the direction that *our* court went, and some of the other large courts, because NIBS allowed us to create our own programs to better cope with the size of the Central District. We could create certain bells and whistles that we needed to make our jobs easier and to facilitate addressing the needs of the attorneys to make us all more productive. So NIBS allowed us to program, *ourselves*, these additional goodies. In reality, that was the high-water mark in terms of the Central District's ability to really distinguish itself in a very productive way to manage its *huge* case file system.

We got to the point where we became number one in most categories around the country, because of the kinds of efficiencies that we were able to build into the NIBS. I think we've taken a step back from that, with the new electronic filing system that's come out of the Administrative Office, because we've lost some of those efficiencies. In terms of a model approach, that's supposed to deal

effectively with both the small court systems—which is how they began—as well as the large court systems in this country. As a practical matter, that doesn't work, because the needs of a small court are so much different. Just think of it in terms of the demand cycle and time requirements.

ES: So the NIBS system from your perspective, was a little more user friendly than the current ECF system?

JER: It was more user friendly because we could decide what *we* needed to do a better job, and we could then implement a change to do that. We had also at this time—which is interesting—the Administrative Office went to a more decentralized approach to budgeting, which provided on a formula basis, funding to individual courts, and then the courts, in turn, could decide where to allocate a lot of those funds. We happened to allocate whatever excess funds we had, to improving our technology, through NIBS. And this is why we were able to develop some very efficient mechanisms for handling our case load. We've lost that in terms of the more centralized approach and less funding—we don't have the extra funding to do these entrepreneurial changes—with the decrease in the number of cases that we've had recently which reduces our overall funding. This has lead to deep cuts in our personnel which results in a loss of institutional knowledge that is a foundation for improved court operations.

ES: During your time on the bench, what years do you feel you were personally the busiest?

JER: Oh, I think in the—. Well, there's two phases here: one is when we only had two judges here, we were very busy. When we expanded to four judges, then that

balanced out the load. But then the workload went up significantly in the '94, '95, '96, '97 time frame when the real estate market in Southern California had a significant drop, creating a lot of problems both in the commercial arena and for individuals. That also just, by happenstance, was when Orange County filed its bankruptcy as a result of the dramatic increase in the interest rates in 1994. So that dramatic increase in interest rates affected commercial properties, the County of Orange, individual homeowners, and then you had the ripple effect of that lasting through '95, '96, '97.

ES: Let's go ahead and conclude today.

JER: Okay.

[End Tape 3, Side B -- Begin Tape 4, Side A]

XI. Preparation, Procedures and Cases

ES: Today is January 19, 2007. This is the fourth tape in the series with Judge Ryan. Judge, I think when we left off the last time, we were talking about your early experiences as a judge, and I want to follow up on that today. Let's start with your method in chambers for preparing for hearings and for trials. Obviously, a lawyer sets something on calendar and files some briefs, so why don't you tell me how it works from there.

JER: Okay, I have an approach where I try to build a strong team in chambers to help do the job. I rely heavily on my law clerk, and generally we have externs from the local law schools each semester. We train them quickly on bankruptcy law rules, local rules, and bankruptcy law. Every matter that I have before me goes through a process that is reviewed by the law clerk. Generally, unless it's a pro

forma matter, we have “write-ups” in which the law clerk summarizes the facts and the law and then does an analysis to reach an ultimate disposition. I want the law clerk to think like a judge to attain the ultimate goal of correctly determining the matter. Bottom line, we work as a team, including the externs and Nancy, my judicial assistant, to resolve the matters that come before me.

I also issue tentative decisions—called tentatives—to let the lawyers know which way I’m leaning on particular matter. If we do a memorandum of decision, because I take a matter under submission, we go through the same process where the law clerk will prepare an initial draft. I’ll then review that draft, or in some cases I’ll prepare the initial draft, and have the law clerk review my draft. When we have a draft that is considered final, we will all review it and roundtable the final draft to get it as perfect as possible. We have a round table in our conference room in chambers so that is how the final review with everyone got called “roundtabling.”

ES: How do you decide when to take a matter under submission before making a decision? Is it if you’re unable to reach a decision on the bench, or is it lay a clear record, or a combination of both?

JER: Generally, it’s a situation where I have not come to a firm conviction as to the correct resolution. If that’s the situation, I’ll put down a “no tentative,” and when I go out on the bench, I am looking for some clarification or clearer guidance to reach that conviction. I like to interact with the attorneys, ask questions to clarify certain factual matters or legal issues. After that, if I’m still not convinced to either grant or deny the motion, I’ll take it under submission. I never want to be

in a position where I still have some doubt. My test is, do I have any hesitancy in terms of the decision that I'm making? I may ultimately make the wrong call, but in my own mind, I have to be convinced that I am making the *right* decision.

ES: Let's talk for a second about working with your fellow judges. Obviously you talked about how solitary being a judge can be, but on a tough legal issue, do you talk about it with the other bankruptcy judges here on the floor, or some of the other bankruptcy judges here in the district, or is it ultimately just your decision you feel that you need to make on your own?

JER: I generally do not do that. It may be that the issue is one that has been discussed by other judges through e-mails, and I'll have some background with respect to their thoughts on the matter. However, I feel that the record should be clear in terms of the basis upon which I'm making a decision. That does not mean that I cannot talk to other judges about issues before me from an ethical basis. But I feel more confident about making my decisions based on the papers before me and the hearing which is all part of the record. I will not entertain any kind of argument that is not on the record. I do not bring attorneys into chambers to discuss the issues. Everything is done in open court and is recorded.

ES: Now what are some of the, I'll call it precedent-making, cases that you've had during your career that, say, have gone up to the Ninth Circuit or Supreme Court that come to your mind?

JER: Well, I have one Supreme Court decision.

ES: As I recall, you were vindicated in that decision, after being reversed by the Ninth Circuit.

JER: I don't think I was reversed. This was the BFP case. The issue was whether a trustee could bring a fraudulent transfer action when reasonable equivalent value was not received in a foreclosure sale conducted in accordance with state law. The motion came before me by motion. There was a split between the circuits on the issue. I sided with the circuits saying that if the foreclosure sale was conducted in accordance with state law reasonably equivalent value is presumed to have been received and the trustee could not sue the purchaser/transferee. To my surprise, there was an appeal and later the Ninth Circuit affirmed. Lo and behold, the Supreme Court granted *certiorari* and later affirmed the Ninth Circuit. As I remember, it had been a very difficult year for the Ninth Circuit before the Supreme Court so this was an appreciated win.

ES: Any other significant decisions that you recall?

JER: Yes. Another case was the *Adair* decision. Barry Russell began and I became a follower of the practice of using declarations for direct testimony in contested proceedings. I believe at that time there were only a few of us doing this across the country. The procedure is that each side prepares declarations for their witnesses and the declarations are exchanged before the hearing. The witnesses have to be at the hearing for cross examination unless the other side waives that right. I thought the procedure made a lot of sense for a couple of reasons. I thought it would be very helpful to me in terms of preparing for the trial to have that direct testimony in writing, so that I could review it beforehand and have it to review after the trial. I also thought that it would help attorneys focus on what they needed to prove the elements of their claims and defenses. Also, it helped to

streamline the trial because the attorneys could be more efficient in their cross. However, there was some controversy surrounding the procedure. I remember Judge Russell calling me and asking me to write an article on its use and benefits. I had this *Adair* case, and used the procedure. Frankly, there was no objection to its use at the trial. However, they made it an issue on appeal. Both the district court and the Ninth Circuit affirmed the appropriateness of the procedure. At the time, it was the only circuit decision on the issue. As far as I know, the *Adair* decision has been adopted in other circuits.

ES: Any cases that come to mind where you were reversed at the Ninth Circuit or Supreme Court, of significance?

JER: Let's see, just recently I was the lead judge on a BAP panel where we held that to show emotional distress damages for the violation of the automatic stay, you had to show some real financial impact. We followed a decision out of the First Circuit in coming to our decision. The issue went up to the Ninth Circuit in another case, and a Ninth Circuit panel ruled as we did in the matter. However, the issue went to an *en banc* panel of the Ninth Circuit and it reversed the panel and the BAP. But over twenty years on the bench, I have been reversed more than a few times. I definitely have no claim to perfection.

ES: What do you think are the characteristics of a good trial? You've seen many trials in your day:

JER: I think the characteristics of a good trial begin with a clear understanding of the issues in play. If you have an understand issues, then you have a roadmap to identifying the key elements and the evidence needed to prove those elements.

The attorneys can also educate the judge through their papers on the law governing the issues. Because I use the declaration procedure for direct testimony, a good trial requires that the attorneys spend time with their witnesses and prepare the declarations carefully to make sure that they have the necessary evidence to meet their burden before the court. It is also important for the attorneys not to take on the emotional baggage of their clients. It is very destructive to the process if the attorneys are unnecessarily bickering because of the dislike that their clients have for each other. A good trial most importantly includes probing cross examination. This is the most helpful part of the trial for the judge because it is through cross that the judge gets to weigh the veracity of the witnesses and weigh the evidence. Attorneys also need to raise evidentiary objections that are relevant and important. Some attorneys object to everything which really detracts from a smooth trial. Lastly, it is important that the attorneys treat the witnesses, opposing counsel, and the court with respect. I insist on this.

ES: How, over the past twenty years have you seen changes or demands upon your time in response to overloaded court dockets, etc.?

JER: Well, to be honest, in terms of bankruptcy, we learned to streamline the process during the early '90s. Out of necessity, we learned to be efficient in resolving matters. The declaration procedure is a good example. We set up automatic calendaring so that attorneys could schedule their matters at preset times without having to go through a calendar clerk. We allowed attorneys to appear by telephone to help them become more efficient and cost effective. The use of tentatives also helped the attorneys decide whether to submit or make an

appearance to oppose the tentative. Technology also helped everyone in the process become more efficient. The attorneys could access our dockets from their offices. Thus, everyone has become much more efficient in bringing matters before the court and getting those matters resolved.

ES: A question for you: as a practicing attorney, and as an attorney who has his fees approved by the court, obviously it's always a juggling act how much time we should put into the written briefs that come before the court. So if you could discuss the importance of written briefs before the court.

JER: I think the attorney needs to look at the matter, its importance, and the issues. If you have *pro forma* matter before the court, you do not have to spend time educating the judge. Where the briefing is helpful is where it's an issue that may depend on the facts, or may depend on specific interpretations of the law. That's where the attorneys earn their keep. This is where the papers can be very helpful. I would much prefer to have attorneys spend their time where their input has the potential to be helpful. I don't need help where the law is clear. I need it when I need to resolve a conflict in the law or it is an issue of first impression. It's amazing how many times the attorneys will give you a decision which is outdated or reversed. That is not being helpful.

ES: For those practitioners out there that are looking to become bankruptcy judges in the future, what type of qualities do you think are important if they're looking in the future to become a judge?

JER: I think they have to develop a level of confidence in their ability to make the decisions even in an imperfect arena. An attorney is asked to advise a client about

the law and the facts, and to advocate positions for her client. A judge is asked to decide oftentimes when the answer is not clear. You have to be able to make decisions in this context. Attorneys need the judge to make the best possible decision under the circumstances. You have to be able to make decisions that effect the lives of people and the future of entities and move on to the next matter. You also need to be a person who is open to different views and able to listen before making a decision. That's why, as I've already described, my approach is to develop process where I have a team to give me input to help me decide. Once they've given me their input, I've heard the attorneys, read the papers, it's up to me to make the decision. The other thing is to realize that you will be reversed and not to be afraid of reversal. It happens to everyone. Just do the best that you can and decide.

ES: As opposed to being a lawyer, when you're a judge, how do you separate yourself from advocating for the estate, seeing what's going on behind the scenes. How do you view your role as a judge, in terms of staying out of more of the business issues, and getting involved in the business as a judge on the bench? Did that question make sense?

JER: I think a judge has the primary role of making decisions based upon the facts and the law that form the record. However, when you're out there on the bench, I think that it is important to ask questions to get the best possible understanding of the facts and the relevant law. Through that process, you can get comfortable as to the right decision. However, you also might see the potential for the parties to reach a resolution. As I tell the parties, they will always reach a better decision

for both if you resolve it rather than me. I will encourage the parties to try and resolve the matter themselves, rather than have the judge make the ultimate decision. I think it is important for the judge to sense when that is possible, and to give the parties an opportunity to do that. I think the best resolution of the matter is [unclear] resolution that the parties themselves come to, rather than one imposed by the judge. So when other events [unclear] I try to make that happen. If they *can't* resolve it, then I'll make that decision. I'm not telling them at any point in time along that spectrum what my decision is. They can get a sense of their strengths and weaknesses through my questions. And I'll actually design my questions to help them see where [unclear], in the hopes that they'll come together [unclear] agree on a resolution. But they need to know that I will make that decision if they're unsuccessful.

ES: What do you think are the most important qualities for a lawyer who practices before you to be effective?

JER: I think the first thing they really must have is [unclear] his or her credibility [unclear]. I say that because so much of how things are resolved [unclear] depend upon special [unclear]. An attorney can't adequately represent [unclear] and the status of those discussions, then attorneys will not [unclear], and the court will not have confidence [unclear]. So credibility is [unclear] where there's a real sense of commitment [unclear] process [unclear]. [unclear] committed to elevating the practice of bankruptcy, and doing whatever is in their power to preserve the integrity of the process [unclear] benefits of that process [unclear].

ES: What kind of qualities do you think are important for a judge? If you were giving advice to a new “baby judge” that’s coming up through the ranks, what do you think are the most important leadership qualities in a judge?

JER: Again, to get back to making those tough decisions, an attorney’s schedule can’t move forward in terms of resolving issues until the judge makes certain critical decisions. When attorneys are at an impasse, they need to know that they can go to the judge and get a quick decision. They then have a right of appeal if they disagree with the decision. This is the process. However, the process does not work if the judge is unwilling or unable to make the call. So the capacity to make tough decisions is imperative for a judge. It is a leadership quality that is absolutely necessary. In addition, It is critical that everyone who appears before the judge leave with the impression that they have had a fair and impartial hearing. Another important leadership quality for a new judge is to be active in the various lawyer organizations and contribute time and effort to educate the local bar on proper trial techniques and the law. Judges’ participation is very important to the success and effectiveness of these organizations.

ES: Let’s talk a little bit about your law clerks. I noticed that you historically have hired law clerks for a one-year term. Tell me why you decided to do that, as opposed to a two-year term, or a permanent law clerk.

JER: I feel very strongly about this. I feel that we are in a unique position to offer to young attorneys the opportunity to understand this side of the legal profession, and to help them see the values of good lawyering in terms of the judicial process. I look at it as a way of giving back to the community that we serve, and so I

decided at the very beginning that I would have a one-year law clerk. My hope was that many of these law clerks would practice in the local community, and be a positive force. Many of them have done just that and I am very proud of them and their achievements. When I was on the BAP, I used the BAP as an opportunity to further their education, give them the benefit of the trial preparation, as well as an extra year of appellate work.

ES: That kind of leads into my next question. Tell me about your experience with the BAP and your thoughts, and whether you enjoyed it, etc.

JER: I loved my time with the BAP. When I took the position, I told my colleagues in the central district that I would only stay for one seven-year term. I felt strongly that others should have the same opportunity that I had to serve on the BAP. If not for that promise, I would have served another term on the BAP. It's a whole different level of approach to the judicial process with a panel of three judges making the decision. So there's significant interaction between the judges to reach a decision. With only seven members on the BAP, we get to know each other very well. Everyone is very collegial. We also wanted to ensure that all of our colleagues had an opportunity on a pro tem basis to serve on the BAP. So when the appeals were down, we did not replace Judge Russell leaving the BAP with six active members. As a result, every month, we have at least one pro tem judge sitting on a panel. This gives those bankruptcy judges who want an opportunity to sit on an appellate panel which is a rewarding experience. While on the BAP, I enjoyed having an extra law clerk. Therefore, I changed the term of my law clerks to two years where the first year was doing trial work with the

second year spent on BAP work. During that time, it was very busy balancing the trial and BAP work. However, it was challenging and rewarding. The law clerks and externs liked it because of the constant writing and research of interesting issues. I remember one particular case, the *Su* case—.

ES: How do you spell that?

JER: S-U. It involved a person who ran a red light and hit a person in the walkway.

Judge Montali was the trial judge and he ruled that the debt was nondischargeable because the injury was caused by the willful and malicious conduct of the debtor. We reversed holding that the trial court had to make a finding of subjective intent to cause the injury to meet the standard. It was a difficult decision, but it is reflective of how the BAP works. Many times the BAP will end up reversing a trial decision of one of its members. One might think that this creates an uncomfortable feeling, but I did not see that. It's a unique position, really, when you think about it, because you have three bankruptcy judges acting as appellate judges, reviewing a decision of one of their colleagues. I know the Ninth Circuit appreciates the work of the BAP. The Ninth Circuit is a leader in using the BAP. It has been very successful in the Ninth Circuit and well respected. Even when the Ninth Circuit reverses the BAP, they appreciate the quality of the work done at the BAP as reflected in the written memorandum that accompanies every decision of the BAP.

ES: Well, good. As a lawyer I get nervous sometimes going to court . . . what makes you nervous going to court? Is it when you have a huge case file and you walk out with lawyers from all over the country, and there's a few more zeros

involved? Is it a courtroom full of people? What makes you less comfortable up there, or a little more apprehensive?

JER: I don't think it is nervousness, as it is the increased pressure to make a correct decision. Certainly, the bigger the case, and the more significant the issue, the more stress there is. Also, the challenge of reading all the briefs and assimilating the information is daunting. If the right answer is illusive, that adds to the pressure. So you're struggling to get to the position where you feel comfortable, in making that tough decision. That's a process. The process begins and evolves with every argument by the attorneys. You say to yourself, "Gee, that makes a lot of sense." Then, after hearing from the other side, things do not appear all that clear. So you probe and question the attorneys on both sides to see if you can get comfortable with a certain resolution. Sometimes the decisions in bankruptcy can be made quickly. Other times they require significant inquiry and research with the outcome having significant consequences to the parties.

ES: I have to presume also, in a larger case, that when you get hit with an issue that maybe isn't so, quote, unquote, "core," to bankruptcy—for example, the duties of an indenture trustee—something a little more esoteric to the process that adds additional pressure.

JER: Oh, yes. You may have an issue for the first time in an area foreign to you. The attorneys may be very convincing as to the correctness of their views. It creates a struggle to find the right answer. The goal is to get to a place of comfort that you know the right answer. That's the challenge. This creates the stress of judging.

The key is to come to a level of comfort in the decision and make it. Extensive dwelling and procrastination in making the decision is not healthy for anyone.

ES: Let me ask you a question: Do you read the newspaper the next day to see what the reporter has to say about your decision?

JER: One benefit of living in San Diego is that I get *The San Diego Tribune*, and not the *Orange County Register*. So most of the time I don't even know what a reporter has to say about my decision. This is good. A clear case of ignorance is bliss.

ES: From a consumer's standpoint, what are the stressful times as a judge?

JER: I'll tell you, the most stressful situations in consumer cases is when there is a divorce situation or business falling out between partners.

[End Tape 4, Side A - Begin Tape 4, Side B]

ES: Let's talk about sanctions. When do you think sanctions are appropriate against counsel?

JER: Let me give an example in terms of the status reports that are suppose to be filed at status conferences. They are very helpful to moving matters along. I can quickly go through a status report in fifteen seconds and then issue a scheduling order. If I have to take five minutes to hear an oral status report from each attorney, everyone pays for the negligence of the attorneys who failed to follow the rules. So when I get an attorney before me who has not done a current status report, I have a situation where the attorneys have not met to discuss the matter and they do not care about the rule requirement. Thus, I won't hear any report. I will continue the status conference. I will tell the attorneys that if they fail to follow the rules in the future I will impose monetary sanctions. Next time, if they

come before me and they fail to comply, monetary sanctions are imposed, and I continue the matter with the admonition that the matter will be dismissed or the answer struck for any future failure to comply. Generally, they get the message and comply. But my point in going through this is to show that sanctions involve a progressive process. Rarely is there cause to impose harsh sanctions at the outset. I give the attorneys an opportunity to correct their failings. Most do.

ES: Let's talk for a second about venue in Chapter 11 cases. I'm well aware a debtor has the ability to file where the principal place of business is, or where it's incorporated. I think in the *Enron* case, the judge said that since Manhattan is the center of commerce, that may be an appropriate forum as well. But do you think that provision of the Bankruptcy Code should be changed to where the principal place of business is?

JER: I feel very strongly about this subject. I think the present system distorts the bankruptcy process where forum shopping predominates in the filing of these large cases. I do not know any other area of the law where forum shopping is so blatant. In the past, filings have been made primarily in Delaware and the Southern District of New York because the debtors and key creditors know that they can get certain rulings that they may not get in other jurisdictions. In other words, the selection is outcome determinative. *Enron* is a perfect example. There was no justification whatsoever for the *Enron* case to be filed and heard in the Southern District of New York. *Enron* is a Texas company with most of its operations, employees, and creditors in Texas. It is an embarrassment that this has

been allowed to happen. It is amazing to me that political gamesmanship has been allowed to control this important part of bankruptcy law.

ES: Assuming you were a congressman, and you were going to introduce the John Ryan Bankruptcy Reform Bill, what other key provisions of the Bankruptcy Code do you think need to be changed, if any?

JER: I don't think requirement for bankruptcy consulting before filing makes a lot of sense. I'm not against financial education for those who file bankruptcy. But to make it a condition to filing bankruptcy does not make sense. People who are considering filing bankruptcy need it. The number of those who have the consulting and do not need to file is small. The attorney is the proper person to advise a debtor on whether a bankruptcy is appropriate. I don't think you should have a consultant make that determination. Bankruptcy is a solution to a financial problem. All this provision has done is make it more difficult to file and for those who for one reason or another do not get the service it means that their case will get dismissed for failure to comply even though they need bankruptcy relief. One other change I would make is to reduce filing fees. We are taxing those people with the least ability to pay with the continuing increases in filing fees.

ES: It costs a lot to go broke.

JER: Yes. We are using fees as a barrier to people using bankruptcy. This is wrong.

ES: Let's talk just very briefly in the last couple of minutes about the Office of the U.S. Trustee. We've seen that program start and mature. How do you view the addition of the U.S. Trustee to the bankruptcy process, and how would you like to see that program changed, if at all?

JER: I'm a strong supporter of the U.S. trustee system. I think that it has added a level of credibility to the process. You have an independent entity with oversight responsibility to make sure that all the players in the system are acting appropriately. The U.S. trustee appoints trustees and reviews all expenditures for appropriateness and accuracy. It also makes sure that attorneys apply for appointment and oppose inappropriate fee requests. Essentially, the U.S. trustee has taken on the administrative role that the court once shouldered. The U.S. trustee appears as a neutral with its sole function to make sure that the system is working as advertised.

ES: One last question: in the Chapter 11 context, do you believe it is appropriate to file a Chapter 11 case where the debtor's attorney knows up front that the sole beneficiary of the proceeds will be the secured creditor? In other words, you know right up front that there's not going to be a distribution to anybody other than the secured creditor. Or do you think it depends upon the case?

JER: I think it depends upon the case and the reason for filing. In other words, I don't think you ought to impose an additional layer of costs on the system, unless there's some good reason and value in doing so.

ES: What if there's a buyer, he wants, say a Section 363 sale order, and the lender's willing to carve out fees to pay debtor's counsel?

JER: What is the purpose, to make life easier for the secured creditor? State law is quite adequate to the task. However, if by filing, the ongoing business can be preserved and value preserved for creditors then it might make sense. However,

if the only beneficiaries are the secured creditor and counsel, I am not in favor of such a filing.

ES: All right, I think that is good for today, and we'll pick up next time.

[End Tape 4, Side B – Begin Tape 5, Side A]

XII. The County of Orange Bankruptcy Case

ES: Today is the twenty-sixth of January, and this is the final tape in the series. Judge, today I'd like to talk about the *Orange County* Chapter 9 bankruptcy case with you, and hear your thoughts about it. Let's start at the beginning. Tell me about how you first heard that you were appointed as the judge on the Chapter 9 case, and what you did, and where were you?

JER: There's a little interesting story behind that, because at the time, I was going to computer school in San Antonio. I remember stopping by and picking up *The Wall Street Journal* as I went to breakfast, and reading an article in *The Wall Street Journal*, saying that Orange County was having some financial problems in connection with its investments. I returned to the hotel that evening, and around six o'clock—as a matter of fact, a group of us were going to go to the Spurs basketball game that evening—and I got a call from Cal Ashland, who was the chief judge, and he said, "Have you heard?" and I said, "Heard what?" He said, "Orange County filed bankruptcy." And I was speechless. I couldn't believe it. He said, "And you're going to be the judge on the case." That *really* made me speechless! Evidently, that had been in the works before the filing just in case of a filing. The county had been talking to Cal Ashland and the Ninth Circuit,

because with a Chapter 9 case, the appointment of the judge is made by the Chief Judge of the Ninth Circuit. I think one of the reasons that I got the case, if not the principal reason, was that I lived in San Diego County, so there was no potential conflict in terms of anything that I would do that might affect the tax basis here in Orange County, because I was not a landowner here in Orange County. Whether that had a lot to do with it or not, I don't know, but in any event, I got the case. I knew absolutely nothing about Chapter 9—and I would venture that I was not the exception in terms of bankruptcy judges. I mean, you go from Chapter 7 to Chapter 11, skipping a few pages in the code with respect to Chapter 9. So while I was in the computer class, instead of listening to what the instructor was doing, I was going on Westlaw, pulling every piece of information that I could possibly read about Chapter 9. I think I covered about all the available information that day, because there was not a lot of case law with respect to Chapter 9.

I remember reading that the largest municipal bankruptcy at that point of time was the bankruptcy of Bridgeport, Connecticut. That case did not go that far in terms of the process, because the state moved to dismiss the case as a bad faith filing, and the case was dismissed. I remember coming back—.

ES: Did you come back that night, the next day?

JER: No, I was, I think, scheduled to come back not the next day after I learned of the filing, but the following day. When I came into the office, Nancy had sort of a bewildered look on her face, and she had a stack of pink telephone slips for me to call all of these different news media outlets and so forth. Well, it took me two seconds to decide that I would absolutely say *nothing* regarding the case, to

anybody. I carried that principle on throughout the case, and I think a very important one, given the newsworthy aspects of the case, because everything was getting reported.

I remember that I had an emergency request for a hearing, and I believe I held the first hearing in the *Orange County* case within a day or two after getting back. I can remember that first hearing very well, in that we had so many who wanted to attend, that I had to coordinate with the clerk's office, and we had different colored slips for news media, for attorneys, for various entities, who wanted to make an appearance, and then for the general public. So we didn't have enough room in *my* courtroom for everybody who wanted to attend, so we worked out an audio feed into Judge Wilson's courtroom, which was next to mine. The overflow was able to go there, and we *still* didn't have enough room. Therefore, we put another audio feed into our library, and we had chairs set up there for additional people. It was interesting walking out and seeing this crowd, and this buzz, with respect to what was going on. I'm not sure anyone really had a clear picture of how this was going to progress.

You have to understand that the county filed on behalf of itself, and also filed on behalf of the Orange County Investment Pool. The Orange County Investment Pool had over 250 municipal entities that invested in this pool of assets. This pool just didn't include funds from the county, but it included funds from numerous school districts, fire districts, municipal water districts.

ES: It's almost like a bank.

JER: Well, funny you should say that. It was very much like a bank in terms of a money market fund where you can, on a daily basis, put money into that fund, and have the expectation of being able to write checks against your account to meet your ongoing expenses on a daily basis. This was certainly the approach that the school districts took with respect to this fund. I mean, the reason the fund was appealing to these numerous districts was that [Robert] Citron, the county treasurer who ran the fund, provided a high return on these funds. His reputation spread for generating high returns on invested funds and more and more municipalities put their funds into this investment pool. The courtroom was *full* of representatives of school districts and other municipal entities who had an urgent need for funds. They anticipated a situation where they were not going to be able to pay their employees, or meet their other ongoing expenses. With the automatic stay, they could not demand payment of funds from the pool.

ES: Behind the scenes, you go home, you tell your wife . . . what did you tell her? "What did I get myself into?" Or did you realize the gravity of the situation?

JER: I obviously realized the gravity of the situation, but certainly I did not appreciate the complexity of the case and the issues and the stresses that would affect all of us. I think my reaction to my wife was, "I can't *believe* what has happened." I mean, this was such a shock to everybody. There was shock throughout the financial world, the people of Orange County, its employees, its politicians, and its judges. You know, at the time, the state judges were paid through the county. They were wondering whether or not *they* were going to get paid because of what

was happening with respect to the bankruptcy. The ripple effect of the filing was not fully comprehended by anybody at that point.

The main concern was trying to deal with the immediate problems that the filing created for all of these entities and the employees of the county.

Interestingly, the county's first approach was to set up a three-person governing body to make most of the decisions with respect to treatment of employees, what contracts were going to be paid, and so forth. In effect, the board of supervisors did not want to deal with those types of issues. The principal managing person—whose name escapes me right now—evidently did not enjoy the confidence of the board of supervisors to deal with the political ramifications of what was going to be done. It appeared that they wanted to set up this separate entity to make the decisions and absorb the political ramifications of those decisions.

One of the first decisions that this three-person entity, which included the district attorney, the head of health services, and the sheriff, was to just arbitrarily cut county people, without any kind of a review, or due process procedure. No one knew what procedure was being used to determine who would go, and who would stay. The unions reacted as you might imagine, by bringing an immediate adversary proceeding and request for a temporary restraining order. So that was one of the first matters that I had to resolve.

I had also had to deal with numerous relief from stay actions by various school districts and other municipalities whose funds were tied up in the pool. They wanted their money.

ES: They were threatening to file their *own* Chapter 9s, weren't they?

JER: Well, they were saying, "If we don't have a mechanism by which to get access to these funds, we might have to file bankruptcy ourselves." Thus, there was the potential ripple effect of multiple Chapter 9 filings, if there wasn't a mechanism by which they could somehow get access to these funds. But their argument initially was, "These are trust funds, and we have the right to those funds. So these funds are not property of the estate." Well, that's an issue that could involve a lot of briefing, a lot of argument, and then decisions by me, and appeals and so forth. I didn't want that to happen. I saw right off that that wasn't going to be the best approach here. I indicated to them that if they believed that these were not estate funds, they would need to file adversary proceedings to deal with that particular issue. You know that the adversary approach in bankruptcy is the same as in the district court where there is the filing of a complaint and answer, and it's a long process. I wanted to make it clear to them that they weren't going to be able to get access to these funds quickly without going through all the hoops. Once they understood that, they then sat down with the county and worked out an arrangement whereby if they needed funds for their operations, they could get those funds up to a certain percentage amount. The county felt comfortable making the early distributions because they would be offset against any final distribution under a plan. After notice and a hearing, I approved the emergency distribution procedure. The procedure provided that if there was a disagreement on a requested distribution, then it would come to me for an immediate resolution. You might be surprised to know that I didn't have to

decide one issue with respect to that process throughout the whole bankruptcy case. So it worked like magic.

ES: Do you think that's because a lot of these city managers work together and know each other and were able to sit down and were fair with each other?

JER: I think that might be part of it, but I also think that they were able to access some other resources. In other words, what they had in the investment pool they could turn over, in a sense. In other words, they had enough funding coming in to cover most of their expenses, and it was just marginal or unexpected expenses that had to be covered by an early distribution. Thus, the potential problem that they saw the day of the filing didn't quite materialize, and the county also did not want to have a ripple effect that might increase its liabilities. Therefore, everyone was incentivized to work together to make this work. The bankruptcy was working, in that respect, without the need for extensive litigation.

On the employees' side, it became clear to me that we needed to try to resolve the problem quickly, otherwise it was going to involve significant litigation and potential problems with the county work force that protected the health, welfare, and security of the county. After I issued a temporary restraining order, I said, "I want you to stay, I want to see if we can work this thing out." We stayed 'til late that night. The parties agreed to set up a committee of county persons and the representatives of the union. The committee would review each potential layoff to make sure that a fair procedure was used in making the layoff decision. The county act openly, describe its procedure, consistent with the essential review that they had agreed to in their memoranda of understanding,

which I said the county had to follow. I later wrote an opinion consistent with that view, which was the basis for my ruling in issuing the temporary restraining order.

So that committee, to the extent it needed to meet on any particular firing of an employee, would try to resolve any disagreement. If they couldn't resolve it, then they would immediately bring it to me for resolution. You might be surprised, but I didn't have to resolve one problem with respect to how the county dealt with its employees after setting up that mechanism. With that, the immediate fires were put out in two very important areas that could have adversely impacted the case.

The case now moved to the next level with the county trying to figure out how to work with the various constituencies to reach a consensual plan. The county ended up getting a confirmed plan eighteen months after the filing, May of '96.

ES: And basically under the plan, the bonds were issued to retire the debt under the plan?

JER: Right. Well, there were two main sources of financing for the plan. One depended upon access to the financial markets, where the county could issue bonds, long-term, to generate about \$800 million dollars to help fund the plan. The additional funding source was to come from litigation against the brokers and dealers that the county had used in connection with the leveraging of the funds in the pool.

To go back as to what happened here, if you remember in '94, interest rates went up. Citron was able to get better returns than anybody else, because what he did was to use short-term money to fund long-term debt, leveraging at its best. He leveraged about \$7.5 billion up to \$22 billion in securities. When the interest rates went up, of course, the value of the collateral, the long-term securities, went down to the point where there were broker calls. Obviously, the fund didn't have the funds to meet those calls, so the broker dealers started to liquidate the collateral. That's what caused the \$1.7 billion loss of value in the investment pool.

The plan ended up paying to the school districts about 97¢ on the dollar, and I think the others got in the neighborhood of 95¢ on the dollar. Now, there were some very complex proceedings that took place in order for the plan to work, and for these various consensual agreements to materialize. Some entities, called the "killer bees," were represented by the Brobeck firm and decided to preserve their rights to proceed independently against the various broker dealers to recover the full amounts of their claims. They, in turn, had no right to participate in any recovery the county obtained against the broker dealers. The plan allowed them to do that. My understanding is that it worked out fairly well for that group. I think they actually got 100¢ on the dollar, plus interest. But it took a lot longer for them to get paid than those who did not opt out under the plan.

ES: Did you decide to have that litigation heard by the district court?

JER: What happened was, I handled the pretrial work. I had motions to dismiss those cases brought by Merrill-Lynch and others, based on number of arguments, such as jurisdiction, and so forth. I ruled against the broker dealers on these motions. A lot of the discovery done before the plan was confirmed. Once the plan was confirmed, the litigation was transferred to Judge Taylor, who handled the litigation, until it ended in significant settlements. Judge Taylor did a great job in facilitating these settlements about that. Judge Taylor was sensitive to not stepping into the fray until the plan process had the chance to work. Obviously, the broker dealers were trying to play the game of moving matters out of the bankruptcy court to the district court. He let the process proceed here with respect to that litigation until the plan got confirmed. At that point, it was clear that the matters need to be resolved in the district court because of the jury trial issues.

ES: What other big decisions did you make during the case?

JER: Well, I remember one that was very, very troubling to me. It was that the county had pledged its tax revenue streams to secure certain transportation bonds and so forth, and the problem was that the county didn't have the money to pay its other obligations *and* commit those general revenue funds to pay on those bonds. A relief from the automatic stay proceeding was brought by the bond holders to lift the stay and allow them to go into state court to foreclose on their collateral, those revenue streams. Well, the result of that would be, if I granted that motion, a situation where the county would have to close many of its services that it was providing to the citizens of Orange County. I can remember struggling with that

particular issue. I decided that under section 552 of the Bankruptcy Code that this was the type of security interest that the debtor could avoid. Based on that reasoning, I did not lift the automatic stay. That took quite a bit of time for that whole process, and they appealed to Judge Taylor. Some months later, he reversed me on my rationale. However, by that time, the debtor had worked out consensual arrangements with all of those bond holders, and other constituencies, so the issue became moot, and the county didn't have to face the draconian result of having to terminate services because it couldn't pay *for* those services.

ES: What lessons would you give, or words of advice would you give to the county board of supervisors of other counties, or other city councils, such as San Diego or other municipalities that manage money? What are the lessons that you learned from the *Orange County* case?

JER: Well, I think a clear lesson is you need to understand what your treasurer is doing, or any entity that is managing the funds of the county, and incurring liabilities on behalf of the county. San Diego has a situation where it has a substantial pension deficit. There, the city council and the mayor, in order to solve a cash flow problem, in other words, a demand by the various unions for additional pay. They decided that instead of dealing with the cost of a pay raise and possible need for additional revenues, they worked a deal whereby the union would not get a pay raise but would get increased pension benefits, which added to the county's contingent liability downstream. Once the county had the report on what that contingent liability was, it became clear that the pension fund assets could not cover that liability stream. The end result is that there is a deficit between \$1

billion and \$1.3 billion. That's affected everything that the City of San Diego can do today in terms of getting financing from Wall Street and so forth. Here, the county did not want to really know how Citron was obtaining these high interest rates because these higher returns were offsetting the need for additional revenue sources to ease the burden of the supervisors with respect to funding their projects. If they had actually done their homework and looked at what Citron was doing, they would have seen that he was creating a high-risk situation that was putting the county in a very risky situation, which ultimately caused bankruptcy.

I guess the best advice is don't cover up problems by either sticking your head in the sand, or creating a more significant problem downstream. Deal with the tough issue today.

ES: So going back to the *Orange County* case, it seems as though the *Orange County* case was filed in reaction to, quote, unquote, a "run on the bank" by the pool members, right?

JER: Not the pool members, by the broker dealers who had made the long term loans that were collateralized by the long-term bonds.

ES: Okay. And it seems like in the end, everybody sat down and worked remarkably in a consensual fashion to come up with the plan of reorganization in the Chapter 9. I guess the question for you is do you think that the Chapter 9 needed to be filed at that point?

JER: I think it did. I think it *definitely* did, because otherwise you'd have had hundreds of state court actions, and demands for funds when the pool could not satisfy those various demands. Eventually, actions to on revenue streams that the county

needed to fund its operations would have occurred. You'd have had chaos. The one thing that bankruptcy does is bring everything into one place where the preemptive power of federal law allows an entity, even a county, to reorganize its affairs. It gives it time to reorganize. As I indicated to you, at that first hearing, everybody wanted their funds. Well, unless we had the automatic stay to stop that, unless they had to all come to me to try and resolve their problems, you'd have had actions throughout the state, trying to deal with these issues. The county would have had to defend in multiple venues. Eventually, the county probably would have had to close down many of its services in order to try to deal with all of these demands. So I think the *Orange County* case is a perfect example of how the Bankruptcy Code can be used effectively to deal with a major financial problem of a municipality. There are various protections built into Chapter 9 to make sure that a municipal filing is appropriate. The county in this case did not have the time to go through an extensive process of negotiation with all of these entities before filing bankruptcy. It had a run on the bank. If it didn't stop that bloodletting, who knows what the ultimate value of those bonds would have been.

One of the first things that the county did was to liquidate that portfolio, to stop the bloodletting. It didn't know whether interest rates would continue to go up. To the extent that the interest rates went up, the value of that collateral would have become less and less. In addition, there's no real protection with respect to what values that collateral has in the context of those sales by the various broker dealers. Thus, the result in the *Orange County* case was a very good result for the county, and for all of its creditors. Back then, if you drove down [Interstate] 405,

you'd have seen a lot of lights out in a lot of those buildings, because at the time commercial real estate was tanking along with residential real estate, because of the downturn in Southern California. There were a lot of reasons for that, as you know. But within about a year and a half of that time period, the lights were all on. And the county has moved forward as if the bankruptcy had never occurred.

What would have happened had they not filed bankruptcy and if there had been substantial bloodletting? Who knows? But we do know the result now, and the impact of the bankruptcy in terms of dealing with all of these municipal entities and school districts. None of them had to file bankruptcy as a result of what happened in the *Orange County* bankruptcy case.

ES: I think we have a couple of minutes left, so I guess in closing, is there something you'd like to say to the bankruptcy bar, just in particular about your career?

JER: Oh. Well, I've had a wonderful twenty-year ride here in Orange County. I came without knowing a lot of people here, but I think I leave with wonderful memories of tremendous people who helped me along the way, like my law clerks , including you, who have played an important role in my service on the bench. The bankruptcy bar in Orange County is outstanding. I think everyone does a great job of representing their clients in an ethical fashion, helping the judges do their jobs to reach the right answers, and supporting the legal community through the various bar associations, such as the *Orange County* bankruptcy forum, the bankruptcy section of the Orange County Bar, and the Federal Bar Association.

I just enjoy being here, I enjoy the people. I've enjoyed the challenge of the issues. I've enjoyed my colleagues on the bench here. I've enjoyed knowing

many outstanding judges and participants in the judicial process in Orange County.

I've enjoyed being part of bringing this beautiful Ronald Reagan Building to Orange County. I've enjoyed the many wonderful associations in chambers, especially Nancy Garoutte and Tina Duarte, the GSA people, Tina and John, the assistant marshals, Brian and Steve, the court security officers, Ron and Tommy, and everyone else who make the Ronald Reagan court a special place. I've enjoyed the fact that I played a role in the county's reorganization which I think many people would like to forget, but it happened. I think the county pulled together and did what it had to do in order to make a success out of a challenging situation. So I leave here with many, many fond memories, and I will miss coming up here to Orange County on a daily basis.

ES: Good. Well, it's been great having you.

JER: Well, thank you.

END OF INTERVIEW