

Robert Belloni: An Oral History

Robert Belloni

An Oral History



FOREWORD BY JUDGE OWEN PANNER

US District Court of Oregon Historical Society
Oral History Project
Portland, Oregon

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FOREWORD

The Oral History Project of the District Court of Oregon Historical Society began in 1983. Through the efforts of Judge James Burns and his wife Helen, a gathering of lawyers, judges, and historians took place at the Society's inception. The Honorable Robert F. Peckham, District Judge for the Northern District of California, discussed the Northern District Historical Society and the inspiration was born for Oregon's District Court Historical Society, the second such organization in the country. The original Board of Directors of the Society was composed of twenty-one members with bylaws including the Presiding Judge of the Court, the Chief Justice of the Oregon Supreme Court, and the President and a representative of the Oregon State Bar. The original officers and directors included outstanding judges and lawyers – Judge John Kilkenny, Honorary Chair, Judge James Burns, Chairman, Randall Kester, President, Manley Strayer, Vice President, Elizabeth Buehler, Treasurer, Susan Graber, Corporate Secretary, and Robert M. Christ, Executive Secretary, along with many other top names in Oregon's legal history.

The Society decided to collect, study, preserve, analyze, and disseminate information concerning the history, development, character, operations, and accomplishments of the United States District Court for the District of Oregon. It was therefore logical that the Oral History Project should be established to preserve the histories of the judges, law firms, and lawyers who actively practice in the Court. With the assistance of Rick Harmon and James Strassmaier, the Oregon Historical Society held seminars to educate volunteers in taking oral histories with a biographical and Court-oriented focus. The Oregon Historical Society has been most

cooperative in agreeing to maintain these histories in their permanent collection for study by scholars and other interested parties.

These oral history interviews have been taken by recording devices, and are either transcribed or transcription is underway. A transcript reproduces, as faithfully as possible, the original sound recording that reflects the special value of oral history, namely its free and personal expressiveness. Most of the transcripts in the District Court Collection have been lightly edited and reviewed for clarity and accuracy by the narrators. That process continues. It is through these wonderful oral histories that the story of the Court is told. We now have recorded nearly 120 individuals since the project began. The goal is to record the individual histories of all the judges of the Court, as well as those of participating lawyers. The Court has a rich tradition reflected in the activities of the judges and lawyers of the Court. The recording has been done not only by professional historians, but also by dedicated volunteers. As one such volunteer said, "The opportunity to interview someone that you always admired is truly an exciting experience."

The history of the Court is being created by the men and women who have participated in its collection and activities. The Society's goals are to collect as much of that history as possible, because it is the history of the law and those who make it that constitutes the moral development of humanity. All of us who are students of the law venerate it. We are also interested in the people who make it.

Judge Owen Panner
February 28, 2006

Family History

JS: Let me start out this morning in the very simple fashion of asking you if you would state your full name and tell us the date and place of your birth.

RB: I'm Robert C. Belloni. I was born April 4, 1919 in the little town of Riverton, Oregon, on the banks of the Coquille River, halfway between Coquille and Bandon in Coos County.

JS: And, before we get to your parents, is there something about your grandparents that is significant in understanding your background?

RB: Yes, there is, Jim. In fact, this is something that has been important to me all my life and has caused me to be able to do a lot of things that I might not have otherwise had the courage to do, just to remember what my grandparents did to get to this country in the first place.

The heroine in my family was my great-grandmother, a lady named Maria Belloni who was living with her husband, my great-grandfather, in the little village of Gordevio, Switzerland. That's in the area of Switzerland called the Ticino, which is the Italian-speaking

portion of Switzerland next to the Italian border. It is only thirty or forty miles from Milan, actually. Times in the latter part of the previous century were very, very difficult in southern Europe. There was just absolutely no opportunity for young people. Well, my great grandmother had four sons, all bright people without much opportunity. She had a sickly husband. He was a lay functionary of some kind in the Catholic Church. He was a kind of a Notary Public. And, indeed, he did die quite young, leaving her with those four children, and pretty destitute.

She did what she could to earn a few bucks, among other things; she would drive her neighbor's cattle up the Alps. The term Alps means more than just a range of mountains. Alps are little areas; different plateaus on the mountain, a kind of a common pasture ground. So she'd take the neighbor's cows up there and bring them home and put every doggone thing that she earned [*chuckles*] in a sack or where she could. Her object was to raise enough money to send her boys to America, which was then, and I think is now, the land of opportunity. There was none there. So when each boy had reached the age of twelve, with her advance planning, she'd saved enough money to send them to America, specifically to California, to make their fortune. She did this knowing full well that she would never see her sons again. And, indeed, she did not see them again.

The third of these boys to make this trip was my grandfather, Gregorio—

George when he got to this country—he landed in Northern California. I don't know exactly how they got there, around the horn [Cape Horn], I suppose, and steerage passage, I'm sure. Arrived with, the way he put it, a quarter in his pocket and the cap on his head. He made his way to where many other Italian Swiss people lived and still do, in the wine country of Northern California, like the Italian Swiss winery that's so well known. Worked hard; he too saved his money.

He wanted to establish a little dairy farm of his own. That was his goal and he finally acquired a few acres of land and was trying to build up a small herd. So he heard about some brothers called the Ottolini brothers who were a little bit farther North in the valley. He'd remembered the name Ottolini family because they also lived in this small village of Gordevio. So he made his way, on foot, to where they lived. He looked at some heifers they had for sale and he liked them pretty well. He stayed overnight because it was a long journey. The person who served their meals was a very pretty young lady a few years younger than he and he liked her pretty well. In fact, by the end of the evening he liked her so well that he decided not to buy the cows at all. Because he learned that this young woman named Cecilia Ottolini had indentured herself to her brothers, the Ottolini brothers, for the traditional period, which I suppose was seven years, which seems to be the common time in those days. So instead of buying the heifers, he paid off the rest

of her contract [*a chuckle*], and they were married and they had twelve children, one of which was my father. He was about the middle one.

My grandparents acquired a ranch in Southern Oregon, which is still there and still called the Star Ranch. He [grandfather] ran it from perhaps 1890 to 1900, maybe 1903. His twelve kids were hardly liabilities like twelve kids would be now; they were assets. He put them to work and he taught them. Every child had a different specialty. My father was in charge of transportation. My uncle was in charge of making butter. They were milking as many as 200 cows by hand. My uncle later became a champion butter maker; he won prizes. He won one in Paris, France for his butter making. That's how my father grew up, and indeed, when he became an adult after also trying his hand at dairy farming, went into a small business more near his heart involving transportation, sure enough. It was a small transfer company in Myrtle Point, Oregon, down where I really grew up and went to school. Got there when I was in the sixth grade. The town had good schools. I look back on my teachers very fondly. They were teachers who went out to be teachers. They were not people who tried some other occupation and didn't make it and went into teaching. For the most part they were pretty strict people, but—

JS: I wonder if I could interrupt you at this point; if we could talk for a bit about your parents, so to have an idea of their

personalities, and sort of a portrait of your father and mother.

RB: Yes. I look back upon my parents very, very fondly. My dad was a hard-working person. His Swiss heritage caused him to be the way he was, I suppose, but a very gentle man, very kind to his children. He was anxious for them to achieve, he was anxious for them to have a lot more education than he had. I think he didn't have much of any formal schooling, maybe three or four years might be about all. My mother, on the other hand, was a schoolteacher. Her name was Clinton, which is my middle name, Robert Clinton Belloni, and the Clintons are a very large family in the Southern Oregon community. Their roots go way back. I think there were General Clintons on both sides of the Revolutionary War. They did come from England, later Missouri, and finally a branch came west to Oregon. She was not in a moneyed family; her father was also a farmer and a carpenter; he built barns. They sent her to a little institution they called The Academy in those days where she went probably through the equivalent of our eighth grade, then became a teacher. She talked about it a lot. She went to a family to live, ordinarily, for her room and board. She received a salary of twenty dollars a month, which she got in a twenty dollar gold piece. That's really a kind of interesting way of supporting and paying the teachers. It was, of course, a one-room schoolroom and she had all grades and

she was a teacher always. When she was married, I think she quit teaching and became a farmer's wife, but by teaching I mean she was always teaching her children, of which there were five. Mom and Dad had five. I'm the middle. One older brother who died when he was only seventeen, a sister who is older, a sister, and a brother who are younger. All four of us are alive. All four of us live in various parts of Oregon. Although my brother did just move to Arizona, I still consider him an Oregonian.

JS: Do you have a recollection of your parents in kind of the ordinary setting that would give us an idea of how they worked together, made decisions?

RB: Yes, I could, even some amusing things, I think. One of the favorite old photographs I have is my mother and father sitting on the seat of an old-fashioned hay mower, being pulled by a team of horses and they both have very broad smiles on their face. They're very compatible people, very cheerful, passed that on to their kids. The work on the dairy farm where I was born, in Riverton, Oregon, was extremely heavy. Farmers then worked from long before sunup until sundown, and even after that. They did things they could do around the house and the barn in lamplight.

My dad tells a kind of amusing story. One of his draft horses died and he was trying to figure out what in the dickens

to do with it. What he knew he probably should have done was to dig a huge hole and bury it, but there were no backhoes in those days. If you wanted a hole, you dug it yourself with a shovel [*chuckles*]. He hooked up the remaining member of this team and pulled this old dead horse out to the Coquille River and dumped it in; hoping [*chuckle*] it would float out to sea. Except this was a tidewater area. It's probably four miles from the mouth of the ocean and so when the tide was going out, the old dead carcass would go toward the sea and when the tide would come back in it would float right past his door [*laughing*], going the wrong way. After three or four days of that he couldn't stand it anymore so he hooked up his draft horse again and got the old carcass and pulled it ashore and dug his hole and buried it [*laughs*].

Another incident that is a family point of discussion a lot is when I was just six months old. This had to still have been in 1919. My dad bought a new car. He bought a Dodge touring car, the kind with a top and no sides. My dad had never driven a car with a gearshift before. He'd had a few Model Ts with the three pedals on the floor. He bought it in Marshfield, now called Coos Bay. Coming back where Highway 101 ran at that time, through Coquille and on to Bandon, hitting Riverton on the way by. So he came to the ferry to cross the Coquille River in Coquille and stopped. Unfortunately, he left the car in gear and it hadn't been turned completely off, and when he took his foot off the brake, the car jumped off

the ferry and clear to the bottom of the river where it was deep.

My mother was in the car, holding me, my older sister and brother were in the car, and an uncle, who was only about a teenager at the time, and he got himself out. When the car went under, it apparently caused the roof of the touring car to pop up, but it was deep. Dad took me out first and put me up on the ferry where some ladies took me. He went back after the rest of my family, one at a time, my mother and my sister and my brother. He rescued us all and there was no problem at all except a little panic. It was a well-known accident in those days; it was a sparsely populated area. Today I suppose we wouldn't even see a news article about it. But many, many years later when I was an adult person, I'd be talking to one of the old-timers and they'd invariably ask me "Are you the one that was the baby when the car went off the ferry?" and indeed I was.

Recently, I looked at that bridge—the ferry was replaced by a bridge—about a year ago, this bridge was replaced with another bridge. So I looked at this bridge that wasn't even there when we went in the water. It's absolutely ancient. I just can't believe [*laughs*] that I'm older than that bridge, but I am.

JS: Do you remember your dad telling that story?

RB: Yes, he told it; my mother told it. She was panicky because after my dad

had put me up on the ferry, the good ladies that took me were trying to get me dry, and they took me off the ferry and into a neighboring house and she couldn't find me and she was panicky. So it is something that's been talked about a lot—just one of those not very big incidents that's played a kind of important part in our conversations around the dinner table, at least.

JS: It must have been a terrific shock for them to get over.

RB: Yes *[laughs]*, I think it probably was. I suppose we all were in pretty real danger at the time. The car, I suppose, could have tipped over and done a whole lot of things, but it didn't; it landed straight up and down. We got out.

Parents

JS: Did you chafe under the load of work? How did a kid in those days, I wonder, deal with it? Were there moments when it was too much, and did you complain?

RB: Well, I don't think so. There were five children and my dad himself had this real work ethic and he taught it to us, not in words, but in deeds. We knew when he was working as hard as he was around the trucking business and at home, always fixing things. It was easy to recognize that he was doing this for us. We all had chores to do. We did them, but our chores

weren't really the important factor in either of my dad or my mother's eyes, nor ours. He really wanted us to receive an education and he wanted us to achieve. He thought that I should do something in the academic field. I'd been a pretty good student early on, and a lot of things, my dad didn't teach me. My dad was a very good carpenter, for example, an old farmer who was able to do everything under the sun, plumbing, carpentry, electrical work, anything. But he taught my older brother some of those things, but he never seemed to be teaching me any of them. So I asked him and he told me that I wasn't supposed to work with my hands, I was supposed to work with my head *[laughs]*.

JS: I wonder how he came to that view of things? Do you have any idea?

RB: No, I don't, except his personal lack of education, he probably felt very strongly. He was a highly regarded man in our little community of Myrtle Point, member of the Chamber of Commerce, Lions Club, and everything that came along. He was popular enough so that when he died, in 1942, all the businesses in town closed in his honor. He was inadequate in no way—he ran his own business, kept his own records; he did a beautiful job, but I do think that he felt a lack of a more formal and more lengthy education and wanted me to have it. I say now, with some amusement, and at least in partial truth, that I have always blamed, well not blamed, but I've always said that my dad

never taught me how to do anything with my hands and indeed I can't. I couldn't build a box if my life depended on it. I can't fix anything around the house; I just don't know how to do it. But what I now say is that maybe it wasn't a case of him not teaching me, maybe he tried to teach me and my mechanical aptitude was so lousy that I just didn't learn [*chuckles*]. I remember when I went in the U.S. Army as a private, I took the Army general classification test, sometimes called the I.Q., but it isn't really an I.Q., I got way up in the genius range. But when I took the mechanical aptitude test, I practically flunked it, so perhaps it was aptitude and not just my dad's oversight in not teaching me how to do any of those things.

JS: Fathers so often have a different relationship, taking this personally, too, have a different relationship with their sons, from one to the other, and there's quite a distinction.

RB: Yes, I think so and I think there's a big difference in a man's relationship to his daughters as compared to his sons. I know my father and his daughters were very, very close. I never felt, I never felt left out, I never felt I was being discriminated against, but he did treat them differently than a son and I just grew up thinking, and still do, that's just sort of the natural way families grow. My mother, on the other hand, I think I was probably closer to my mother than any of the other children, although we all were. But I was born

on her birthday, April 4th, so we always celebrated this joint birthday and that little thing alone may have caused us to be closer. She told me one time, privately, that children are really special, especially sons [*chuckles*].

JS: Could she have had something to do with this decision that you had a future that would be more of an intellectual future?

RB: I think that without doubt she did. She encouraged me along, always, and that existed even after I became an adult person. I remember when it came out in the local newspaper (I was Circuit Judge in Coos and Curry counties) that Judge William East had retired from the U.S. District Court on a disability, and she called that to my attention. She thought, "That'd be a good position for you." [*laughs*]

JS: Oh, really.

RB: And indeed, I did succeed William East.

JS: Good. She was very attentive.

RB: Yes, Yes, really.

JS: Could you describe her, in a word picture of your mother, what she was like?

RB: Yes I can. She liked to be around people. She had her own circle of friends and she belonged to things like business and professional women's clubs. After my

father died, she took over the little trucking business and operated it herself. She was a fun person to be around. When she was a widow and I was a young married man, just setting up my profession and operating it, we'd have a party occasionally and my other friends would have a party of young people and they would always invite my mother. And she'd always come [laughs] and she just fit in so great. I have extremely fond memories of her and my dad as well, but my mother lived a lot longer and we enjoyed her a lot longer. I really didn't know my dad as an adult very much, maybe I was twenty-two or twenty-three when he died.

JS: You had another death in the family, the death of the older brother at age seventeen.

RB: Yes.

JS: What sort of an impact did that have on you and the family?

RB: Well, it had a big impact upon me and the family. I was eleven years old, or I just turned twelve, and he was seventeen. He was my big brother and, of course, my idol. When he'd do things, I wanted to do them. He was always very good to me, too, I might say. We belonged to the same scout troop and the troop did very well in a contest and the prize for winning the contest was a trip for certain members of the troop to go to San Francisco. In selecting the group, he [my brother] was

selected to go; I was not, mostly because I hadn't been a scout long enough to achieve much. On this Boy Scout trip he caught a cold and it settled into his sinuses and caused infection and he died. It was from a thing that could be easily cured; nobody would even get very excited about it, because in those days they didn't even have penicillin for example. So it was tragic in that way. Had it been a few years later, there's no question but what he would have lived. Yes, it was a great blow.

[End of Tape One, Side One]

JS: Do you recall how the family worked its way out of this loss?

RB: There's no question in my mind that my mother and father worked at it. I'm unaware of what they talked about between themselves, but I do know that it just didn't happen. They had a plan to ease the pain, and indeed they did. I remember that we got a new car not too long after that, one which I'm sure we couldn't afford but which we got. My parents were very, very frugal people, so to buy a new car was something they didn't do very often. I think probably that they kept the children as active as possible in order to get their life back on keel. It's a little bit difficult to remember exactly what we did, what we talked about. There were a lot of tears and nobody discouraged that. My brother was also highly regarded in his local community. He was an Eagle Scout. He

was the first Eagle Scout ever to come from our small town and when he was buried, he was buried with his Eagle Scout pin. We were all very, very proud of him.

JS: What was his name again?

RB: His name was Roy.

JS: Roy, is that short for something?

RB: Roy Leland Belloni, that was his name. Right.

JS: What did your family do for recreation and fun? Were there some common activities that, on a daily basis, or also on an exceptional basis?

RB: Yes. We did an awful lot of things together. Around home we played a lot of cards, played rummy and we played pinochle and the entire family would be involved in those games. Also, games where you spin for numbers and much the same kind of games, but a little less complex than we have today. Spent a lot of time doing that. We didn't have very many vacations in which my dad took time off from work. He just didn't take much time off. We did, a couple of times, and I remember them very well. We went to a lake one time, the whole family for a week, but for the most part, our recreation was at home and with the family.

Weekends and summer, we went to the beach. The beach was at Bandon,

eighteen miles away from Myrtle Point, where we lived. So whenever I think of the beach, it is with a very warm feeling. I suppose that's one reason why I've always wanted to get back to the beach. Indeed I have a home in Newport, Oregon, which my wife and I've just built and because ever since I was a kid, the beach just seems like a desirable place to go. People ask me why on earth I like that windy, cold Oregon coast so bad. It's a little bit hard to answer [*chuckles*] because sometimes it is windy and cold, but the answer is, really, that in my mind I've associated that with pleasures because that's where we spent many solid hours of good times. We often just took the tent and pitched the tent in a park and stayed in it. Later, we went to auto parks and later motels when they came into being.

JS: I'm picturing a kid walking around on the beach, and what sorts of things did you do? There are a lot of different patterns that a child has.

RB: Oh, you run in and out of the surf and you get wet and we even used to swim in that ocean. You'd swim in that ocean and in five minutes your body would be so cold that you could pinch yourself without even feeling it. I'd no more go swimming in the Pacific Ocean off the Oregon coast than anything now, but we used to do it then. But mostly you'd run in and out of the waves, and you find agates and shells, and you climb up rocks

and sometimes you climb up rocks and the tide comes in and you can't get back, and you get panicky, and you should get panicky, but so far, we've always got back. It's just a fun place to be and I always had a dog and dogs love the beach. It's just fun to be down there.

JS: I need to get a clear an idea of your location. Riverton, do you have some years for the Riverton residence?

RB: Yes, I was born in 1919 on the farm in Riverton. Didn't go to a hospital. I don't remember that place at all, but I've gone by it many, many times. I think I was probably three years old when we moved from that farm to the little community of Arago, also in Coos County. I do remember living in Arago, where we lived until I was in the first grade. At that time, we moved to Coquille.

JS: When you were in first grade, is that right?

RB: Yes, in the first grade. I went to grades one through five in the Coquille school system. Then, we moved to the little town of Myrtle Point when I was in the sixth grade. The reason we moved there is that, you remember for the move was economics, things were very, very depressed in those days. Dairy farmers were hard pressed. Political organizations were always trying to get my dad to join up and he would never do it because he didn't like that kind of thing; but the price

he was getting for his milk was so small that we just weren't making it.

He had an opportunity to buy this little trucking business in Myrtle Point and he sold his place there and bought this little business with his family, there were five of us then to support. We had hardly a dime. And it took great courage to make that change. We weren't making anything on the little farm, but we raised our own vegetables and we had our own milk, of course. And we were getting by, but he just wasn't achieving the goals that he had for his family so he took a plunge and bought that business. The business itself wasn't really making it by the prior owners, but he put the effort in it to make it work. It did work well enough so that he raised his five children and supported them and clothed them and we were, from that time, on, we were really never in want. We couldn't have everything we wanted, but we had everything we needed, always. I think I digressed from where we were.

JS: Your father's reluctance to be part in any organizations sounds like quite a distinctive thing to do. I wonder, did you understand his reasons for that?

RB: I think I understand. This was a time of a lot of really radical labor organizations. And, you know, they were bomb-carrying people that belonged to some of these organizations. Sometimes if you didn't go into the farm union, your property was damaged. This didn't

happen to him but it was widely believed that it might happen.

JS: Did you say bong carrying?

RB: Bomb, B-O-M-B.

JS: Oh.

RB: Yes. I asked my dad one time what IWW stands for. He said, I guess it's International Woodworkers of the World, [Industrial Workers of the World] but he said it stands for "I won't work." And that's the way he felt. He was a conservative, Republican. When I became of voting age, I became a Democrat, and quite a liberal one, later chairman of the Democratic Central Committee in my county. Later, parted in our political views. He was only amused though when I registered Democrat [*chuckles*].

JS: He was only amused?

RB: He wasn't angry or disappointed or any of those things, he was just amused. He wasn't able to teach me his political philosophy.

JS: Was he surprised?

RB: Probably, but besides just the philosophy of the Democratic Party in which I believed at that time, it was more than that; Franklin Roosevelt was on the horizon, and he was the future of this country it seemed to me. It seemed to me

that there was much self-interest in my becoming a Democrat, because it seemed to me that the Republican party was dead, probably forever, and that the wave of the future was Democratic. If you wanted to be in a public position of any kind, you'd better be a Democrat, and not only that, you better work at it a little bit, so it was more than just personal philosophy. It was partly self-interest that I registered in that party.

JS: Yes, and thinking of self-interest, too, when you were a child and the family finances are precarious, did your father or your mother communicate to you about how things were? Can think back to how it was, at the time? Did they communicate and what sort of effect did that have on you?

RB: Well, they never complained about being poor because, as I look back on it, I think we were poor, but we didn't think so. In fact, we talked about poor people, and it certainly didn't include us. [*laughs*] And, of course, when I look back, I think we didn't have very much money, but I also see that there were a lot of poorer people than we are. The only reason that we weren't as poor as the rest of them was that my mother and father worked harder than most of them did. I don't ever remember any complaining about the government, about the system. It was just accepted that life was tough. If you're going to eat, you had to work, and I think there is some comfort in that. But later,

of having been hungry, I don't mean that literally, because I've never been hungry in my whole life, but by being hungry I mean you didn't have everything that you wanted. I knew perfectly well that when I started to school, I'd better study. I better learn this stuff, much as I disliked school at times, and when I went on to the university, the same. Nobody's going to support me. I'm going to have to support myself and a family and I think it caused me to work harder than some of my friends at the University of Oregon who didn't really know, nor care, where they were going, because they knew they were going to inherit a lot of money, and I knew I wasn't. I don't look at those days with any bad feeling, but only with great feeling that this was a good way to grow up.

Family Status

JS: I was thinking more in terms of how you felt about your family status, whether you were worried that your family was in a lot of trouble, and I was wondering if that might have something to do with, your developing political views, the picture of the concerned child.

RB: I don't know. I suppose, if anything, what this would do might make me a Republican, because I saw my dad and my mother with nothing and worked very, very hard and progressed, sent all their kids to school, through their own efforts. They never received a dime from

public assistance. They wouldn't have taken public assistance even if they'd been hungry. I'm convinced of that. In fact, we even acted as volunteers in the little trucking company bringing sacks of flour to people who were really in need, that is we did this for the relief organizations without any charge to them. I don't think that my family life had too much influence on my later political views, but I'm not sure of that. I do know one thing, I do know that I'm a great deal more conservative than I was when I was twenty-one years old. Every once in awhile I end up voting for a Republican, though it's hard to do [laughs]. And I haven't decided whether I'm for [George H.W.] Bush or [Michael] Dukakis to this day. I wish there were a third choice.

JS: I was actually thinking earlier to ask you a kind of an opening question and you've partly answered it, but when you were a kid, say before your early teens, how did you think of yourself as different from other kids and your family different from other families.

RB: Well, most of the families of kids I went to school with were (I'm talking about the grades now) they were in very much the same condition that I was in. Not every kid had a bike, for example. In fact, I never had a bike. I used to look in the Montgomery Ward catalog where you could buy a bike for \$25 and it was \$5 down and \$5 a month until you got it paid. Well, I never did buy a bike because

I didn't have \$5 down and if I had, I'd never been able to pay \$5 a month. That's very different from today, where a bike is almost considered a necessity for every child, but my classmates were in the same way. Sure, there were some bikes, and they weren't always wealthy kids, but you were pretty lucky if you had a bike. I don't think we felt any different from the other families, with this exception, I don't think I ever saw a black person. I really don't know when the first black person I ever saw was, but I'm sure I was at least in high school. I know I never knew a black person before I went to the University of Oregon. A family of Jews moved into our town and they were oddities, I mean nobody had seen a Jew and we really didn't know for sure [*chuckles*] what a Jew was. I used to tell that to my dear friend, Gus Solomon, Judge Gus Solomon, and he'd laugh. We heard all sorts of stories about what the Jewish people were, but we really didn't know. Even Catholics were a rarity. We had a little Catholic church in town, but there weren't very many, so with those exceptions, I think we felt just like every other family in town.

JS: Do you remember the persecution of the Catholics? There was a moment in about 1924, it's a little early for your family, was your family Catholic?

RB: My family in Europe was Catholic, and I think my father was a Catholic when he was baptized as a baby, but he didn't follow the Catholic persuasion. Some

other members of my family, the other sons that came over and started families here, remained Catholic. So many of my aunts and uncles are, but I was raised up going to Sunday school in usually Presbyterian churches. Then when I became an adult I joined the Episcopal Church, to which I still belong.

JS: It sounds as though your family was seriously religious.

RB: Yes, my dad was not a very great churchgoer, but went on all the traditional days, and maybe once a month, maybe not quite that; but he saw that the children went to Sunday School, and so that's what I did. I wasn't very excited about it, but I did [*laughs*].

School

JS: Well, tell me now about schooling, the early schooling experiences, and how excited or unexcited you may have been about that.

RB: I started at school in Coquille when I was in the first grade. We were still living on the little farm. I think we came about two miles to school, which we walked both ways. I think there were school buses, but I think it was for what we called the country kids that lived way out ten miles or so. We walked the two miles to school and walked home. It seemed a very normal thing to do and nobody seemed

put upon because we had to walk two miles to school. My parents didn't think so, and we didn't think so, and it worked out fine. School was fun. Teachers were good, from the very, very beginning. I still remember some of my primary school teachers. Sort of uneventful. I can't think of anything very startling in my early schooling that stands out, except to repeat what I said before, that the teachers were good teachers. The kids respected them and they made us work. We learned.

JS: Did you have any free time, say between school and chores?

RB: Yes. When we got older, we had our sports, which I was very much involved in. The school was a little more regimented than I think schools are now. When the school bell rang for the morning, wherever you were, or in whatever weather, you lined up, and then you marched into school. Sometimes with a John Phillips Sousa march [*laughs*] and this is a public school, you know. That's what we did. We had a lot of fun at recesses. We did a lot of things after school. We had plenty of time to do things besides our work. An awful lot of kids did things, such as paper routes, like kids still do. I had one. When we first moved to Myrtle Point, it was the first time we were off of the little farm, we had an acre of land and I had a cow. I used to milk that cow twice a day and sell milk to the neighbors for some spending money.

JS: And even though, you did have an

income of some kind, and what did you spend it on, if not a bicycle?

RB: I've always had a small income. I never had an allowance as such. That's just not a practice the family followed, but we were always given opportunities to earn a few cents. The girls, who had fewer opportunities, I think, to earn a little money, might do a few things around the house and really get paid for it, which was nothing more than an allowance, but we didn't call it that.

Oh, I don't know what we bought—balls and bats, and [*chuckles*], a prize item was a fielder's glove. Playing baseball, and sports you engaged in below the high school level, children were expected to furnish their own equipment and so we had enough to do that.

JS: High school followed also in Myrtle Point, is that right?

RB: Yes.

JS: So there was a change from Coquille. You switched schools from Coquille to Myrtle Point.

RB: Yes. In the sixth grade. And school went very fine for me at the junior high level. I didn't get the best grades that anybody ever got, but they certainly weren't bad. I worked at school pretty good. I still knew that some day I was going to have to support myself, and hopefully a family, and then I went into high school.

High school was a fine experience. The first time I really had much of an opportunity to go into leadership positions, like I was president of my freshman class. It's a union high school, the town is very small, but the high school had—200 or 250, 300, I think there were fifty-five or sixty graduating seniors in my class. Just had our fiftieth class reunion not long ago [chuckles]. It was quite an experience. I don't know why I was surprised that everybody looked so old, but they certainly did [chuckles].

[End of Tape One, Side Two]

Influence of Other Adults

JS: That quickly takes you back from the present to the past, doesn't it?

RB: Yes, it really does. It was a good thing to do. I enjoyed it. I had to think a lot about who some of these people were because I couldn't remember them. Although there is something about a small town that you want to remember. It was a good place to grow up. The people are often extremely loyal to one another in later years. There was a man in Myrtle Point when I was in high school. He was ten years older than me, but he was an automobile mechanic, name of Norm Williams. He was a mechanical genius, actually, he'd had no schooling at all, and he invented things. He invented useful and saleable items. The first air brakes on

trucks for example. Well, to get back to my story. He had this big manufacturing business on the outskirts of Portland and if anybody from Myrtle Point would come and ask him for a job, he always gave them a job. It didn't make any difference whether they had any skills or not. That's kind of an example of the nature of loyalty that you run across in a small town environment.

JS: You say there are some things that you want to remember about a small town. Are there some things that you don't want to remember about a small town?

RB: Well, I don't think so. When I had a family of my own I was happy for the opportunity [of living in a small town]. When Lyndon Johnson appointed me to the position I now hold, it required me to move from down there, [Myrtle Point] to the Portland area. I was glad of this because my children were about of junior high age, and they'd had the small-town experience and I felt that it was a, really a good thing, now, to get them out of there into the different environments and let them have an urban experience. I still feel the same way. I think it was very fortunate for my two children that they have had both experiences. But there was nothing distasteful about the small-town experience. It would be distasteful to some people because everybody knows your business. If you misbehave everybody in town knows it. Some of the old women

will wag their finger at you even, but we didn't misbehave very much and that's part of the reason [*laughing*] I think.

JS: Well, as you were going through high school, you were saying earlier that, that your mother is giving you support, and your father too, this idea that you were destined for larger things. Were you feeling that way in high school? Were you getting some sense of support like that from teachers, too?

RB: I did. I had a lot of encouragement. It had never occurred to me, ever, that I would not go on to college from high school. I mean, just not shall I or shall I not, it was just I knew I was going to and everybody else knew I was going. It was just a thing that you did. Well I'm sure that if anybody'd suggested that I'd ever be a United States District Judge, I'd think that was a ridiculous suggestion. Not that it's the highest office in the world, but it's a pretty high office for a kid from Myrtle Point, Oregon who is the first generation in his family ever to graduate from college. But I did expect always that I would be either in the business community with a fairly high position or that I'd be in one of the professions. It never occurred to me that it'd be anything else. But that's strictly from the tactics of my mother and father. I know that. They never let me think any other way.

JS: Was it common for other kids to think of going on to college? How common was it?

RB: I don't think so. I think it was not and, even after my reunion, I don't know how many have gone on to higher education, but not more than a handful. The thing is, times were tough, but lumbering was pretty good. And as I grew up to junior high school and high school, the lumbering business was good, and there were a lot of jobs in the industry. But they were terribly hazardous jobs. My friends would take a job in the woods, and more likely than not, they would be injured, and some of the injuries were very serious. One of my closest friends lost his leg in the logging woods. My mother just would not let me take a job in the logging woods. She said forget about it and I said, "Yes, mom, but you know, I can make a dollar and a half an hour and I'm only getting \$5 a week doing what I'm doing." But I respected her and I didn't go to work in the woods, But they did and they made what we considered to be a lot of money. I mean quite a young person, they'd be able to buy a second-hand car for example. You know it's hazardous but you don't think "it can happen to me." They didn't even talk about the danger, but it was very, very dangerous work. But the attraction of the high pay was strong and they'd go to work in the logging woods and after three or four years they would never do anything else.

In the first place, (I've noticed I've been around loggers all my life and they've been my best friends) there is a great attraction for working in the logging woods. And after work and social events when we'd go out together they'd talk about their

logging experience all the time. That was their topic of conversation. Most of the time I didn't really understand too well what they were talking about but I made a point to understand what the people do in the woods—choker setters and whistle punks. The whistle punk was the first job that most of them ever took. And that taste of more money deterred a lot of them from going to school. Sometimes we'd talk seriously and they'd say, "Look, man, why should I go out there to the University of Oregon and come back and see Mr. Hendershott down here (he's a manager of a store through his college education) and I make more money than he does. So why should I do that?" In that way, I was different from most of my friends in high school.

JS: Was there a thought of your taking over your father's trucking business?

RB: Yes, there was. And as a matter of fact, I did operate it for a few years. It was very successful, but I really kind of hated it because I felt that I was wasting time, which I was. And so at the first opportunity that I had, I got out of there and did something else. But this was actually after the war.

JS: What was the name of the company?

RB: City Transfer. Myrtle Point, Oregon.

JS: Well, I wonder if we could get back to school, back to the people that you were

in contact with at school and maybe get some impression of what they were like, the ones who were significant to you.

RB: Well, there's not too much that really stands out in my mind except in a general way. My teachers were good teachers. I engaged in high school athletics and athletics were important to me so I suppose your coach is sort of your hero, a fellow by the name of Pat Rickard. He was the coach and he wasn't the freshman coach, or he wasn't the football coach, or the basketball or the track coach, he was *the coach*, he coached *everything*. You were in contact with him throughout the entire year. He was as concerned with your personal life and your later ambitions as he was with winning athletic contests, so he has to stand high in my rating of all the teachers I ever had. I had an absolutely tremendous English teacher, a lady named Grace Mary Linn. I look back with a great deal of gratitude to those people. I did fairly well in athletics, I lettered in several sports.

JS: Not just football then?

RB: No, no. I played basketball and I ran some track and field events, the high and the low hurdles, and later went on to the University of Oregon where I won freshman numerals. I was totally self-supporting in college so I only did that one year. But that was important. I think that I learned an awful lot through high school athletics. You really wanted to

win. Winning was very, very important, but that's not all. We learned how to lose, too. We learned the pain of losing and the old-fashioned pep talks the coach used to give us at half-time. They were great, it was a great experience.

JS: Was he a pretty rough pep talk giver?

RB: Yes, he got right down there and told you how things were. He'd get pretty specific, too. You know, "Where in the devil were you when that end around?" "Haven't I spent all week telling you that team was going to do the very thing they did do, and where were you? [*laughing*.] Standing there dreaming." He was probably right, too.

Educational Plans

JS: It sounds as though you were not getting too specific as a kid in high school thinking about your future, or were you beginning to get an idea what you would go into?

RB: I had a friend who was an adult person, an older man that, he was my friend because he was my dentist [*chuckles*] and he took an interest in me and decided that I should go into medicine, and he convinced me that I should. Not dentistry, but general medicine. He thought it was absolutely the greatest profession that ever existed on earth and that I would be good at it and he convinced me that

I should be [a doctor] so when I went to the University of Oregon, I did take pre-med, and with some reservations, I took an accounting course. Pre-med students usually don't take an accounting course, but I did, which indicates to me that maybe I wasn't totally committed. But I graduated in 1941, the year the war [World War II] broke out. My medical career didn't start. I hadn't been admitted to a medical school; I believe I would have been admitted to a medical school, but I wasn't at that time. Things were a lot different then than they are now. We were attacked, and I think a lot of us, including me, really did want to be involved in the defense of our country.

JS: Excuse me, let's see, when did you go to, when did you start at the University of Oregon?

RB: I started in '37, finished in '41.

JS: O.K.

RB: I'm getting around to telling you why I became a lawyer [*laughs*]. I went overseas and because I'd had this pre-medical training the classification people put me in the medical department. Then because I had this high Army general classification test score, they practically insisted, whether I wanted to or not, that I was going to Officer's Candidate School, and did, and graduated. Shortly thereafter, I was sent to the South Pacific and became a young officer in a field hospital in a very tough zone of operation. A lot of small

arms fire went on very close to me. I was in command of 190 men, (very young, maybe twenty-three) enlisted men. But the men were technicians of various kinds. But I still intended to be a doctor when I got back out. I'd see these people coming in from the front, just terribly wounded, with their heads half shot off, young people, younger than me even. And I did my work pretty competently, but I just couldn't stand it. We set up our operating areas in tents, and I would sneak away from my troops occasionally and go back and just throw up. I just couldn't stand it, so I decided right then and there that if I couldn't stand this, how on earth am I going to do it the rest of my life. So that's when I decided that when I got out of the service I knew I was going to have the G. I. Bill of Rights coming and that I was going to do something else.

I'd been interested in the law, but frankly I've never had a lifetime ambition to be a lawyer. But it was probably the best thing, vocation-wise that could have happened to me, because at best I'd have been an average doctor and I certainly think that I've been more than an average lawyer. And when I got into law school, I loved it. I actually loved to study the law. I didn't even have any concept of what the study of law would be like. In fact, I really thought it might be kind of boring. You had to learn a whole bunch of statutes and stuff, which, of course, you don't do at all. What you do is you learn to think in a certain way, in a logical way, and so I loved it. I've always loved it. I loved it

right through school and did real well in law school, and I love it to this day. At age sixty-five, which is four years ago, I could have stopped working entirely and still receive my full pay, but I don't do it because I can't think of anything that I'd rather do than try a complex civil lawsuit. So what I'm doing is what I always will do until somebody decides that it's time for me to quit because I'm no longer able to do it. Thankfully that time hasn't arrived yet.

JS: Well, it's a different feeling when you find your *métier*, what you really are suited for. I wonder if we could go back; I don't want to jump too far in the chronology, to get an impression of this change from the small town setting to the college setting in a larger town, not a large town, but a larger town.

RB: Eugene, Oregon was a large town to me. Even Coos Bay was a large town to me at that age. I hadn't traveled very much. Later when I came to college, I traveled around a lot, just by hitchhiking to various parts of the country, but up until that time I lived in a very small town and environment so, yeah, it was a really a growing experience. I don't think I was ever intimidated by it. Fortunately, from the very beginning I made awfully good friends who are still my friends. The study of science was satisfying. I didn't do all that great in the grades department but I certainly didn't do bad. But, it was a transition. Don't know what else to say about it, but it's an experience

that I'm grateful for. There, too, I had good instructors, good instructors. The University of Oregon did well by me, both in undergraduate school and in law school.

JS: Do you remember any particular ones, then this earlier period before you went into the service.

RB: What do you mean, the instructors?

JS: Yes.

RB: Oh, yes, I do. I remember some of the people whom I thought were outstanding. Dr. Hustes, of the science department; Dr. Yoakum, also, I think he taught me zoology or chemistry. I can't remember for sure which, but they were easy to know and they were good teachers. I don't remember having a bad teacher there. As a matter of fact, later in law school, the best teacher I ever had from kindergarten all the way through graduate school was Orlando John Hollis, who was my dean in law school. He was not just a dean, he was a teacher, absolutely the best teacher I ever had. And I've had an awful lot of good teachers. One reason I didn't do all that great in grades, not bad, but not great, was that, by that time I was totally self-supporting. My dad was still alive and still prospering in his own way, but he didn't have enough left over to spend it on my college education. I knew that I would never have to go home because I didn't have enough money. So financially

I was self-supporting, but I had all this moral support. I just knew that somehow or another they'd get the money for me if I really needed it. But that made me all the more determined not to ask for it and things hadn't recovered all that much—1937. Things were still hard.

My room and board at the dorms was thirty-three dollars a month. My jobs paid about seventy-five cents an hour, but there were quite a few jobs available for students and student employment systems were helpful. Pretty soon, you became smarter about jobs. I took a job ushering at football games. Well, I would have gone to the football games anyway. I might as well get four or five hours at seventy-five cents an hour to usher at the game. You set up little concessions, you get a little Coke machine and candy bars and you put them in your dorm or your fraternity house and I did a little bit of that and then had all summer to work at wages. I was able to completely support myself through college and I'm glad, I'm glad. I think I probably got more out of college because I did it the hard way than if I'd have just done it by a dole from my parents as a lot of my friends did.

JS: So it was pretty common that the other students were supported by someone?

RB: Yes, I think at least half of my classmates were almost completely self-supporting, or with some help, at least some moral support, as I had, from home.

JS: What did you do for summer jobs?

RB: My father still owned the trucking business at that time. '37 to '41 were my college years and he died in '42. [During the summers] I went back and took a very active part in helping him run the business. I knew it well, but I did other things. One summer, I think, I stayed at the University and did janitorial work at the university. I think I wanted to do some studying. I did a lot of janitorial work during my college years. And then one summer, I remained down there. By that time I also wanted to see what was going on in some of the other fields other than my own, so I took this summer job and one of my duties was to be the janitor at the law school. Well, law school wasn't even in session, so about the easiest job I ever heard of was being a janitor at a law school that wasn't in session.

[End of Tape Two, Side One]

RB: Judge James Alger Fee of this court used to come to Eugene in the summer and hold trials in the building that I was janitoring in. So whenever he was holding trials, I was usually sitting in his courtroom. He probably wondered who in the devil that was all this time. He never did ask me *[laughs]*.

JS: Oh, was that right?

RB: Right, so I learned a lot about what to do and what not to do from him.

Remember, I was, I still was not committed to the law, but I learned a little bit about what the profession did at that time. But, for the most part I worked with my dad in his business, and probably busier in the summer than any other time of the year. Later, when I took over the business for a year or two, on his death, I knew how to run it.

JS: Well, it's really interesting to hear about this exposure to Judge Fee. Can you remember some of the details of what you heard and saw there?

RB: Yes, I remember, like I can see it right now. It really made a deep impression on me. He was a very strict man, but very efficient. He was trying a lot of condemnation cases at the time. The U.S. government was taking over some land to build a dam some place in Lane County. He would have the jury in and they would receive testimony and then they would go out and view the property in a bus. They were taken out there by the U.S. Marshal. Then immediately he would start another trial, with another jury, and he'd send them out on a view.

I saw him try as many as three cases at the same time. Ordinarily, a judge would have them hear the testimony, send them on the view, and wait until they come back, and then finish the trial, but he didn't do it that way. I don't know how he kept track of one trial from another. Another thing, in that "what not to do" category, that I learned from him, was,

[To interviewer: "I'm a little bit reluctant (inaudible). O.K."]. He was trying a member of one of the Indian tribes for a very serious offense, assault with intent to kill, where apparently the fellow had carved up one of his neighbors pretty bad with a knife. It was a jury trial, and the defendant's mother, a very heavy Indian woman, was attending the trial, but she'd sit there and read her newspaper. She came every day, but she'd sit there reading her newspaper, and she'd crinkle it once in awhile.

I'd look up at Judge Fee and I knew he was getting angry. And finally he said, "Where are all the bailiffs around here. Take that woman out of here. Take that newspaper away from her and take her out of here." He said, "These Indians have absolutely no respect for the white man's law." And here the jury was sitting there, this poor guy was on trial, he'd probably get twenty years on a conviction. I'll never forget that, and it helped me because you do get exasperated, but you do have to remember who else is going to hear, besides the bailiff, you're talking to.

JS: So you caught that point at the time, the impropriety of it?

RB: Right, oh I thought it was a terrible thing to do and I still do; but it was part of my legal education even before I started law school.

JS: And this was happening before '41 when you were a janitor for a summer?

RB: Right.

JS: Wow. Well, were there things that you liked about Fee?

RB: Oh yes, I never knew Fee personally, but I just observed him at that time. There's more James Alger Fee stories and most of them are not flattering, and most of them are, I'm almost sure, complete fantasies, never even happened. But he certainly knew the law and he certainly was efficient. He got things done. Dictatorial as he could possibly be. He would have never won an elective office or at least not a bar poll, I don't suppose, but I admired his work and still do. I'm still exposed to his rulings and opinions and I read them with great respect and I find them very persuasive.

JS: Well, I'm also thinking of when you were sitting there observing, were there things that appealed to you about him?

RB: Well, I knew nothing at all about the trial of a lawsuit, and so just assumed the way it was happening was the way things always happen in court. It was the first court I ever saw in operation, I guess. I know a little bit different now, that he did things differently than some, but I liked the process that I saw in action. I liked the idea of people being able to get their disputes resolved in that fashion rather than going out and shooting one another. I suppose, even though the experience

was kind of a negative one in a way that James Alger Fee had some influence upon my going into the law later.

JS: Yes, really.

RB: I never thought that or even expressed that before, but now that I've talked to you, I think that's a distinct possibility.

JS: I'm sorry not to have done this earlier, but it's always interesting to know what kind of interests a kid has, not necessarily related to what they're going to become and so forth, but they're kind of interesting of themselves, and they sometimes have part of things. When you were a kid, what were your fantasy subjects, things you loved to read about and dream about and that sort of thing.

RB: Oh, I read, I read adventure stories, I read sea stories, none of it really was career oriented. In fact, I really didn't decide on law itself until much, much later, and even not for very good reasons. There was ten years between my bachelor's degree in '41 and a law degree in '51. The war occupied four years of that time, a couple years of helping my father's business. It was fun being a kid, really, and nobody was put upon too much, and we did a lot of things that were kind of mischievous. We were held down by the peer pressure in a small community, but it was fun growing up.

Father's Death

JS: When you worked with your father for a couple of summers, or perhaps more, how was it working with your father, the relationship?

RB: Oh, it was fine. We both knew that it was a very temporary thing that I wasn't going to follow in his footsteps. I had no interest in inheriting his little business, which he'd made grow, very, very well, from maybe one or two trucks up to two more and larger equipment. He became involved with Consolidated Freightways when they were a very young business. Now they're world-wide. He was a local agent for that line, a commission agent, it was called. He got a commission for the business that went in and out of our town. By that time I was old enough and experienced enough, so that he would listen to my suggestions. It was kind of fun making them and trying them out. Some of them were good and some of them were not. But it was a good period in my life because working directly with my dad, I got to know him even better and he did come to rely upon me quite a lot, and finally, for the first time ever, he was able to get away from the business, take vacations with my mother, which pleased me. So that was a nice experience, too, just to be with him, and to relieve him of a little bit of work.

JS: Was his health bad at this time?

RB: No, it wasn't. He developed a brain tumor, which we didn't know existed at all

until we brought him to Portland. Dr. John Raaf, certainly the finest neurosurgeon in the Northwest, operated on him and was not able to do anything; we just had to wait for his death. He was fifty-two years old when he died and at that time I noticed a great deal of dependence upon me when he was sick, in fact, dying. I was back to school, I was still in college when he died.

JS: Sounds like a difficult moment.

RB: Yes, it was. The second family death we had, and they're rough, for anybody. Not any rougher for me than anyone else, but they were rough, both of them.

Early Political Memories

JS: Yes. So at this time, FDR and the New Deal were in motion and your awareness of that you've indicated before. I wonder if you could tell me more specifically how this awareness developed in you. If you can remember when you began to become politically aware of larger developments.

RB: Well, I just wrote some figures down here. I guess I was only fourteen in 1933.

JS: That's what I'm starting to do to. You're faster than I am [laughs].

RB: I first remember ever even hearing about Franklin D. Roosevelt in school. We had a newspaper, I think it was called *Current Events*. The campaign was shaping

up. It was way back when there were a whole lot of candidates on the Democratic side, all of them vowing to beat Mr. Hoover, and I remember that Franklin Roosevelt was one of them. Even then he seemed to me to be the outstanding one of the group, and a pretty young guy. I'm not sure why. He was just appealing, and I could see that he hadn't had all that much experience even, but we were exposed to his campaign promises and others', and his looked better to me than the others' did [laughs]. And I became a Roosevelt fan and remain so until this day. I remember my Republican family background. My mother was as strong Republican as was my father.

JS: Oh, she was too?

RB: Yes, and later in life, she started receiving her Social Security checks. On the first of every month she was right at the mailbox when the mailman came, to get that Social Security check. One day when she was bringing it in, I said to her, "Mom, every time you open up one of those Social Security checks, you should thank God for Franklin D. Roosevelt" and she said, "You know son, I do." [laughs].

JS: Right, good.

RB: She never voted for him, but she was able to see that he did some pretty good things.

JS: Did teachers at that time disguise their political views?

RB: I don't ever remember receiving any kind of indoctrination from any teacher I ever had. I might have had some, but it certainly wasn't visible to me, not something that I remember having happened. We were encouraged to be aware.

[End of Tape Two, Side Two]

JS: In talking about your college experiences, Judge Belloni, we didn't talk about your field that you were occupied with. What was your major in college?

RB: I majored in science. My goal was to go to medical school and become a doctor. But that didn't work out for reasons that I can tell you a little later involving my war experiences, but my degree was in science.

JS: Well, I should correct myself because we did talk a bit about that, and what I was thinking of was a reference in an interview that you had with Peter Tugman years back. It was in *The Oregonian* and in which he said you had majored in history, or was that an earlier major?

RB: No [*chuckles*]. When you said you had to correct yourself, I was thinking that I've got to correct myself, too, because my major really was not in science. It was in history, that is correct. I remember Peter Tugman. I don't remember the interview, nor the article, but the reason my major

wasn't in science was because the University of Oregon didn't offer a degree in science at that time. Whether they do now or not, I don't know, but I took really almost enough history, I think I did, I took enough credits in history my final year in school to fulfill the requirements for graduation. Enjoyed it tremendously, but I never had any idea of ever using my history studies in any kind of a form of livelihood. It was just a very enjoyable course of study and it caused me to be interested in our history ever since that time.

JS: What kind of history appealed to you? There are so many different categories: political history, and social history, and economic history, and biography and—

RB: Oh, we took all the traditional—history of Western civilization. There was a kind of a fad, I think, for history departments to have courses like modern Russia and modern Japan, and modern this and modern that, and so I took my share of those, but my interest in history is pretty general. Our own, of course, mostly, but you can't understand our own history without knowing more about the history of the rest of the world.

JS: That's right. After college you got your undergraduate degree. What year was that?

RB: I graduated in 1941. Of course, that's the year the war broke out. You want to know about my first employment?

Work After College

JS: Well so when you graduated, the war had just broken out so there's a period between then and your getting into the war, is that right?

RB: That's right.

JS: And you started working.

RB: Actually, graduation comes in June, and the war didn't start until December 1941. I did take employment immediately upon graduation with the Eugene office of Commercial Credit Corporation. The pay, as I remember, for a college graduate, and this was a fairly desirable job, was \$90 a month. The first job I had with them was the worst job that I ever had in the sense that I hated it worse than any other job I had. *[laughs]* It was collecting for cars and appliances and if I didn't get paid, I was to repossess them, so I repossessed a lot of cars.

But the [military] draft, of course, was already on. At least people were going into the service like crazy at that time and I think the draft was on, but you know, it's a long time ago, I'm not sure. People who were superior in grade in the company than I were going into

the service in droves so in no time at all I received several promotions and moved into the office in Eugene and hired other collectors. We called ourselves "adjusters," but we were collectors and repossessors of cars.

JS: May I ask, what was the experience? Did you find yourself having to be particularly tough with people? How did it sit with you?

RB: Well, it was mainly a matter of finding people. You were practically a detective because cars have wheels and they move without much of a trace. Once you found a person you were looking for and the automobile, generally, it wasn't all that unpleasant. People know they either pay for their cars or they're going to lose them. But I did have some experiences that I didn't like, unpleasant ones. Just generally it didn't take me long to discover that working for a finance company wasn't my cup of tea.

Now, filling in the gap—about that time my father was not well. In fact, he died in February of '42, I believe, not too long after the actual beginning of the war. So I left Commercial Credit and went home, to Myrtle Point, and worked in my father's business a little. But it wasn't too long after that, I guess I stayed there until I actually went into the service. I think it was in '42.

Military Service

JS: You were drafted, and what was the experience of getting into the war? How did you feel about it, and what was the experience like as you moved from one stage to the next in this new involvement?

RB: O.K. Roosevelt's announcement of the war that Sunday morning, December 7, 1941, I think everybody who lived that period remembers the day and remembers where he was on that day. I certainly do. I happened to be at my parents' home in Myrtle Point and the whole family listened to the radio broadcast together. We were shocked along with the rest of the country, and, really, almost totally unprepared for the actual commencement of war. Of course, we had known of the deteriorating situation but somehow or another it surprised us all when the announcement was made.

I have tried to describe this situation to a lot of young people, particularly those who were being prosecuted for draft evasion later in my career, for not wanting to go to Vietnam. The two situations were just totally unlike. Really, I remember that there was almost immediately a total war effort in this country. I wanted to help out. My friends all wanted to help out. I don't mean to say that any of us were anxious to go over there and get shot at, but most of us would prefer going over there to get shot at than to not do anything at all. I had a draft number that was about to come up, but I actually volunteered to the draft board. Each little district had a

quota they had to fulfill, and if people would volunteer through the draft board, then our area got credit as fulfilling the quota to that extent.

I got a short deferment because my father was ill. I think he died before I went in. Sorry, I can't remember those dates. But then there wasn't all that much reason for me to remain. My mother had always worked in the business. She was able to carry on during the war years and so I went into the service. We went to Fort Lewis where we were tested physically and mentally and classified. I was sent to the medical department because I had taken pre-medics in college. I thought a lot about going to medical school at that time and made some applications. They had not yet been acted upon. I withdrew those applications because I didn't really want to go to school for four years while everybody else was fighting in the war. It's strange to even hear myself say that because I was not then and am not now any kind of hero, but there just seemed to be compelling reasons to participate in this war. I think we all understood the real seriousness of it. I think we understood that if the Japanese themselves had realized their own potential after they destroyed our fleet at Pearl Harbor, and that they could have invaded the West Coast and, very likely, fairly successfully. We were aware of those things. We were aware we were not out of the woods yet. I wouldn't have been happy and I knew that, to be going to school, taking a course that we thought then would probably last

much longer than the war would. None of us had any idea it was going to take so long to fight [that war], whether we won or whether we lost.

JS: How long did you think it would last?

RB: Well, I think we all thought that, particularly since they didn't invade us, they goofed, that we could quickly start turning out guns and tanks and we'd get it over in a year, kind of like people in the Civil War. Both of them thought they could put that away in a few months. It also lasted many, many years. But, it's not the way it worked out.

From Fort Lewis, after I was classified as someone who should be in the medical department, I went to Abilene, Texas, where the medics usually train, but I wasn't there very long. My Army General Classification Test, sort of like an I.Q., but not an I. Q., was high so my commanding officers sent me to Officer Candidate School. You do apply for Officer Candidate School but you are really sent there. You really don't have much choice in the matter [*chuckles*]. So I was sent to San Antonio, Texas, for officer candidate training and finished that rather easily. I remember that [out of] my particular class of perhaps 750 candidates, I received the highest academic standing and at our graduation ceremonies I got to shake hands with a general in front of the ceremony. I didn't find the course of study very difficult. It was tough physically, but

I was in good shape and I rather enjoyed that part of it.

Then I was assigned to a unit in Camp Ellis, Illinois, and this was where medical units learned how to work together, assigned to the 43rd Field Hospital. A field hospital is a very mobile outfit that reminds you very much of the current MASH [Mobile Army Surgical Hospital] series on TV. It's really that kind of an outfit. It almost makes me homesick to see that show because it's so nearly like what it really was. We divided into groups of three platoons, it was called, and advanced always forward. Had no plans for going backward. Fortunately we didn't ever have to.

We were always advancing. I don't know for sure what we'd have done if we had to retreat because we hadn't any plans to do that. So that one-third of the unit was really on the front line in small arms fire country, with sometimes artillery going over your head, sometimes both ways. Your own, and your enemies' passed overhead. But then as the war progressed the back part of our unit, the third platoon, would advance forward and so there was always one of the platoons in a rather safe area and one in a very hazardous area.

We did everything that you can do in the medical field. Real difficult surgeries performed under battery lights in war tents. My designation in that unit was Detachment Commander, as a 2nd Lieutenant. This means that I was immediate commanding officer of 190 enlisted men and I was very young, twenty-two, twenty-three, I guess,

maybe twenty-four. But these people were all technicians, medical technicians, surgical, dental, eye, ear, nose and throat, chaplains' assistants, cooks, mechanics, so there wasn't much command to it, it was more of an administrative position. I really didn't have many command decisions. I suppose I hated every day in the service, but it gave me some strengths that I would never have achieved without that experience.

JS: What would you say those would be?

RB: Well, at that young age, to be making decisions. Some of the decisions I had to make, for example, was where to set up our front unit hospital for our own protection as well as the utility of the hospital. And if you make mistakes you're apt to be wiped out by hand grenades or artillery or whatever. Indeed, we did lose a number of our people, both officers and men. In times of real stress, often I was asked to make decisions which affected the lives of the troops. I made them, some of them weren't perfect. I don't think any of my decisions caused the death of anybody, but we did lose men. But that war experience, together with early experience in my life which I mentioned before regarding the knowledge of the struggle of my great-grandmother, sending her kids to the United States, and of my grandfather, of my father, those two things, my family plus war experience, has enabled me to do a lot of things in my later life that I just probably

wouldn't have had the courage to do except for that experience. As a matter of fact, most of the decisions I've had to make since then have been rather easy ones in comparison to those my forebears made and that I made myself during the war.

But when we were in the front lines, we were right in the midst of fighting. Before this interview started, I mentioned a National Broadcasting Company report by Robert St. John, who was quite famous at that time as a war announcer. You mentioned I might leave that as part of the record, which I'm glad to do. It tells generally of a little skirmish that my unit had in the middle of the night when a guard wasn't sure whether he saw something moving in the shadows or whether it was just wind, and it turned out to be a Japanese raiding party.

They actually invaded our hospital area, simply tramping down the Geneva cross¹ as they went, set up a machine gun nest right in the middle of our well-laid-out company street. We fought back with the weapons which we weren't even supposed to have had, because we knew that the Japanese didn't pay any attention to the Geneva Convention. We would have been in trouble with our own Army had they known we had these weapons, but we had them. I think most every service organization that I know of overseas had weapons, whether they were authorized or whether they weren't. We probably saved some lives by having those weapons against Army regulations. Anyway, here's a copy of the NBC broadcast.

Philippine Islands and Japan

JS: Well, thank you. So you lost a few people on that occasion?

RB: Yes, we did, we lost some officers, doctors and several enlisted men.

JS: Patients? Is that right, would they have been patients?

RB: No, they were my men. We didn't lose any patients. We certainly could have, but we didn't. This took place in the Philippine Islands. We landed in the Philippine Islands in the Lingayen Gulf of the island of Luzon with the very first troops to invade that part of the Philippine Islands. As I recall it, some of the southern islands, Mindanao, some of the others, had already been retaken. We had landed on those islands. There were a lot of other experiences in the Philippines. One I think would be worthwhile mentioning. The Lingayen Gulf is north a couple hundred miles from Manila Bay, so after we'd been there awhile, a good share of the city of Manila had been retaken by our troops. I think even General MacArthur had made his famous landing there a few weeks earlier. Our troops were involved in the process of retaking part of Manila, the part they had taken was the part north of the Passig River, which runs through the city of Manila, divides it in two. The part south was still occupied by the Japanese, but we held the part that was north. There was

a hospital, I think it was called St. Luke's Hospital, that was on the north side. I was sent there with a team, one administrative officer who was myself, and three doctors, and a couple of sergeants. It was our job to go down and receive that hospital from the Japanese soldiers—

[End of Tape Three, Side One]

RB: So we drove to Manila in a couple of Jeeps, and found the hospital. The area was all under control of American troops. The hospital was still being operated after a fashion. I don't think they were taking care of patients, but they had custodial care of it, by Japanese medical officers, who, when we went there, met us. They knew of our mission because we had communicated with them before. They took us on a walk-through, through the hospital. I remember that it was just terrible, it was just filthy dirty and there were a lot of patients there, badly injured patients, who really weren't receiving any care. I don't think any of us blamed the Japanese medics for this. It was just the situation. They had a battle on their hands and they weren't able to do very much. But this was actually a friendly takeover, no shaking of hands. They bowed to us and showed us around and then they were taken prisoner.

So, we assessed the situation, sent for more medical personnel, and then took over the hospital, started operating it immediately. I remember an internees' camp at the university there. I think it

was called St. Tomas, Santa Tomas, I believe. And it was a university, but it had wrought iron gates all the way around it, decorative wrought iron gates.; inside the decorative gates there was a bunch of barbed wire and a lot of people, mostly Caucasian, inside of this. And they were people from all nations, allied nations, maybe even some Germans. While we were not part of the military government, we had no way of doing anything at all. Nobody even knew who was inside of Santa Tomas University internees' camp. Besides, we weren't armed. There was nothing we could do except talk to some of these people through the wrought iron gates, and they were madder than the devil because here was America now in command, and had been for ten or twelve hours, and they weren't let out yet.

I remember that there was gangrene signs posted all over. People had died in there and were buried in shallow graves. I guess it was very dangerous to even come in contact with gangrene, so there were lots of warnings around. I remember at night that since we only had the part of Manila north of the Passig River, and the Japanese still held the area south of the Passig River, our fleet was outside firing on the south part of the city. We could observe those shells coming in. They appeared to be heading right toward us. Of course, they weren't [*laughs*]. They were headed for the southern part, but it was a pretty eerie feeling. I remember all kinds of rumors that were going about. You could hear almost anything.

I remember that one of the rumors was that the Japanese were trying to get away, and even Philippine people. Rumor was that they'd go toward the river, and that the river was filling up with bodies, and pretty soon they'd be able to walk across on the bodies. Of course, that's a very large river and that was totally ridiculous, but that was one of the rumors we heard and partially believed. My duties there only lasted two or three days, and I went back to my main duties, but this is one of the things that I remember so well.

JS: They, internees in Santo Tomas, did they get let out after a short while?

RB: A short while. They had to find out who those people were, where they came from, and whether they were friends or whether they were enemies. But I remember how angry they were because here we were walking around outside and they were so happy to be liberated, except that they weren't liberated; they were still in there. No one could really blame them, but you couldn't blame our military government people either. They couldn't just let them out without knowing who they were.

JS: Mm hmm. The story of the rumor of the bodies in the river does give a sense of the horror of the scene. Have the war recollections been painful at times to go back over?

RB: Yes. They have been. I can't say that they are any more. But, I was jumpy for

a long, long time after. Whenever I heard a small arms fire from close distance, and like the experience related by Mr. St. John on the NBC broadcast, enemy activity, as far as we know it, always took place at night. They always made raids at night and one got so that he hated to see night fall because sometimes it was pretty horrifying. I suppose I was uncomfortable at night for many years after I returned home, but no longer. Neither the sounds of a firearm nor darkness bothers me any more, but I suppose it did for the first five years after I was released from the service.

JS: Mm hmm. Was Manila the end stage of your service, or—

RB: No. We moved on to Japan. We loaded up for Japan expecting it to be an invasion on the island of Honshu, the main island of Japan. We were at sea August 15, 1945, when the first of the atomic bombs were dropped. We knew about it. The shipboard news told us about it. We continued on, still thinking that we were going to be invading. We were ready to land in Tokyo Bay at the city of Yokohama. It was September 2 that the surrender actually occurred; we landed September 3. We were held outside of the harbor in our battle-beaten-up old LST ships while the surrender ceremony was taking place in the shiny battleship Missouri. But it was a mighty happy day anyway when we realized that this landing was not going to be one in which we were shot at like we were when we landed in the Lingayen

Gulf in the Philippine Islands. We did get in there on September 3rd. The Emperor had told his people, "The war is over, lay down your arms." And that's exactly what they did. We walked the streets that night in Tokyo in safety. Three days earlier we'd have been torn apart if we'd walked those same streets in American uniforms. The trouble with the Japanese people was really very minimal. I think there were a couple of very small attacks on Americans. Americans were attacked by a group of hotheads, but they were dealt with severely by their own government. For the most part, it was a very strange feeling, walking up and down the streets of Yokohama so soon after the war in total safety. In fact, there was a lot of camaraderie, a *lot* of camaraderie between the Japanese people and us. I remember getting acquainted with an old lady. I called her "auntie." She was eighty-five, perhaps ninety years old. I asked her, "When all these bombers were flying over, weren't you frightened?" She said, "No, I knew the Americans wouldn't hurt me."

JS: [laughs] Really?

RB: Yes. We were invited into homes. Went. They liked to display their art works, in particular the kimonos that their daughters wore. Beautiful things. We were intending to go in fighting. We were a medical unit and we were just loaded with Jeeps and ambulances, none of which we needed, so we were pretty much allowed to drive around as we saw

fit; and we saw an awful lot on Honshu at the time. Oh, yes.

We set up our hospital, though, as we had planned. We set it up in an old kind of half-way destroyed school building. And the military government people moved in as our patient, Prime Minister Tojo, who had tried to commit suicide—failed. He was under heavy guard, usually an American officer guard rather than American enlisted person guards. Because I was Detachment Commander and had the responsibility for space allocation and supplying our own people to run our hospital, I was able, one time, to see him. I had and still have a Samurai sword which I got on a battlefield situation in Manila, and I still had it with me and I knew that people were knowledgeable about Samurai swords, could tell something about the history of this particular sword, the Samurai family involved, and so I took it in and showed it to Tojo [*chuckles*].

He wasn't very receptive. He wasn't belligerent, he was apathetic more than anything. After all, he tried to commit suicide and was pretty well disgraced because he didn't do it successfully, and besides that, everybody blamed Tojo at that time for the war. All the Japanese people blamed Tojo. All the American people blamed Tojo. Everybody did. I mean, obviously he wasn't the only person that caused that war to be fought, nor lost, but he was certainly the scapegoat, and everybody hated him. Anyway, he wouldn't talk to me, though I understood

he spoke very fine English. He talked to me through an interpreter. He told me something about the family, but it's so long ago, and it was so meaningless to me at the time that I can't remember. Japanese names are difficult, but I still have the sword to this day. I was there six months. Meanwhile, the U.S. military was simply falling apart. They were sending people home so quickly that it was really kind of hard to even administer the little hospital that we did have going because we were losing our people so quickly. But finally, I went home myself—[I'm] trying to remember when. I guess, early '46, perhaps January. I think I was discharged in March '46. That was the end of my military service.

Marriage and Law School

JS: During this period, it's such a, literally and figuratively, a spiritual experience—and a foreign experience is perhaps a better term—with time to think and being out of the context of the ordinary life. What were your expectations when you were over there, anticipating what things would be like when you returned?

RB: Well, you thought about home every waking moment. I must compare some to the Vietnam situation. It was just so different. We knew that when we arrived home we would be welcomed, not only by our families, but by our communities,

and that there would be a very good feeling between us and the people that we saw at home. We were almost heroes. Not really heroes, but certainly we knew that we would be welcomed by people, even people we didn't know would be glad we were home. What a contrast to the Vietnam situation when those young soldiers returned under almost totally opposite conditions. I suppose what I thought would happen really did happen. I remember the overnight transition from a peacetime America to a wartime America and the magnificent way it was done: quickly. I started to say efficiently, but that's the wrong word because there were all sorts of mistakes made both in military and civilian life, and sometimes you wonder how we ever won the war, but it was amazing how quickly the wartime transition was done. I felt that probably the peacetime conversion would be something similar to that, and I think it was. I think that the peacetime conversion came about relatively smoothly and quickly.

JS: Did you think the depression would continue, the depressed economy would continue?

RB: I don't know that I thought about it that much [*chuckles*]. Every person coming home had his own personal concerns and one of them that concerned all of us was what we were personally going to do now. I gave up medicine for good, there was just no way I could undergo a life

of being sick every time I operated on somebody. Had no particular idea what to do next. I did go home to the little family business, operated it; but it turned out to be a not a very satisfying thing to do. The old World War I song, "How you gonna keep them down on the farm after they've seen Paree!" Well, it was kind of the same thing, I just wasn't happy to be back in my father's old business, but really didn't know much what else to do either. I didn't give too much thought to going on to graduate school. Had an offer to come to McMinnville by a doctor who was the father of a good friend of mine, who operated McMinnville Hospital. He asked me to come up and be their administrator. I had some experience administering in military hospitals, and so I accepted.

Got to go back a bit because I met a very wonderful nurse who was in my same outfit overseas, working under the same conditions I was, very primitive, hard-working conditions. We liked each other and decided to be married, and we were very shortly after my return from overseas. In short, we lived together for almost forty years, had two children, a boy and a girl, but we did grow apart. We were separated and divorced a few years ago. We're both remarried now. Her name was Doris.

Anyway Doris and I moved to McMinnville. I administered the hospital and she took a job in her own profession, nursing, and she nursed at the same hospital. I wasn't any happier there than I was in Myrtle Point. I make a point of this

because almost everyone I knew that had returned from the service felt almost the same as I did. They'd been in the Army for four years. We were suddenly civilians. We needed to earn a living. What to do now? I realize what started all this lengthy answer was you were asking about what I thought about the economy and what I expected, and I just don't remember because that didn't seem to be very important to me at the time. Just trying to find myself, to find a life's work. I didn't like administering that hospital any better than I liked running the business at home, so I decided to go to school, and for no better reason that I can think of than that I couldn't think of anything else to take, I applied for admission to law school. [JS laughs]

Not a very dramatic way to decide to go to law school, but that's what happened to me. I know now that accidental as it was it was a very, very good decision. I really liked law school. I had to work very, very hard. I remember Judge Alfred T. Goodwin, later my colleague on this court, was my classmate and a very good friend. I remember that if he needed four hours to study for the next day's lectures, I needed about four times that much, sixteen hours. It didn't come easy, it came extremely difficult, but I loved it. It was a very happy decision I made, no matter that it hadn't been planned very far in advance, or if it didn't occur with articulable reasons at all. I just decided to go to law school and went.

Memories of Ted Goodwin

JS: How did you meet, not Judge Goodwin, but Ted Goodwin, at that time?

RB: Well, we didn't know each other before we enrolled in law school, but we were both freshmen in law school at the same time, and he was a married student, I was a married student. We had a small but close class, so we simply became friends. Later, though, we were very close. This was partly because he became editor-in-chief of the *Oregon Law Review* and I was on the staff. The *Law Review* staff consisted of only four people. I was head of one of the editorial sections of the *Law Review*. And then the *Law Review* had an office, and the four members of the *Law Review* did all their study in the *Law Review* office, so we were together every day. Indeed, at the end of the time, at the end of our studies, we took the bar exam together in Salem. We roomed together at the Senator Hotel [during the exam], so we were close.

[End of Tape Three, Side Two]

RB: What was Ted Goodwin like at this time? In the first place, he is one of the most brilliant people that I have ever, ever known. I remained pretty high in my class at law school but it took me, as I mentioned, so much more effort than it did him. If he was number one, and I was number three or four, he'd be so far ahead of me [chuckles] that there'd probably be

the same distance as my number three position to the last in the class, you know, one hundred twenty-four of us when we started. He's a brilliant guy, but very down to earth. He was then just like he is now, as our Chief Judge of the [Ninth Circuit] Court of Appeals, who administers a court of well over one hundred district judges now and thirty or forty circuit judges. Come into the Pasadena parking lot where his chambers are and you see all kinds of fancy cars out there, but the fancy cars all belong to the clerks and employees. When you see a beat up old pickup, it belongs to Ted Goodwin. So that's the way he is now, and that's the way he was then.

He was only in practice three years when he was named Circuit Judge of Lane County by Republican Governor Paul Patterson. Oh, before that, though, I remember the first, (I've kidded Ted a lot about this since then) the very first jury trial I ever had was with a fellow by the name of Harry Shepherd, who still runs Shepherd Motors in Eugene. He had a case against a fellow for not paying for his automobile. It wasn't just a collection, it was really a genuine dispute about what the agreed-upon price was. Anyway, it was to be a jury trial. I'd been in practice about a week, I think.

Anyway, Harry Shepherd went to Ted Goodwin who was in the firm of Vonderheit and Darling in Eugene. The case didn't amount to much, and so he probably wanted a young lawyer because it'd be cheaper. (Valid enough reason.) Anyway, the actual trial was to

come up in just a couple days so he went to Goodwin, and Goodwin said, "Well, look, Mr. Shepherd, I just haven't had any experience in this kind of work at all, but I have a friend in Coquille," (incidentally, that's the place the case was to be tried) "and he's real good at this sort of thing." He didn't bother to tell him that I was in the same class he was and had the same lack of experience as he did, but I tried the case before a jury, and won it, and I always did think, and still think, that one reason I won that case was because the jury was sorry for Mr. Shepherd because he had such an inept lawyer [*chuckles*]. But whatever the reason, we won, and, as I say, I've had many occasions to kid Goodwin along after that. He became Circuit Judge after only three years in practice.

Anyway, two years later Robert Holmes was governor and I'd met and known him in some earlier political activity, and so he appointed me Circuit Judge in Coos and Curry Counties, the same judicial district as Lane County. So frequently we [Goodwin and I] would work together on the court. He would be in Coquille trying a case or I'd be in Eugene trying a case. Sometimes we would actually trade trials, not just for the heck of it, but because for some reason he had a case that he really shouldn't have handled because of knowledge of the matter or the people. He would call me and I'd head out from Coquille. He'd head out from Eugene and we'd actually pass on the road, and sort of wave as we went by, and I'd take his trial and he'd take mine.

We were pretty young to be Circuit Judges. I was thirty-seven, he was substantially younger than that, and that was very unusual, very unusual. At that time judges were appointed as a sort of reward for long and honorable service at the bar; that's how one became a judge. But about that time people got to thinking that it's a very demanding job, very physically demanding, and perhaps we should have some younger judges. So Patterson appointed Goodwin, and Charles Woodrich in Roseburg, and they were my era of people. They distinguished themselves so well and so quickly that the public and the bar were really pleased with what they were doing. I credit the fact that I was appointed to the success of the appointment of another young man. Had they bombed out, I think the days of appointing younger men to the bench would have been delayed a long time.

JS: Really. Ted Goodwin was an Eastern Oregonian. Knowing him, what did you see in him that was sort of different in that way?

RB: Oh, he likes to act like an Eastern Oregonian. He genuinely feels that he's sort of a cowboy, which he is. He was called Tex, T-E-X, in school. At that time, a lot of the Western movie actors were referred to as Tex. It didn't have anything to do with Texas. That was a cowboy name, and some of us still call him Tex. I call him Tex, or Ted, interchangeably almost. Still, I notice that he isn't called Tex very much

anymore, but probably because nobody really knows that's what people called him for years and years.

He was then appointed to the Supreme Court of Oregon after a short period of time. Now this was by Mark Hatfield. And I, not too many years later, was appointed to the position I now hold, to this District Court. I actually persuaded, I think, Ted Goodwin to come to our court. Judge Kilkenny was about to retire, leaving a position open, and I wanted him to be my colleague here. I was just almost sure that he would get it if he wanted it. When I was talking to him I prophesied that he would go to the [Ninth] Circuit Court [of Appeals] within a very few years if he would come to our court. But he really likes the trial work better than he does the appellate work in the first place, so he agreed to come. He made his availability known and he was appointed.

An amusing sidelight is that Ted's brother, Jim Goodwin, is also a fine friend of mine. He was practicing in Oregon City. I lived in West Linn at the time, right next to Oregon City, and so I went to my friend Jim Goodwin and said, "Look, I'm gonna try to persuade Ted to come to our court."

Jim said, "Oh, it would be a total waste of time because he's very happy in the Oregon Supreme Court, and why would he want to come up here?"

And I said, "Well, all right, I'm a little bit discouraged, but I'm going to do it anyway."

And I did, and much to Jim's surprise, he did come. As I had predicted, he was on

the Court of Appeals a few years later. My relationship with Goodwin has been of fine memories. He has been a fine friend and I value that friendship very highly.

JS: You were living in Amazon Flats, I've read, and Ted Goodwin—was he married at the time and also living there?

RB: Yes, he was married at the time. He did not live there. He and Mary had an apartment in town, but we came together often, probably because our class itself was a very close-knit class. We still have reunions. We just had our 35th reunion, a year ago. Plus the fact that we were both married students gave us another common interest and our wives liked each other, so I don't mean to say we socialized a lot, we did some. Actually, we didn't socialize very much; we were busy studying all the time.

Inspiring Teachers

JS: I wonder if you could describe to me how your interests in the study of law formed. What subjects really began to draw your attention, what areas of law you developed a real interest in?

RB: The best teacher that I ever had, first grade through graduate school, was Dean Orlando John Hollis. Still alive, still living in Eugene. You might remember that he succeeded Wayne Morse as dean at the University of Oregon. Well, he was my first dean, and the school was small compared

to what it is today. I think there were only about a half dozen instructors all together. Dean Hollis was the administrator; he was also a teacher. He taught all freshmen a class called Common Law Procedure, and we did learn common law procedure, but it was more of a course in history, legal history, with a good smattering of ethics and a good smattering of common sense treatment of the law. He just made it come alive for us, tracing the common law from England to our own country and then as applied by the states. Practically everybody in his class wanted to learn. And the other professors: Professor Charles Howard, absolutely an outstanding professor; Kenneth J. O'Connell, who later became a member of the Supreme Court of Oregon. I still haven't run across anybody who could make one understand the law of real property as well as he. And several others, just outstanding professors.

We took, at that time, just basic courses, there were practically no electives. Most of those of my generation think there still shouldn't be very many electives, because you only have three years to learn all this. Certain basic courses, such as Contracts, and Torts, and Evidence, and Constitutional Law, Trusts and Mortgages, Financial organizations, Corporations, and so forth, are actually essential, and they're difficult courses and they're major courses. So if students are allowed to take too many electives, some of those they're going to have to leave out. One can be a graduate of a law school, I suppose, without taking

Constitutional Law. But I would not call this person a lawyer who hasn't had Constitutional Law. He's just a graduate of a law school.

You asked me what course I liked the best and I really can't tell you. I think I profited most from Orlando Hollis' Common Law Procedure, but not because of the procedure I learned, because procedure, after all, is kind of a dull matter. It's about the only dull subject that I can think of in law school. But to learn how many copies of a complaint you should have and where you should take them after you have them typed up is not a very interesting subject. But he made the course an interesting subject. And in those days, totally different from now, most people who applied for law school got in. In my class, there were 125 started. Every one of the 125 was male. Every one was a veteran of World War II. Three years later, twenty-four of us graduated. It's this group of twenty-four that's still close, and we still have our reunions.

JS: Did Professor Hollis, or other professors, fraternize with students at this time? What were relationships like?

RB: Orlando Hollis was, and is, a very formal person. You have to just know him for years to see the warmth that he really possesses. Students were in awe of Orlando John Hollis. Remember that they were 125 veterans of World War II. I told you something about my experiences. I

am sure the others had experiences which were similar to that. Yet, when we were singled out in class by Orlando John Hollis to make a recitation on a particular case, there wasn't a one of us who were not shaking in our boots because [*chuckles*] he was so exacting. He was a disciplinarian. I suppose a disciplinarian shouldn't have bothered a bunch of soldiers, but he did. My classmates, I think, would pretty well agree with this, that we held this guy in total awe.

We didn't socialize much with professors; but maybe because Orlando John Hollis himself realized that people were not comfortable around him, he sponsored and held some events. They called them "smokers," I think. We'd get together and get to know each other a little bit socially, but that's all. That occurred maybe once or twice in a year.

Years later, now, I consider Orlando John Hollis my friend. He still calls me Judge Belloni, he would never call me by my first name [*chuckles*]. I still call him Dean.

JS: Is a smoker a fight?

RB: That's what a smoker is, but I can't remember it being that way. I think we just met and had refreshments and little silly games, and visited. There wasn't much alcohol involved. I don't think, although there wasn't any sort of a rule. Part of it is that we were all broke and we couldn't afford alcohol.

JS: I wonder if you could tell about the sort of experiences, the assignments that you had working on the *Law School Review*.

RB: It was an awfully good education. We authored articles for the *Law Review* ourselves. Usually we would take a recent case by the Oregon Supreme Court and look at it analytically and, usually, critically. We had good instruction, that is, as members of the *Law Review* staff itself. We were senior students and we assisted the first-year and second-year students in writing the articles that they wanted to publish, as indeed senior students had helped us when we were underclassmen. I authored a couple of articles. One had to do with railroad crossing signs, and one of them had to do with wills and contracts to make a will, and I was able to go way back into early English history for some of my sources. It was just a fine learning experience. The publication itself is very useful also. The students authored some articles that were intended to help the practicing bar, and they did to some degree. However, the best articles were not written by students at all. Oh, some of them were, some really good ones were, including some written by Judge Goodwin. They'd be written by practicing lawyers and professors who were graduates from our school or some other law school. As I say, it was a good learning experience. Everybody who was ever taught anything, including

yourself, knows that you learn an awful lot when you try to teach others.

JS: At the University of Oregon at this time, say, from Dean Hollis and your other teachers, were you made aware of the general approach to law at that time? Were you aware in particular of the approach that began in Harvard and some other places early in the '30s of getting away from law based upon study of cases and bringing in other factors? What was the general approach to law?

RB: During my time in law school, I would say that ninety-five percent of our instruction was the analysis of cases. It was almost a total case law methodology. Cases were well selected and they were put in case books, properly indexed to the subject that you were trying to learn, and we simply learned from the opinions of judges. I don't remember that we even had any textbooks. I'll take that back; we did have books, we called them hornbooks, but we didn't have assigned reading in hornbooks. They were available to us so that we might put in context the cases that we were studying, but essentially this was a total case law instruction method that we used. The only reason I don't make it one hundred percent is that people like Orlando John Hollis taught us a lot of history in the process, so that wouldn't be casebook method.

This business of teaching law by studying textbooks came after my time. I

know that I got a mighty fine education in law at the University of Oregon using the casebook method. I have a natural bias toward that, but I lack experience in any other kind of teaching so I'm not able to say [that one method is superior to another]. Of course, you study all the time when you're a judge. We still study cases, but our education comes now, once you're in the system, through the Federal Judicial Center, and those are by way of seminars, usually by our fellow judges, who've made a particular study of a particular field of law which you want to learn. So our continuing education really can't be called a casebook method.

[End of Tape Four, Side One]

Early Days as a Lawyer

JS: We had been talking a bit about your experiences at graduate school and so forth. I guess the next subject to look at, at least briefly, is your experience of the bar, which I guess, over the years, has been a sort of a changing experience for people. How was your experience?

RB: Well, yes it has taken a great deal of change since I took the bar exam. The practice at that time was, after receiving your degree, the study [for the bar exam] would be entirely on an individual basis. Most of us stayed around the law school the summer of graduation for a couple

of months until the bar examination took place in August

At that time, perhaps still, I don't know, it was held at the state house in Salem. Now, though, the study for the bar exam is pretty much organized. People take bar review courses, and they are very effective in preparing people to take the bar exam because they study old exams and have an awful lot better idea of what to expect than we did. I'm not making any judgments about which is the best way, but it was a very important time in our lives.

At the time I started law school, which I guess was '47, most everyone who applied and had decent grades at all was admitted, and the elimination came during law school. For example, in my class, which graduated from law school in 1951, 124 of us started and, I believe this is accurate, that everyone of the 124 were veterans of World War II, and they were all male. The elimination of our numbers came fast so that three years later, only twenty-four of us were graduated out of the 124, and of that twenty-four, only nineteen of us passed the bar exam the first time. I think my other classmates, the other five, did later pass the bar exam and become very effective and fine lawyers, but we knew those statistics.

That's changed now, too. It's much, much more difficult to get into law school now, and most of the people who are admitted actually finish. So knowing that the mortality rate would be very heavy,

taking and passing the bar exam was about the most important event in our lifetimes. We were about to let a whole lot of schooling either come to fruition or go down the drain, so it was a very serious and very studious and thoughtful time in our lives.

While our study was individual, I was fortunate in that I had good friends and, maybe this is repetition, but one of them was Alfred T. Goodwin, now my own Chief of the Ninth Circuit. We studied together because we were members of the *Law Review* and we officed together. But he, I remember, was an awful lot more confident than I was, [chuckles] and for good reason. One, he was a better student than I.

But, indeed, I did pass. I think it was a two-and-a-half-day stint. It was all objective type questions, which also is now changed. I think there is one day now of objective type questions, and one day of a national exam, which is simply a multiple choice thing. I think the objective type questions were two full days which took, incidentally, a great deal of energy, as well as knowledge. Was probably the best test, but I can understand why they almost had to go to a national exam with multiple choice questions, because of the grading, the effort the bar committee had to go through on the grading of those papers. It must have been a tremendous effort on the part of those volunteer lawyers.

JS: Have you heard people talk about having to grade those?

RB: Yes, I have. Some of my friends have been on the bar admissions committee and have had to grade papers. It was really a real sacrifice to do it on a voluntary basis. Anyway, I did pass, and cast around for a job. I wanted to go back to my roots, down in Southern Oregon, southwest coast, Coos County, to be specific, and did so. My first position was with an attorney named J. Arthur Berg in Coquille, who to me was the most reputable attorney down there. I thought I was fortunate to be employed by him. I will have to admit, as I did to him at the time, that I really didn't consider this to be a permanent relationship as far as the rest of my life was concerned; I wasn't even seeking a partnership; I really wanted a sort of an intern-type practice.

He paid me fairly, as much as the rest of my classmates got, so I worked with him for a year, learned all sorts of things that you don't learn in law school, how to get from one office to the other in the courthouse building, how many pieces of paper do you take along when you file a complaint, or how you get into the jail when you have a prisoner in there that you're trying to represent. You can learn all those things if you just hang out your shingle, too, but its rather expensive that way. This way, I at least got paid, and was able to do my employer some good while I was learning.

JS: Did it make you feel critical of some lacks in the law school education, the formal education?

RB: Not really, Jim. You have so much to learn in three short years of law school that it probably isn't necessary to teach students the mechanics, the plumbing, of how things are done. I'm not critical at all. I think if anything I'm more critical of present day education, where the faculty teach students most anything they want to take, whether it's good for them or not. We dealt, in law school, pretty much with legal theory. We learned to think as lawyers, we learned to analyze and rationalize, and try to understand the gist of the problem. We'd read what the judges of, particularly, the United States were doing; and from that the faculty would help us tear those cases apart and just figure out what the court was talking about and what they're likely to do in a similar situation.

The other thing is we had no electives. The first year we had no electives, the second year we had no electives, the third year, when it finally came spring term, and you'd almost finished your curriculum in the first place, they let you make a few choices. You could take environmental law, you could take Indian law, you could take the law of the stratosphere, under the ocean law [*laughs*]. All of those things which, with the background that we'd already attained, we could pick that up on our own without any faculty member even assisting us. Now, most of my generation are critical of present day legal education because, as I said, they'd teach a student almost anything he'd want to know and

the student is not ready yet to make those decisions. I do think, though, that after this wide swing to electives, there are so many people of my generation and ten years younger than I that have been urging them to go back to the basics, I believe there's a swing in that direction now.

I was not critical at all of law school. They not only didn't teach us the little plumbing matters, we didn't even know quite what to do when a client entered the office, because we had no interviewing skills at all. But you pick those up, and since we're talking about my early practice of law, your fellow members of the bar, the older members, took a serious responsibility for teaching the young lawyers and they did so. I was in a small bar, only fifty-five members in the bar at that time, the Coos and Curry bar. Incidentally, they probably have two hundred members [of the bar] down there, and the county isn't any bigger than it was then; but that's about how many we had. We'd have a couple of meetings a year, annual and semi-annual, and the elderly lawyers would tell us, "Let's make the law look good. Let's be competent, and if you younger lawyers want some advice from the older people, just give us a ring." And, we would do so unless that older member's law firm was actually involved in the litigation; then of course, we would not. We had lots of jokes about it. Joe McEwen was one of my mentors, and in a way he was a competing lawyer, but I'd always feel free to call on Joe

McEwen, and so did many of my younger colleagues. One of the jokes was that somebody comes in your office, you call Joe and say, "Joe, I've got a client in my office, what do I do now?"

So it finally got to some more substantial questions on how to do things. One amusing thing was a fine old lawyer by the name of Claude Giles who lived in Coos Bay. Claude Giles had done an awful lot of criminal defense work. As a young lawyer I was named City Attorney for the tiny town of Powers, twenty-two miles [south] of Myrtle Point. Somebody was arrested by a city policeman for driving while intoxicated in the city of Powers, and it became my duty to prosecute this case. Well, I'd never even seen a drunken driving case, and I got my books out but I didn't learn very much. So I found out the defense attorney was Claude Giles from Coos Bay, a man who'd been very kind to me over the years. So he was in Coos Bay, that was on one side of Powers, and I was in the middle, and Powers was on the other. And I said, "Claude, why don't you pick me up when you come from Coos Bay on your way to Powers and I'll ride up to court with you, and we'll try that case?" And that was just fine, so he picked me up and I said, "Claude, I'm the prosecutor but I've never prosecuted a criminal case in my whole life and I don't have the slightest idea what to do, *[laughs]* but I'll do something."

And so he said, "Well, let me tell you, I've been prosecuting attorney in many places. I've been defense attorney

in many places, and here are some basics that you have to understand."

And so it took nearly an hour to drive up there, and he gave me his lecture all the way up there about how to try criminal cases, so we tried this case, and I tried my damndest, and he tried his damndest. I can't remember whether he won or whether I did, but I thought that was an absolutely magnificent thing that he was willing to do. I think you see some of that today, but nowhere near on that scale. It's just a lot more competitive now, and unfortunately sometimes you even get information concealed from you when ethical standards would require that you divulge it. It's a very long answer to the question of whether I was critical of that point in law school, and I'm not.

JS: What kind of cases were you working on besides that? Were they common cases that you were working on as you started practicing?

RB: When I first went into practice, I went in with one single practitioner, Mr. Berg. He did everything under the sun. I think we have very little of that now. At least I don't know very much of it, even in the smaller communities. Law firms seem to start at five people, maybe three, but you know, five, even in a small place like Coos Bay, is a rather small law firm. They have fifteen-, twenty-men law firms in those small towns now. [So the one practitioner often did] absolutely everything. I had a murder trial when I

had been in practice, I think, only two weeks. You just got thrown in the water and you swam, just like my father might have shoved me in the river when I was six years old so I would learn to swim. That's the way I learned how to practice law. It might have been a little tough on the clients for a while, but it certainly taught me in a hurry. You learn, like swimming, because you have to learn.

JS: When you were first getting into court, if you can, describe some of the things that you were learning about trial lawyering, and how you took to this experience?

RB: Well, from a very early time I had a lot of trial work, even though it was a little questionable whether I really had the experience to do the things I did. I told you about a first-degree murder case, but most of the cases I had were not at all that serious, and the skill of the lawyer wasn't all that vital. But I had a full range of cases, big range of criminal cases, most of them were on court appointments.

The fact is, I can't remember whether we were even paid in court-appointed cases. I believe we were not. I believe that was strictly a pro bono service. If we were paid at all it was a very small amount. Nevertheless, all of the young lawyers and, I might say, even the older lawyers, were very glad to take that work without compensation, either without or with very minimal compensation. There was a very big commitment to justice among

the members of the bar at that time, and a weakness, at that time, in the system was that every person did not have an adequate defense. You had to have some money to have an adequate defense, except for the voluntary efforts of the members of the bar.

But in addition to a heavy load of criminal work, I wanted to get into trial practice. My arrangement with Mr. Berg was ideal because he didn't want to be in trial practice. He wanted to be a contract lawyer, an office lawyer. I did an awful lot of that for him. Most of it involved the timber industry, cutting contracts on private and government timber. It involved civil disputes over major and minor things. Water was a big thing, probably still is, in that community. Borders between people's property was a big thing. Early surveying wasn't all that accurate and it didn't matter when everybody was buying land by the section, but when they started buying it in 100 x 50 lots, it made a lot of difference whether your boundary was twenty-five feet off or not. So [I did] an awful lot of that kind of work. But as I say, I was interested in getting into the trial practice. He [Mr. Berg] didn't want it. I did. So everything that came in that involved going to trial, either in our own counties, which we considered to be Coos and Curry, or other counties, I would do. Finally, it evolved pretty much from my own interest (I'll take you into that more when I get into my own private practice), which was personal injury work, from the injured worker's side, and workmen's

compensation. So my trial practice grew fast while I was with him, meanwhile doing a great deal of office work under his supervision and learning a great deal.

Finally, I had been with him for one year. We had a conference in which I suggested that it might be just as well if I would go my own way and he agreed. It was a tentative agreement from the very beginning. So I went up to the little town of Myrtle Point, population of 3,000. There was one other lawyer in town who was very kind to me. [He was] glad I was there, as a matter of fact, because in a small community if you're only one lawyer you have a problem. You're a good citizen of the community, and these towns are friendly towns, the people know and love each other. You're a single lawyer, you end up a sort of a country squire, trying to resolve disputes between two people, and the result is that neither one of them hire you because if the resolution of the dispute is not successful, then you, who are the mediator, can't take either side, so they both go out of town and both get other lawyers. Usually I would have one side of a case and he'd have the other. We tried to resolve the thing between us and if we were not successful a court action would follow, and we would both do our very best within the adversary system to win it.

JS: Who was this other lawyer?

RB: A man named Wallace Dement, who was an older lawyer. Then he took

in a younger man, by the name of Jack H. Dunn, and Wallace Dement more or less went out of the practice and then my competition was Jack H. Dunn. Jack H. Dunn is now the lead name in one of the largest law firms in Portland. We're still very close friends, so that has been a nice experience over the years.

In the private practice, and in my new town (which was really my old home town where I went to high school) I felt a need for professional purposes to do voluntary things and become better known, [which would perhaps be] a business-getter. So I ran for and was elected to the office of councilman in the city of Myrtle Point. Jack H. Dunn was mayor and I was councilman. At the end of his term, Jack retired as mayor. I ran for mayor and I succeeded Jack Dunn as mayor of Myrtle Point. So we still have a lot in common.

Early Political Office

JS: What kind of problems did a town like Myrtle Point, that size of town, and that close of a town, did you run into as a council representative and a mayor?

RB: Well, the towns were trying to grow, they were trying to improve. The state highway system was absolutely terrible. The sixty miles between Myrtle Point and Roseburg took at least two hours to drive. Half the time it was slid out and totally

impassible. The battles took place to get state money to improve highways, or to at least make it safe to live in those coastal communities. Those coastal streams, as you as an Oregonian know, will increase their flow by 200 percent in twenty-four hours.

[End of Tape Four, Side Two]

RB: Adequate highways were a high priority among the small towns of Oregon, particularly the coastal towns during that time. Indeed, that's where many of my efforts as mayor went, to lobby and otherwise work for better roads. It was easy to get community assistance down there. The highway is called Highway 42, and we organized a group called Housewives for Highway 42, and they haunted the capital.

So that's the thing that small towns were up against besides extremely limited budget, and extreme resistance to raising taxes, as we still have. The sewer and street problems were terrible, but we were able to pick at it and eventually make it a fairly decent community in which to live. So in addition to that work, and probably for the same reason, that is to become better known and perhaps increase business opportunities, I filed for and became a member of the Democratic Central Committee in my county.

I held that office at the same time I was mayor. I was, after a year, elected to chairman of the Democratic Central

Committee for Coos County. That made me a member of the state Democratic Central Committee where I met an awful lot of people that became lifelong friends, and lifelong supporters, principally Wayne Morse. He was probably my biggest supporter. But in just a somewhat lesser extent, Dick Neuberger and Bob Holmes, who became the governor and who finally appointed me to the Circuit bench. I met people at regional meetings, John F. Kennedy, Senator Frank Church of Idaho. I got well acquainted with him during those times. Martin Luther King. I remember going to a regional meeting in San Francisco, of the Democratic Party. We had a number of speakers, Hubert Humphrey, Franklin Roosevelt, Jr., Martin Luther King. They spoke to the gathering, got a very warm and healthy applause, and then the next speaker was Wayne L. Morse.

There were probably 2,000 people in that building. When Wayne Morse was introduced, the roof actually seemed to go off that building and the Democrats were so enthusiastic about that man. He made a speech, and he was thoughtful and sometimes you agreed and sometimes you didn't agree and sometimes he'd made you scratch your head, but when he finished, the pandemonium was even wilder than what it was at the beginning. Most of those people, the California people (they used to call him in a joking way, the Senator from California) were extremely fond of him as was I. As his good friend, I think

I probably knew some of his failings, too. Had an extremely high ego. Good egos are healthy, I know, but you were either with Wayne Morse or you were against him. He didn't even like minor criticisms. He just didn't handle them very well.

JS: Can you think of an illustration of this?

RB: Yes. Forrest Amsden, who is now executive director here in Portland of the Medical Research Foundation, was editor in chief of the *Coos Bay World* and a strong supporter of Morse, strong supporter. Sometime in the middle of the year, Forrest wrote an editorial which was really favorable to Morse's point of view on something, maybe the Vietnam War, probably was, took minor issue on not a major point at all, really. And the next day I got a telephone call from the Senator.

He said "Bob, do you know why Forrest turned against me?"

And I said, "Oh my goodness Senator, I don't know what you're talking about. Of course he hasn't turned against you."

He said "Well, did you read last night's editorial?"

I said, "Yes, I did, but I still don't understand what you're all excited about." Then he got a little unhappy with me. But that is an example. But my friendship with him was deeper than that. His, and our mutual respect remained. He was a strong supporter until the day he died, so I'm pretty grateful to him.

Democratic Party Politics

JS: Did you get to know him closely?

RB: That takes me in to the time when I was county chairman of the county Democratic Central Committee. And that too, has changed an awful lot over the years. When any political figure, whether he was running for office or whether he was not, came to a given town, it was the custom, at least in the Democratic party, as soon as he crossed the county line, would get in touch with the Democratic County Chairman. Since that was me, I got to meet all these people that I'm talking about including John F. Kennedy. When Wayne Morse finally became a Democrat after changing from Republican to Independent and then to Democrat, he was a good one. He believed in the party system and so he observed that very strongly. As a result, I had the pleasure of driving him around from place to place. This was particularly true during his campaign appearances.

He was a man of tremendous vitality. He was born in the year 1900 so he would have been eighty-eight if he was living now. Even then he was no youngster. But he could attend early breakfast meetings with fishermen at 5:00 in the morning, could and did. All through the day to coffee hours and meetings, major speeches at Chamber of Commerce at noon, constant rounds in the afternoon, a major speech in the evening. After that he'd meet with people who would come up to see him. Then we'd go to a hotel

room or something. It was invariably after midnight by that time, and we'd say, "Well, Senator, we better get out of here so you can get rested. You've got another meeting with fishermen tomorrow morning."

"Oh, no, no, no, don't go. I want to talk to you."

So we'd all sit around, and he did all the talking. But it just seemed to relax him to do that. Then finally we'd get out of there, dreading the thought of seeing him at 5:00 in the morning, but there he'd be, absolutely looking like he stepped out of a bandbox, often with his trademark, a red rose in his lapel, all ready for another day. Tremendous physical energy, that man.

Back to county—if anybody'd mentioned PACs, [Political Action Committees] nobody'd have any idea what you were talking about. That's what's changed. When a politician goes to a county, large or small, now, he doesn't look up the elected representative of the party. He looks up the people who have the money and that's the chairman of the PAC funds. The party doesn't function the way it used to. I'm not prepared to say it doesn't function at all, because perhaps it does. I haven't been involved in partisan politics for thirty-two years, so I don't know how it works now. I knew it worked then and I knew it worked very well. I knew that it also worked in the Republican Party, for whom we all had a tremendous amount of respect, and great competition. We would outnumber them

in Coos County by perhaps three to one, and every once in awhile, they'd beat us, so we couldn't help but admire them, but both parties worked that way. Both parties work with the PAC system now, so that's a big change.

JS: You came in at the point at which a lot of changes were actually taking place in the Democratic Party. What did you observe of what was happening inside the Democratic Party locally, and statewide?

RB: When I first became involved in local party politics I was impressed, perhaps a little bit disappointed, to learn that there was a big tug of war between union members and members of the party who were small businessmen, farmers, and were actually almost opposed to organized labor. And at first, although I was never opposed to organized labor, probably sympathized quite a bit with those small businessmen and farmers and people like that because they were fearful that organized labor would simply take over the Democratic Party, not only in our own county, but in the state.

Now this is partly geographical. There are seven small towns down there, about equal in size, divided into the bay area, meaning Coos Bay area, and the valley area, Coquille, Myrtle Point, Bandon, and Powers. The bay area was highly unionized, mostly longshoremen, but carpenters and teamsters as well.

Those people that I was more sympathetic to were wrong because organized labor was not about to take over the Democratic Party. They had a story to tell. Up until that time, it hadn't been very well told. An awful lot of people, including conservative Democrats, were fearful, I think now, for nothing. Matter of fact, I did an almost complete turn about. I went from being quite a conservative Democrat to one which was quite liberal. Now after all these years, I've kind of leveled off into a neutral position, but I do think that organized labor had a message to deliver. I'm grateful that they've been able to do it.

JS: Is that a later story, or how you made this transition? Perhaps you could explain that here.

RB: No, because then when I became chairman of the party and I would preside over party meetings, I would obviously try to be neutral about the thing and let people convince the gathering what was right for the State of Oregon and United States in general. Frankly, I was just won over by the logic of the arguments and learned that they weren't all dominated by Harry Bridges, for example, which we were sure they were. Absolutely baseless, but we were sure of it anyway. And frankly, the period of growth in my life in which I learned to be more tolerant of other people's views and even learned that there was a great deal of merit in both sides of the controversy, but mostly

on the side of organized labor at that time.

JS: These are McCarthy days, too. Were you aware of that? Did that play a part in your thinking?

RB: Yes, those were [Senator Joseph] McCarthy days.² Yes, it did play a part in my thinking. McCarthy's antics deplored me then and they deplore me now. They deplore most people now, but they didn't then. I witnessed Joe McCarthy once in Washington talking to an empty House, carrying on with his allegations of 200 and some odd card-carrying members of the Communist party in the State Department, and all that nonsense. Yes, it did, perhaps made me even turn a little less conservative.

JS: Did you know Monroe Sweetland in these days, and Howard Morgan?

RB: Yes, knew him very well. [I knew] Howard Morgan, a little less than Monroe. Well, it's been a long time, but I think Howard had volunteered to be administrative assistant to Bob Holmes when he first was elected. Do you know whether that's true or not?

JS: I'll check it.

RB: Yes, at any rate, he was Public Utility Commissioner. He was a good, able, extremely able [man]. One of the most able of the Democrats' stable at the

time. I don't think he ever aspired to public office, but he was one of the dynamic people. One reason I knew him was because my close friend, and still my close friend, James Johnson of Coos Bay, was Bob Holmes' director of the Department of Motor Vehicles, and with whatever Howard was doing at the time, perhaps it was Public Utility Commissioner,

JS: I think it was. I'll check.

RB: They were in the so-called Governor's Cabinet together, and I had a lot of contact with my friend Jim Johnson and would meet with Howard Morgan socially. Most of the social business ended up talking state business, so I knew him in that regard and I was highly, highly complimentary of his ability.

Monroe Sweetland I knew very, very well. Monroe [*laughing*]. Monroe was highly maligned, you know: people absolutely swore that he was a big wig in the Communist Party and all kinds of things. That's Joe McCarthy stuff, and he never was. Fine public service, fine human being, a person I always enjoyed. He lost to Mark Hatfield.

JS: He did, running for Secretary of State.

RB: Right, and I was working hard for Monroe at the time. He had the misfortune of running into a very, very strong candidate in Mark Hatfield and lost; and who will say that it's a bad thing,

because I'm a very great admirer to this day of Mark Hatfield. So we were lucky at that time to have had two good candidates running for office. There's no question in my mind that Monroe suffered because of the McCarthy era. None of this was ever contributed to or even hinted at by Mark Hatfield. It was just a bunch of rednecks.

JS: Well, Sweetland is one of the state level organizers of the party —

RB: Yes.

JS: Chairman at one time.

RB: Yes, for a long time.

JS: What was he trying to get you to do down there, or what were your plans in building your party down in that area?

RB: Well, he was pretty aware of the dangerous potential split between the union and non-union officials. I probably didn't discover it myself; it was probably through his assistance that brought it to my attention. He was a great advocate of carefully and selecting our candidates before the primaries. Rather than just let everybody under the sun file—you had to let them if they wanted to, of course—but rather than just take it by chance and then support the winner, that we should find good candidates in the first place and encourage them to file and support them as well as we can way back in the early stages. I am a firm believer today that

that's the way to improve government, in that early level of party politics. So he was a big advocate of that. I don't know what else to say about him, except that I liked him personally, a very warm man, a very able one, a very good American.

JS: Did you have any patronage at your disposal that you could really use for building your party?

RB: Oh, very little. There was no money, but you know, people like to be recognized. People like to be on the Fish & Game Commission, they like to be on the Highway Commission, they like to be in a governor's advisory board, without a dime's compensation. It's a status factor to an awful lot of people and very important to a lot of people. No money was involved. I had never been aware of my being able, as county chairman, to get anybody a paid job. I was very frequently successful, and welcomed by the governor and others, to pick out good people to serve on these boards and commissions. So I think in a sense that that was patronage, and it was good for the party. I worked for Democrats, I didn't work for any Republicans, and I think that it made our local party machinery more than just a debating society, it was something that people saw was happening and really wanted to get involved in it. I think that's important.

[End of Tape Five, Side One.
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Becoming a Judge

JS: I had thought one of the first subjects to take up today is to ask about your observations of judges as you saw them at work in the courtroom, and about some particular individuals, and about some of the general thoughts that you have.

RB: The ten years I spent as a Circuit Court Judge in Southern Oregon were years of great change and growth. I hadn't practiced law in a long time. I became a Circuit Judge when I was thirty-seven years old and after only five years of practice, but that practice was concentrated very heavily at trial work because I was representing mostly injured workers. But partly because I was doing trial work rather than office work, my name simply came up more often when people thought about who should be judges. So by the time I was practicing law and before, the concept of a state judge was ordinarily that of an older man who had spent many years in honorable practice of the profession, and was almost a natural promotion, I suppose you might say, for some of the real fine lawyers, some of the real "deans of the bar."

My immediate associate, when I did become appointed in 1957, was Judge Dal M. King and he certainly fit that category. He had been a trial lawyer in those two small counties, Coos and Curry in the southwestern part of the state. He succeeded Judge Jim Brand. Judge Jim

Brand went from that court onto the Supreme Court of Oregon. There were only two judges before Judge Brand: Kope and Kendall. From the very first statehood, was Kope, Kendall, Brand, King, and me. I was only the fifth judge in all of that time to be appointed. Those older judges that I remember were excellent judges. They were hard working, awfully hard working.

But things were changing; the court calendars were becoming much, much fuller. Many things were going on in the criminal field. It's not that there was so much more crime, but prior to that time there was no one to represent them. The indigent defendants were frequently represented all right by lawyers, but they did it on a totally voluntary basis and without any fee, without any compensation at all from the state. It became apparent after awhile to the people of Oregon if there was to be equal justice for all, there had to be some way to provide for attorneys and only then did the state begin allocating payment for attorneys. When that happened, there were many, many more criminal trials than before because people would just simply come in and plead guilty largely because they couldn't afford an attorney and couldn't find one to work for them for nothing.

So those judges, who were older, mostly in their sixties or above, just started to get physically worn out. It was a different kind of a job. When most of them first took that job, it was sort of an honorary

position. It was a kind of a relaxed effort where you tried a few cases now and then, and did a lot for the community, and their criminal and civil docket was rather easy. But it quickly became overwhelming and men in their sixties were not physically able to handle the job nearly as well as they'd hoped.

JS: Did you get to hear them talk about these things?

RB: Yes. We visited a lot. As a young judge I was able to move around the state quite a bit and did indeed become very good friends with many of my colleagues at that time, all of who were much older.

In 1955, I think it was, Governor Paul Patterson took note of that fact; and he had a chance to make two appointments, one in Eugene, and one in Roseburg. And he decided on a younger man and he picked Judge A.T. Goodwin, my real good friend, and in Roseburg he selected Judge Charles Woodrich. They were both in their early thirties, but they had been good students, they had been good lawyers for a short period of time. Goodwin probably only practiced three or four years altogether. But they had all the ethical and the mental facilities to handle this job. But what was important, I think, to the governor at that time, was physical energy. You know, it was hard work; it is hard work to this day. You are likely to try a case from 8:30 until 5:00, but that evening you get ready for the next day's trial; and the next morning, long before trial, you're

there taking care of your mail and your motions and necessary lawyer interviews, and whatever else that was going on.

The fact that those two men, Goodwin and Woodrich, had been appointed a couple of years earlier really helped me out a great deal when it became time for Governor Robert Holmes to make his appointment. He was able to judge that those younger men were probably, in a sense, able to do a better job than the older people. The quality of their work wasn't any better. Their sense of justice wasn't any better. What was better was that they were able to get out a lot more volume of work, which was absolutely necessary. But those two fellows had performed so well that it was not unusual at all when Governor Bob Holmes appointed me. I was thirty-seven and had just five years of practice, but I'm just as grateful to those other young judges, who did a first class job, as I am to the appointing authority.

During my term of ten years the work just continued to grow, both on the civil and the criminal side of the docket. Many new kinds of controversies were almost invented. We like to say there's a remedy for every wrong, but while it's true in a technical sense, the mechanics weren't there. I mean, you could be sorely wronged and there still might not have been a violation of a legal duty. Those legal duties just grew. You can call it judicial legislation or whatever, but within this concept, there should be a remedy for every wrong.

One of the things that began

to happen was that what we now call product's liability cases. Product's liability cases may even be the most numerous kind of cases we have, both in federal and state courts. The concept of that is when industry produces goods that are faulty, and as a result of this fault in the goods, someone is injured in his person, he should be compensated for it; and even though there was no fault in the form we'd always considered a fault being negligence on the part of the manufacturer of the goods. That two people, both whom are innocent of wrongdoing, one of them being the industry and one of them the individual, that the idea was that the industry could far better absorb the cost of that person's injury than the injured man. To this day, right now, I have about three thousand cases in the District of Hawaii all caused by injuries from inhaling asbestos dust. When I first went on the bench, that wouldn't even have been a legal claim. Nobody would have gotten anything because they hadn't invented that kind of a claim yet. But, that's just one of probably a dozen instances where the law grew. But the law does grow.

I think maybe there's some justification in criticizing judges for their so-called judicial legislation, but it is a part of the business. All the laws are not written down in the statute books. That's why in the Anglo-American system, the common-law system, we have judges. And when the laws are set out, they are set out in broad terms, which have to be interpreted, and indeed there are many

gaps, hiatuses, in which you want to get a result and you don't have any direction in the law to get to that result, so you come up with the result. Indeed, I think sometimes judges make fifty times more law, one hundred times more law than legislators do, but they are in little places where you have to decide how are you going to get from point A to point B. So that was going on all during my ten years as a judge. The younger judges were being appointed very quickly after my own appointment. The very conscientious group of judges in this state, I think we had a sense of what was going on in the law and we couldn't, all thirty or so of us, be going off in separate directions. So we did start to have quite a few statewide meetings for our own education and planning how the court system should move in Oregon. We even formed a state organization called Oregon Circuit Judges Association. Sometime in the middle of my term, I was elected president of that.

JS: You were involved in the creating of this organization?

RB: I think the association had been created and it was existing and had been for some time, but it was extremely inactive. We met about once a year, usually in the old Multnomah Hotel in Portland, or sometimes the Benson [Hotel]. We'd have dinner and we'd get to know each other, but it became really a study group. The judges attended ordinarily at their

own expense and almost a full attendance every time. That group of judges that I recall, we're passing pretty well now from those that were the old deans of the bar (and fine judges as they were) to getting men of younger caliber. I certainly enjoyed those people tremendously. I don't come prepared to give you a lot of names. I wish I had, but I didn't.

Another thing was going on at that time, mostly in the rural counties, like I came from—there were certain parts of judicial work that was not done by judges at all, they were done by county judges. The county judge was and still is a chief administrator of the county. In other words, he is the chairman of the Board of County Commissioners. He had two very important judicial functions. One was probate and the other was juvenile. In the probate function, administering of wills and deciding where property should rightfully go, should have been strictly a job for a trained lawyer. It was no place for a layman to be fooling around in.

That was changed at the same time I went on the bench, as a matter of fact, in 1957. They transferred the probate function into the Circuit Courts, and then also the juvenile function. Now the juvenile function should have gone to the Circuit Courts, all right, but in my opinion, it wasn't quite as important as probate. Probate is a matter strictly of law. And in juvenile work the judge works with youngsters that are brought in by his juvenile office that are in trouble. They're

either completely out of control or they're completely neglected by their parents and, in any case, they usually have to have new living conditions. They have to be removed from the home they were in and placed in someone else's home. Well, now, a good conscientious chairman of the Board of County Commissioners can just as well be a sensitive and humane individual as any judge can be. There wasn't an awful lot of law involved, but I think probably because probate had to be transferred they decided to send the juvenile work there too. And I think, looking back, it was a good thing to do.

Juvenile Work

RB: Judge Dal King was still with me and he was my senior and I was his junior. He asked me to take over, in addition to my other regular trial functions, those two capacities, probate, and the juvenile. Well, I found out very quickly that I was immensely interested in juvenile work. I never wanted to be a juvenile judge; it just sounded like a kind of a dumb job to me, but when those youngsters started coming before me and you realized how much in need they were and because of their age, thirteen or fourteen, so often you knew perfectly well those kids could be rehabilitated if you could just figure out some resource or some wisdom or some friend or some source to get help. It became clear to me from the very

beginning that that's what we didn't have. We didn't have a showcase of things that we could pick from and say this is what this little bank robber needs if we're going to get him to stop robbing banks. The only resource we had was to send everybody to MacLaren School for Boys in Woodburn, Oregon, and it didn't make any difference whether they robbed a bank or whether they chased their grandmother down the street with a butcher knife or whether they just refused parental discipline and didn't come in at night until ten or eleven o'clock. Everything from the big to the little, the only resource we had was MacLaren School for Boys.

Well, it was a terribly traumatic thing for a thirteen year-old boy to be uprooted from Coquille, Oregon and sent to MacLaren School for Boys. Most of those kids had never been out of their own county. It was akin to sending them to Red China. One would seem as far away as the other, I think. But it became apparent to me and some others that we needed to somehow or another to keep these kids closer to home. We could send them to MacLaren School for Boys, which was a good organization. They went up there, they were locked up. The object seemed to be to make these wild young people into model inmates of MacLaren School for Boys. But you see, that wasn't what we had in mind. We weren't interested in having our good Coos County boys and girls, in this case boys, trained to be good inmates of MacLaren School. What we

wanted them to be were good citizens of Coquille and Coos Bay, Oregon.

JS: You went up to MacLaren?

RB: Many times. So we thought (I'll tell you who the "we" is in just a minute) that if we could keep the kids closer to home and break as few ties as possible. Sure they have to get out of their own home, because the father's in the penitentiary, and the mother's a prostitute, and there's no place for them. You've got to find some place for the kid to live, but let's make a search for aunts or uncles or friends, or teachers, or anything to sever as few ties as possible. Judge Dal King had then resigned after about five years and he was succeeded by Judge James Norman. I was then his chief and he was next in line. He took this up with much greater enthusiasm even than I.

Judge Norman and I separately would go all over these two counties every time we were invited to speak at a Rotary Club, or Lions, or one of the women's groups, or whatever. We'd tell the home people that this was what we think we need. And always got a polite reception and never had any trouble getting speaking engagements. Of course, everybody knows what it's like if your program chairman for one of those clubs, you're always looking for somebody [chuckles]. We also felt that nobody was listening to us, which was sort of true, but then, something happened. And what happened was that I was appointed to the United States District Court in 1967. This

was a compliment to the small community to have one of their kids who was born, raised and went to school and practiced law in the hometown, to be appointed to one of the most important judicial offices in the state, and so there was kind of a general good feeling. I talked to some of those people and they'd say: "Now that's great about Belloni getting this appointment from the President. Now what was it he was trying to tell us all [laughs], all this time about some kind of a boys' home." And, so they started putting their heads together and decided, "Why don't we build it, why don't we build a boys' ranch?" They met with Judge Norman and Judge Norman said, "Yes, let's do it and let's name it Robert C. Belloni Boys' Forest Ranch." Well, it probably should be named the James A. Norman, because he did more work than I, but he's the one that suggested it be named for me, and that's how it happened. Well, it's very gratifying to me. It's one of the things I'm the most proud of when I have to list my curriculum vitae for such things as *Who's Who in America*. I always list that.

JS: Were you in on designing how this new institution would work?

RB: Yes, and there were a few models around. There was one in Roseburg at that time. It wasn't quite what we wanted, but it helped us. There were very few around the country, so we kind of played it by the seat of our pants. We built the ranch, the one that I'm looking at right now, looking

right over there, at the picture of it. It holds twelve boys, and very well set up so there's quite a lot of observation. Some of these kids are rather deeply disturbed, and they had to have a system whereby there could be some constant supervision, and even being able to see the boys, even when they're in their rooms. A lot of those things we knew. We were dedicated from the very beginning though to have it a professional group. There was an awful lot of pressure on us to get just good people who are "good with kids."

Well, there are an awful lot of people like that and they are good with kids and they will remain good with kids until they run into their first problem, and then they don't have the slightest idea how to approach that problem. There was not a single person in the State of Oregon at that time that had a master of social work degree, not a single one. And so, a little later we formed another organization having nothing to do with the Oregon Circuit Judges' Association. It was Oregon Juvenile Judges' Association. I think I was the second or third president of that. Judge Bill Fort, of Eugene, was the president of that organization just before I was. That was one of the first needs that we discussed in that organization. Where are we going to get some qualified people in our own juvenile departments and in other institutions such as we were trying to form there in Coos County, the boys' ranch. Portland State was a brand new entity. So a group of us went to the administration of Portland State and we

just simply convinced them to institute a master of social work program and they did. They got some good instructors, and they started.

[End of Tape Six, Side One]

RB: I had an assistant juvenile director in Coos County. His name was Ted Drahn. He had his bachelor's degree in some behavioral science, but that's all he could get and he needed more training. He really did. He needed a couple years more training probably. So when we got the program opened at Portland State, I secured him a leave of absence to go up there for study for two years, with the understanding that when he got his degree he was to come back and be my juvenile director. Well, we both had that intention for two years; but the night he got his diploma, he got a telephone call from the President of the University of Alaska, asking, "Will you come up to the University of Alaska and institute a master's of social work program up here?" So I never saw Ted Drahn again, except on friendly occasions. We never worked again professionally, but that's how much of a need there was for trained people and how the system just simply absorbed them, just scooped them up and put them to work.

JS: Why Portland State and not one of the other institutions?

RB: That's a pretty good question but I don't have the answer to it. It could have been a thousand reasons. It might

have been because we got the bug in our system when we were at a Portland meeting and they were the easiest people to get to. [laughs] I really don't know why, but we were very happy with the results. I think maybe, being a newer institution, they were a little bit more amenable to try some new approach to education than the older universities were. At least maybe that was our concept of the universities rather than their concept of themselves, but that's what we did. O.K., Jim, do you want to start me someplace else?

JS: Yes. I have a couple of questions about this and about some earlier subjects. Does Judge Skipworth figure any place in your knowledge in the history of work with juveniles? He has a home named after him in Lane County.

RB: He certainly does and I remember Judge Skipworth with a great deal of affection. He was just about on his way out when I was on my way in to the system, but we did cross paths and he worked with the non-system we had in those days. Judge Skipworth was a man very learned in the law. He was one that you can imagine him trying complex cases and making difficult rulings on the law and writing very scholarly opinions, and that sort of thing. He did have another side which wasn't all that much recognized, I suppose, at the time, partly because he was such a fine general jurist, but that was that he had great heart and knew the system wasn't going to work,

which was essentially to treat kids just like adults almost. Of course, we all realize that there's no magic in the eighteenth birthday, but we do also know that a thirteen year-old kid is more amenable to rehabilitation than the thirty-eight year-old person. Taking advantage of that, he made a lot of reforms in Lane County. I don't know the history of the Skipworth Home—been there many times—I don't even know whether he was instrumental in its formation, but it was in his honor that it was constructed.

JS: I'm kind of interested in the effect that experience in the court, on the bench, or as a lawyer had on you? Did you have cases where you sentenced juveniles?

RB: Yes. During my tenure, I had a number of cases in which a person, maybe sixteen, would go to juvenile court under the normal course of things, but the offense that he committed was a very serious one, perhaps even killing somebody. So we had the problem of trying to decide whether he should be truly treated as a juvenile or not. Now, for a long time the law was black and white—if you're not eighteen, you're a juvenile, and if you were eighteen or over you were an adult. I think the judges figured out a few ways to soften the impact of that black and white law, but another development came up at that time through our same Juvenile Judges' Association. We worked out a brand new juvenile code in which we clearly set up the procedures and methods of adjudicating

dispositions of juvenile offenders. We completely wrote a juvenile code at that time which was passed by the legislature without very much trouble. That was in about '62, I suppose.

JS: That came out of your Juvenile Association?

RB: Yes, it did. And here again I was amused a couple of years ago when I read that there was going to be a complete revision of the old juvenile code. And they did indeed completely revise the old juvenile code that we thought was brand new in 1962, quite appropriately they did. Things change in twenty-five years, but to me what they called the old juvenile code was still the brand new juvenile code because I worked with the non-cod before that, but I am pleased that they are keeping up with events. Our code, which was written about 1962, did a lot of things besides just providing mileposts and directions on how to adjudicate and sentence juveniles. Some of them don't seem very important, but we eliminated by law, for example, the concept of a delinquent child. It used to be that a child was delinquent if he was out of the control of his parents or out of control of society, and he was a dependent child if he was just neglected by his parents. Well, there was no clear line between a dependent and a delinquent child, so, and another bad thing that everybody went around calling this kid a delinquent. After a while he'd seem to start thinking himself that he was a delinquent, and that didn't seem to have a

very good effect on him, so that's one of the rather important measures, but that was just a minor thing.

JS: Well, thinking about your own development—what was it that helped you to come to understand kids? Where did you gain your understanding of kids like this?

RB: I don't know whether I ever did come to understand kids or not. I don't deal very well, unfortunately, (or at least my concept is) with a child on a person-to-person basis. I do, but it takes me quite a long time for the boy or girl to get acquainted with me and me with them. But, on a mass basis, we were dealing with children and you just simply had to learn what kind of a child you have before you, and then what you could do for them. I mean, there were lots of things we'd like to do that we couldn't do because we didn't have the resources. But fortunately, all the time during my judicial career, either state or federal, if you were interested in educating yourself and becoming knowledgeable on difficult subjects of law, or adjudication of penalties, or juvenile work, that's available to you, and it has always been. The state system has always provided education for its judges, still does. The federal system, through the Federal Judicial Center, will provide us just any kind of education in fields, allied with law, where we need it; and so that's what I did, and that's what most of my young judge colleagues did. We just worked at it, and working at it, we learned. I suppose that most of us had some sensitivity about the

needs and the desire to fulfill those needs. If we hadn't, I'm sure we wouldn't have been in the job in the first place. I suppose that's how I became as knowledgeable as I was.

Injured Worker Cases

JS: You were saying a little while ago also that you were experiencing the many cases dealing with injured workers.

RB: Yes.

JS: I wonder if you could tell me what that meant to you in your thinking. I'm thinking partly of your political thinking as it was changing as you were saying. What was your experience with these cases?

RB: Oh, I think they're probably tied together—my then political philosophy and the type of work I was doing. My mother and my father were Republicans. My grandfathers and grandmothers on both sides of the family were Republicans. My first opportunity to vote for a president was for Franklin D. Roosevelt, and I believed in him explicitly. I thought then, and do now, that he was one of the greatest presidents we ever had.

Furthermore, it became apparent to me that if a young person was going to go very far and if a political background had any part whatsoever in his ambition, then that was the party to go into. There wasn't

any question about it. This was the party of the future. I mean, we were just coming off of Herbert Hoover, you know. And, so I registered in the Democratic Party. I became active and I think the liberalism that I attained came after I joined the party [*chuckles*] rather than before. I think joining that party was more or less of an opportunistic thing. It just seemed to me that this was the way to go in order to succeed in life. But I didn't see any great injustices. I just saw little injustices that I thought should be corrected.

Therefore, when I opened up my own law office, this is what I preferred to do. I preferred to help people who were injured on the job. Would not probably otherwise have got any compensation except for the assistance I was able to give them. The work was easy to get for a young lawyer because it was the consensus of the older members of the bar that you couldn't make any money on workmen's compensation cases. This was pretty true, unless you did it the way I did and handled them in a great volume. I was fortunate to be able to do that because there were those people out there who were injured and local lawyers weren't interested in them, so they just simply gravitated to my place.

After a short two or three years, I had more cases on the trial calendar than any of the old experienced lawyers there because there was a vacuum, some method for those people to get attorneys. So I profited from that and it also caused me, I'm sure, to be appointed Circuit

Judge, and later to the office I hold now. So it worked out, sort of accidentally, but very satisfactorily.

JS: So part in your appointment was the kind of work that you were doing?

RB: Oh, I think so. I know that it helped me a great deal to be appointed to the federal court and the reason for that is because Wayne Morse saw things the same way that I did. Wayne Morse was my supporter and was really the person almost solely responsible for my being appointed. We were not close personal friends, either. We were just good professional friends. I liked what he was doing and he liked what I was doing. I could, and probably should, maybe a little later, dwell upon my appointment to the federal bench because there have been things written about it in newspapers which were just absolutely and totally inaccurate, and if you don't correct some of those things, the old newspaper files, I guess, become history, even though distorted.

JS: Yes, well, we'll certainly get a chance to do that.

RB: O.K.

JS: How early were you thinking of the possibility of becoming a judge? When does the idea begin to cross your mind and what are your thoughts?

RB: Well, I don't imagine that I'm typical, but I began wanting to be a judge after about one month in law school. *[laughs]*. It just seemed to me that this field we were getting into with our orientation classes, and you could see ahead and you could see all the things that we were going to touch on in three years of law school. I thought that the way to keep involved in one hundred percent of these fascinating subjects was to be a judge. You become a lawyer in private practice and you're going to do probate work or you're going to do this or that, and you're going to lose track of the whole of the law, and I loved being a law student. It was absolutely fascinating and I just didn't want to give up any aspect of it, so way back then it became my ambition to be a judge.

More than that, though, I think that almost every lawyer would like to be a judge. I think there's less of that now because the law has changed so much. It's expanded so rapidly and now I suppose people go into the law because they're interested in patent law or they're interested in some specialized field, but you know there's never any shortages of candidates for a United States District Judge, even though we complain about low salaries *[laughs]*.

I remember when I was a candidate for this federal court, I went to a state bar convention, and Representative Bob Duncan addressed the Oregon State Bar. There was a joke about there being so many candidates for the job that I later

filled, and he addressed the crowd by saying: "Mr. President and candidates for federal district judge." There were about 2,000 people out there. You can tell by that that it's a job that's not shunned by the bar. I think that lawyers don't admit that that's true, but I still think it's true that most good lawyers would like to be judges, and I was no exception.

JS: What could you do to further your eventual appointment?

RB: There's not much you can do. You have to be standing in the right place at the right time and fortunately I was, two different times. Politics, pure partisan politics, assisted me in becoming an Oregon Circuit Judge. I do think that I had qualities above just being a politician. My local bar association gave me a one hundred percent endorsement and recommendation so I must have pleased somebody when I was practicing law down there. But I can't overlook the fact that I was a Southern Oregon campaign manager for Robert Holmes when he was campaigning for governor either. And indeed when he had a chance to make an appointment, the very first appointment he made was mine, and two others, a judge in Lincoln County and one in Jackson County. Had I not become acquainted with Bob Holmes, who knows, I might have gotten the position anyway, but you don't know. Then, during that process I became well acquainted with Senator Morse; it was the same thing. He liked what I did in the practice; he liked what I did as a

judge, and he supported me throughout the appointment process. I've had many, many people say, "Gee I'd like to be a state judge," or "I'd like to be a federal judge. How do I go about getting such a position?" There isn't anything that you can say. I mean, I went there one route and somebody else goes there another route. The state system, they're just simply elected, which isn't a very practical way either.

JS: Well, you had mentioned something earlier about [Richard] Neuberger may have had some part, or was it this appointment?

RB: Neuberger. The appointment came up for President Johnson to appoint someone in Oregon.

JS: No, that's my mistake. Windsor Calkins, or somebody like that—are there other people in the local profession who were helpful? Of course, his connections were more with Republicans, weren't they?

RB: I suppose so. I know Windsor Calkins, and as a matter of fact, Windsor Calkins and I are good friends, but we became so much later. No, I didn't have any supporter of that kind. That played no part in my appointment by the governor.

JS: When you were in that judgeship, you had to run for re-election.

RB: Yes.

JS: And, can you tell me what that experience is? This is 1965?

RB: Yes. Well, it's an interesting experience. When I was appointed Circuit Judge, I had an investiture ceremony. The very senior member of our Coos and Curry County Bar Association made a speech at that investiture ceremony. He said something like this: "I don't even know this young man. I never met him before, but he has the confidence of the governor, he has the confidence of this bar association, and in two years from now, he's going to stand for election, and if he does a creditable job, which we all think he's going to do, I expect that he will have no opposition for that permanent term."

And that was the attitude. If you had a judge in there, keep him there. You were called a self-starter if you filed for election against an incumbent judge; it simply wasn't done. At the end of my first term, I didn't have any opposition. I just filed and was automatically re-elected. But of course, that's changed an awful lot. There was a lot of talk at that time about whether to adopt the system that was in use in most of the mid-western part of the country where a judge would be appointed and at the end of a term, the question would be on the ballot, "Should Judge Belloni be retained for a second term in office?" And the voter just wrote down, "yes" or "no." The judge had no live opponent; if the "no" vote carried, the governor would appoint someone else.

In fact, that happened to Rose Bird, Chief Justice of California Supreme Court. There was and is plenty wrong with the elective system of judges. Los Angeles County has so many judges, I guess their sample ballot is as big as two newspaper pages and somehow or another, the ordinary voter is supposed to pick out a couple hundred judges and vote for them for six-year terms, and don't have any idea whether they had any capacity or not. That was and still is true in Oregon, but somehow or another it's worked pretty well, probably because Oregon is a much smaller state. Now, I was not in favor of that system as a judge because I could look out in my bar association and I could see one hundred people out there and I couldn't see a single one of them out there that could beat me in a re-election. But I was afraid of this phantom candidate, this yes or no thing. People sure do like to vote no on ballots, and so I was very happy that that system never came into effect while I was a judge.

JS: Was it a threat? Was it coming?

RB: Yes. There was a great deal of talk at that time about changing the system. We almost lost George Rossman to someone who didn't know anything, but had a good historic name, and anybody that'd ever read Oregon history had heard of this opposing candidate's name. He even changed his name, I think, so that it coincided with that of his ancestor, and almost knocked George Rossman off.

Rossman was one of the best Supreme Court Justices Oregon had ever seen. That's one time it began to be talked about statewide very seriously to just change the system. Well, fortunately it didn't happen very often, so it was never changed. And I think maybe, if Oregon would somehow miraculously grow to California size, some other system would have to be developed than the one we have now.

JS: Well, hopefully an improvement over that.

RB: Yes.

JS: At the time of your appointment and installation, they made the comment (this is an editorial comment), in the *Coquille Sentinel*, that they hoped you would take the tutelage of Dal King. Can you tell me a little bit about the relationship between you and Dal King?

RB: Yes. Dal King was a small town single practitioner, lawyer, with high ethical standards. He was a very, very hard working man. We had a very fine and close working relationship. He'd been on the bench so long and I was so new, not only at being a judge, but also to the profession itself.

[End of Tape Six, Side Two]

RB: We had mutual respect for one another. Politically, Dal King was absolutely

180 degrees from me in political philosophy and I suppose to some degree, the philosophy of the law. I think that he could just identify more clearly with the creditor part of a lawsuit than he could with a debtor and his problems, and I probably, to a fault, supported the underdog position. But in spite of those total and complete differences in the way we saw things, we worked very, very well together. We had no trouble, and indeed, I did emulate him. But mostly, in the mechanical aspect of how to get work done. I learned from him how to get work done.

JS: So you learned how to handle all those cases?

RB: Yes, and my close friend, Gus Solomon, at every opportunity gave me credit. "Judge Belloni gets things done." Well, that's true. I do, and that is the lesson I learned from my colleague, Dal King and I'll always be grateful for it.

JS: How exactly did you handle that huge volume of worker comp cases?

RB: Of course, workmen's comp cases were the kind of a case that I had handled in private practice, so I knew my grounds. And knowledge is the key to getting the work done. Mainly we worked out systems whereby we set cases very compactly. We had jury trial in workmen's compensation cases in those days and I approve of that but we haven't had jury trials in that kind of case for twenty years. For the most

part those cases never did get tried, but the judge couldn't find out whether the cases are going to get tried or not until he set them. Well, in the old days, when judges didn't have very much to do, they had twenty cases, they'd set each one for a day certain. One would be January the 5th and the next one would be January the 6th, and so forth. Probably the first fifteen cases settled and there you had an idle courtroom for fifteen days.

I know the lawyers weren't very happy with this, but we just simply set them on a much more compact basis. Sometimes I'd set twenty in one day with the idea that the lawyers had total control over which cases were going to settle and which ones didn't. They would go ahead and settle their cases that they're going to settle, and then try the ones that they're going to try. Instead of taking us twenty days, it would probably take us a day and half, and that's exactly what happened, but Portland lawyers, particularly, when they came to Coos County and discover they had twenty cases set for them on the same Monday morning would just about die of heart failure. There are many other ways to get work done. When new judges come to our court, they are always asking me, "How do you get these cases out of the way? How on earth do you deal with 3,000 asbestos cases in Hawaii?" Well, there's no single way. You learn how to do things and how to facilitate your work as you go along, and after thirty-two years practice at it, I know quite a bit about how

to get work done. I'd hate to have to write a book about it. It'd fill this room, I think.

JS: Might be very useful.

RB: Yes.

Range of Judicial Experiences

JS: And you traveled around, invited into other districts to hear cases.

RB: Yes, we're still in the state system?

JS: Mm-hmm, right. What was that like?

RB: Yes, at that time the Chief Justice of the Oregon Supreme Court had the power to ask a Circuit Court Judge from one circuit to move to another. As a young judge, particularly, I liked to do that because when I'd gotten through law school, I went back to my own county where I was born and raised, knew everybody, knew all the lawyers, knew all the people. Two people would be in trial before me and I'd know both of them really well, and I felt a need of getting around the state, and particularly the more metropolitan areas, Portland in particular. I tried an awful lot of cases during my ten years as a *pro tem* judge here in Portland. Thereby you learn that things are not done in the same way all over the state. You find great disparity in the customary sentences of criminals in

Portland compared to Coos County, and that's O.K. I'm not critical of that fact of it. It really is worse to rustle cattle in Coos County than it is in Multnomah County, because people aren't dependent upon their cattle for their livelihood up here, and it's not wrong if somebody down there'd get five years for the same thing that somebody might get two months for in Portland. Those things were all helpful. Eastern Oregon ideas are so much different, and don't ask me to elaborate, but they are. [JS *laughing*] They just live in a different world than those in the West. And so I took advantage of every opportunity. I think I probably tried cases in every county in Oregon. If not every county, at least every judicial district. Sometimes several counties were contained in one judicial district. It was a helpful experience for me. I served on the Oregon Supreme Court as a temporary judge a few times.

JS: Yes, I was interested in hearing about that. How did that come about?

RB: This happens when the court gets a little behind in its work and draws upon some of its more experienced circuit judges to come up and be sworn in *pro tempore* to serve a while on the Oregon Supreme Court. I did that. Appellate work is not my favorite work, but I think one becomes a better trial judge if he's had some experience on the appellate court as well. Appellate judges have a tendency to think about things a little bit differently than the trial judge. The trial

judge is very, very interested to see that both sides before him get a fair trial. A lot of that feeling is a subjective one. The case is then appealed on its transcript and goes to an appellate court. The appellate court is also interested in making sure that both sides had a fair trial, but they're looking at some different material. They don't see the witnesses, they don't see the reaction, they're not able to judge their credibility. They read a document, they read a transcript of questions and answers and that's the only source of information they have to make their ruling. And indeed, sometimes from that transcript they will see that out of 200 rulings a trial judge made in a given case, they think he was wrong on one of them. Well, he had two days to try his case in which he made his 200 rulings and he made them right then and there. The appellate court gets the transcript and they look at it and they study it for six months, and they decided 199 times you were right, but this time you were wrong, [*laughing*] and indeed, very likely was.

But, it has helped me be a better trial judge because I think I've been able to supplement the record by a little statement, or a little question or two to the witness to put his rather ambiguous answer into a little better context so that the appellate court would understand it a little better. Interestingly, at the end of my stint as Circuit Judge, and I was appointed to the United States Court, that year I served on five different courts. Now, I'll see if I can name them. Of course, there

was my own Circuit Court. As a Circuit Court Judge, I was presiding judge of the two counties. Each also had a district court. During that time, if the District Judge was busy, I would frequently go down and sit on his district court for awhile, hearing automobile cases, and that sort of thing. In Gold Beach one week the local municipal judge was gone. I had authority to hold court in the municipal court. I never had, but I had authority. The municipal judge had a real emergency and wanted to know whether I could come over and serve for him, and I did. Then I was appointed to the U.S. District Court, and I hadn't been here two months until I got a call to come to serve temporarily on the United States Court of Appeals, so in one year I served on five different courts. It was kind of a freaky, oddball thing, but it was a memorable time in my life.

JS: The appellate work didn't appeal to you as much. Well, did you nonetheless think that you would be interested in an appointment to the Supreme Court of the state?

RB: No, I was never a candidate to be appointed to the Supreme Court of Oregon or any other appellate court. There are types of people who are appellate judges and there are types of people who are trial judges and I'm one of the latter. I just enjoy my work. I've been at it for thirty-two years and I still enjoy coming to work. I like very much

to deal with jurors. I like to try to make them comfortable in the courtroom. I'd like to make them understand what it is that they're supposed to do. The result is entirely up to them, but I would like to have them pay some attention to the law, and the way for them to pay some attention to it is to understand it. I enjoy trying to make them understand it.

I enjoy the give and take with lawyers, not camaraderie, I don't have very much camaraderie with lawyers, except once in awhile at a bar meeting or something, but the match of wits, I guess it is, that I really enjoy as a trial judge and you don't get that on the appellate court. You read a transcript and you listen to a twenty-minute oral argument, but there's not much give and take. In a trial situation, where there's trial before the judge and without a jury, a statement of the law will be made, and it seems so fantastically wrong to me. I can say, "Well, do you mean to say that you think the law is this way, and if so, it just doesn't make any sense to me, and the law usually makes sense," and so we try it again, and I try it again, and pretty soon, we do have a sort of a meeting of the minds, and are able to work out either what the law is or what it should be. And that's why the work is fascinating—the people part, the part that keeps me young because I've got to keep my mind honed up all the time.

It's the reason why judges never quit. Five years ago, I could quit working and never work another day in my life

and I would be receiving exactly the same amount of money I'm receiving now with 3000 asbestos cases in Hawaii. But I stay on, the same reason Judge Solomon stayed on, the same reason Judge Kilkenny stays on, Judge Goodwin stays on, and Skopil. People even think the government's taking advantage of us. "You're entitled to quit." But my feeling is this: I've spent half my life trying to become a United States District Judge, why in the heck should I quit it? [*laughing*]. We do the same thing. We do the desirable thing by taking senior status, and this allows a successor to be appointed. The successor is always needed because there's always a gap between the numbers of judges you have and the number you need. No real effort is made to anticipate the need for judges in a particular court. When you get so absolutely bogged down that you're becoming farther and farther behind on your work so that it takes five years to get a case to trial, until that happens, there's not much of an effort made to get new judicial positions.

The older people, like me, if they'll step down and continue to work, then you get an opportunity to appoint such great judges as Judge Malcolm Marsh, who's been with us about a year now, and so, the system works very well that way.

JS: How was Ted Goodwin doing on the Supreme Court? How was he feeling about doing appellate work?

RB: Judge Goodwin's first love was

journalism. Had a full-time job with the *Eugene Register Guard*, even while he was a student there. Absolutely excellent writer; he writes well without effort. He loved the trial of cases. He still loves the trial of cases, but when he had an opportunity to go from the trial court to the appellate court, he accepted it without any reservations at all, because of this ability and inclination he has to do clear, concise writing. He has been a real leader in the profession. I was sure at the time Judge Kilkenny left our court Judge Goodwin could get the appointment to succeed him.

JS: Why was it so likely that he would get that appointment?

RB: We may have been overconfident, but he'd had this tremendous background. My gosh, he'd been an outstanding Circuit Court Judge in the state. He'd been a distinguished member of the Oregon Supreme Court, one of the best that there's ever been. He then served in the United States District Court, honorably and well. It was logical to take another Oregonian because an Oregonian was being replaced in John Kilkenny. Of course, the President doesn't have to do that, doesn't even usually do it, but in this case he did it, so maybe it's another case of a little bit of luck going along with our hopes and desires. Goodwin wasn't on that court very long at all until he was really being looked at for the Supreme Court of the United States. The trouble was, just by being a

contemporary of mine, of those years, you get a bit of liberalism rubbed off on you. At that time liberalism was so badly needed. So he didn't fit the conservative stereotype that today's political thinking make good candidates for the Supreme Court, and he still isn't a dyed-in-the-wool conservative, as a matter of fact. He's going to call them as he sees them, and he's not going to be some pretend conservative when he isn't one.

Family Conversations

JS: I have been thinking about what it's like when you go home from all of these experiences. Did you talk with your family about what was going on and share your work experiences?

RB: Oh, yes. As a Circuit Court Judge, I had a fine wife and two children. The children were nearly high school age and we talked about it with great excitement. Like every other kid that age under the sun, they had great reluctance to leave the little town they'd lived in and where all their friends were and thought they were moving at least as far as the moon. But to nobody's surprise, we did move and they were old enough to realize it was a great career advancement as far as I was concerned. We expected that they would fit in very well and, not unexpectedly, in three weeks they had a whole new passel of friends when my wife, Doris and I, were really lonesome. It took us a much, much

longer time, as I think is rather normal, for older people to adjust to their new circumstances, than it was for the kids.

But, yes, my family always shared in my work. In the process, I'm extremely proud to say that my daughter was sufficiently impressed with the work that I was doing that she followed in my footsteps and became a lawyer. She's now thirty-four years old and she's Assistant United States Attorney in San Francisco, where she's in the criminal division. She's trying criminal cases in the trial and appellate courts in California on a regular basis. She has ambition to become a federal judge someday, and I wouldn't be surprised if she might make it.

JS: And were you aware of this transfer of interest when she was, say, in high school?

RB: Always. We used to kid about it. I was kind of like an old European father, and I said, "Sue, I want you to have your education, I want you to go just as far in school as you want to go and I'll support you every inch of the way financially. I'm not even going to tell you what to study so long as it's some phase of the law." *[laughing]*. So we always had a big joke. She claims that I forced her into it, but she had everything it took to make a good lawyer. High ethical standards, clear thought processes, logical mind, hard working person, and I don't deny that I encouraged her at every level long before she ever went into high school.

JS: How was your son developing in these years?

RB: Jim is a totally different kind of person, every bit as bright as Susan, but there's a lot of things that he'd always rather do than academic type work so he went into the U.S. Army. After the Korean campaign was over and the Panmunjom council table was set up (where I guess it still is), he was guarding the border between North and South Korea for several years; became a radio mechanic. When he got home it was just natural to go into electronics. Electronics was just getting going real well. He joined Tektronix and worked for them. He doesn't work for Tektronix, but he has worked for practically all of the little electronics firms that are setting up around the area, and he's still doing it, very well and very competently, and he's quite happy in his work, too.

JS: Was Doris ambitious for you, your advancements?

RB: Yes. Doris and I were married during World War II and this marriage lasted thirty-five years. She was an Army nurse and I was in the Army medical department. So we were in this little field hospital, kind of a M.A.S.H. unit field hospital where we got acquainted and decided to get married. We actually would have gotten married when we were still soldiers except that there's some Army regulation against husband and wife

belonging to the same outfit. We would have been separated, rather than united by marriage, and so we didn't marry until we were discharged in early '46, after our terminal leaves were all over. She was a Midwest country girl and would have had to be ambitious to accomplish what she did. Honors graduate from Henry Ford Hospital in Detroit and right into the Army Nurse Corps where she had steady advancements. She was an ambitious person; she was ambitious for me. Always supportive. She felt that my career and the raising of children was more important than her nursing career. Otherwise, you know, she had the capacity to be chief of nurses at any large hospital.

[End of Tape Seven, Side One]

Early Married Life

RB: Immediately upon our discharge from the Army, I ran my father's business a little while down in Myrtle Point but then after a few years I decided to go to law school. We were on the G.I. Bill of Rights and, even though she's a registered nurse and has a bachelor's degree, she took a secretarial course because she thought it might help me later in my profession because I intended to just strike out on my own. As a matter of fact, she never did become my legal secretary, but it was quite an experience and good adventure for us both. We were both on the G.I. Bill

and I think we got \$125 a month apiece, which was our total support. We paid tuition out of that. We paid room and board. You talk now in terms I guess from \$12,000 to \$20,000 a year to send your kid to college and here we were going on the G. I. Bill at \$125 apiece. Lived down in the Amazon district out of Eugene, the married students housing. Paid \$22 a month for our apartment. Had a wood stove and used to go over to Weyerhaeuser and buy Presto-Logs for four cents apiece; I think they're about a dollar apiece now. And we'd fill the wood stove up with three big Presto-Logs and the fire never went out from fall to spring. It was one of those places that heated a water heater with coils, and so we lived pretty cheaply. When our friends would come over, we might be inclined to serve them booze but we didn't because we couldn't afford it. We'd serve them coffee and cookies instead, but it was a very good experience for both of us.

[End of Tape Seven, Side Two]

Appointment to the Federal Bench

JS: Today I would like to introduce the subject of your appointment to the federal bench and ask you to tell me how that began to develop, your first awareness of this possibility, and how it proceeded.

RB: All right. I had been serving as a state Circuit Judge in Southern Oregon for about nine years when Judge William East decided to take senior status on a disability, health reasons. It was in the paper of course, and when I saw the article I was immediately interested in making application for the position. Whereupon I wrote a very short letter to Senator Wayne Morse who I had known through political and government efforts that I'd been involved in earlier. It was a very short letter, about three lines, that said something to the effect that "I understand there will be a vacancy on the United States District Court and I would be a candidate for that position and would accept appointment if the President thought I was the person most qualified."

That's all the letter said. And as time developed there were an awful lot of candidates for that office. It was almost a joke there were so many. I think I mentioned this before but Congressman Bob Duncan, when addressing the Bar Association, a couple thousand lawyers out there and his tongue-in-cheek opening was: "Mr. President and candidates for United States District Court." The field needed to be narrowed and the Senator decided to ask the Oregon State Bar for a poll of its members and invited anyone who was seriously interested in the position to consent that their name be placed on that poll. There were fourteen candidates who entered the bar poll, statewide poll, and as I recall

the vote, I was number four out of the fourteen. Orville Thompson, of Albany, was number one. Otto Frohnmayer from Medford was up high in the rankings, either just ahead or just behind me, I can't remember for sure. And a number of other good people showed well in that bar poll. I'm having a hard time remembering whether Dick Neuberger was alive or not at that time. He died shortly after. Senator Morse was the senior senator of the administration party, the Johnson administration, so he was the person that pretty well controlled appointment to the United States District Courts for his state.

Sometime in this process, I think perhaps right after and partly as a result of the bar poll, Senator Morse decided that I was the person that he was going to support and he did. He resisted pressures that were not too easy to resist. I never will quite know for sure why he settled upon me as the one he favored. I know that I was doing a good job in the county where I was working, and around the state where I was promoting a lot. I did a volume of quality work and he knew that. We were never, either before that time or after that time, close personal friends. We were friends in the political sense that I believed in what he was doing and he liked what he saw in me, I guess. But almost from the beginning there were great pressures on Morse. He received a letter from Congressman Charles Porter explaining to Senator Morse that his support of me

was not very wise politically. You know, after all this guy comes from Myrtle Point, Oregon, a town of 3,000 people. You should be looking at Judge Ed Allen from Eugene, the second population center in the state and a very popular person. I agree that Ed Allen would have been a fine choice, and I also know that Ed Allen had nothing to do with this letter going to Senator Morse and he wouldn't have approved of it, had he known.

Appointment Politics

JS: Morse showed you the letters?

RB: Morse sent me a copy of the letter—probably still have it someplace—which absolutely dressed Porter down terribly. He said: "Charlie, we've known each other in politics, we've been on the same side of the fence and it really hurts me to think that you would think that I would support an appointment to the United States District Court because it might get me some votes. That's not the object and it never has been and never will be." It was really a harsh letter back to Porter. There were a lot of people who showed up, some in and some out of the bar poll who had champions around and thought that that person should be appointed, rather than me. Surprisingly I became kind of an early front-runner. Some how or another the word got around that I was the person Wayne Morse supported

and that Wayne Morse's candidate was going to get it. So I became somewhat the target for awhile.

JS: Word got around.

RB: Yes, it did. It even appeared in the local paper, along with a picture. That was almost a year before I was actually appointed. Five or six years ago, there appeared in the Portland newspaper (I'm not sure which Portland newspaper, it occurs to me there was only ever one Portland newspaper) an assessment of this court, and the article was very hard on me, and almost all of it was totally the figment of some young reporter's imagination and hardly any of it was based on fact. But, the article said something to the effect that there was one applicant for the appointment, Alan Hart, who was head and shoulders above all of the other applicants and the reason that Hart wasn't appointed was because Morse and Maurine Neuberger couldn't agree on anybody, even though they both liked Hart, and he'd been a professor in law school and he'd been a whole lot of other things. I know Alan Hart; he is a good person. I don't really believe Alan Hart was ever a serious candidate, but the paper went on to say that the reason Alan Hart wasn't appointed, even though he would have been better than any of the others, was that those two senators couldn't agree and I was a sort of a compromise nominee. Well, it just didn't happen that

way, at all. I became Morse's choice very early in the game. Alan Hart did have some good supporters. Alan Hart didn't enter the bar poll, so nobody knows how the lawyers would have felt about an Alan Hart appointment.

JS: He didn't submit himself?

RB: No, he did not. But he was a good friend of [Supreme Court] Justice Bill [William O.] Douglas and I guess ever since Douglas' close association with Franklin D. Roosevelt, he was still close to the various Democratic administrations that came in, the Kennedys and Johnsons. There was a fellow in the White House who was Johnson's—I guess you could probably call him a chief of staff now—I don't think they used that term there, Italian name, Valente.

JS: Jack Valente?

RB: Yes, that's who it was. He called Wayne Morse; Morse told me this, Valente asked if he could come over and talk to him and Senator Morse said "Well, you don't have to come over. I'll come over there. I'll come over to the White House and talk to you. I always do that when high members of the administration want to talk to me. Do you want to tell me what it's about?" Valente said, "Well it's about district court appointments." So he went over to see him and Valente urged him to drop my name and further

the cause of Alan Hart. So Alan Hart was very strong in the White House. But as far as I know, that's the only strength he had in the appointment process. He was neither Morse nor Neuberger's choice. Neuberger had a choice and it was Jack Beatty, Circuit Judge Jack Beatty, also a very fine judge. But I think the only substantial support he had was that of Maurine Neuberger.

JS: Richard and Maurine were not together?

RB: No, by that time Richard had died and Maurine became Senator.

JS: There was a switch at that point from Richard Neuberger's candidacy to Maurine's.

RB: Yes, right. I just can't remember the dates when Richard died, but I knew Richard Neuberger as a fellow politician and I supported him and we were friendly. I took him around the county quite a little and introduced him to service clubs as a speaker and that sort of thing. And I knew Maurine, too, at that time. I was friendly to them both. Neither of them had anything against me. But Richard did die, and Maurine's candidate was Jack Beatty and I was Wayne Morse's candidate. She never went over to Hart either. I was saying Hart just didn't have much support.

JS: I'm sorry, I missed that.

RB: Which the newspaper totally missed. I mean, as far as I know, the only person's candidate that Hart was, was the newspapers and of Justice Douglas and his influence in the White House. But Richard died and Maurine's candidate was Jack Beatty. At the time she made the statement that she has nothing at all against Belloni, he was a good judge and he would be a good judge in the federal court, but "I'm not about to lay over and play dead," I mean, that's the way she put it. I'm not just simply going to accept Wayne Morse's candidate. What the implication was, that she wasn't going to accept any Wayne Morse candidate, me or anyone else, and she didn't. This position had, by then, been open about six months and I'd sort of been the front-runner all this six-month period, but it seemed to have bogged down completely at that time. Morse told a friend of mine, knowing I'm sure that it would get back to me, that, "Don't worry, she only has six months of her term of office remaining and as soon as her term expires, Belloni will be appointed and that will be that." And that is what happened. We waited until her term expired. She only served six months, and the appointment was made.

But then, of course, Senator Hatfield was in office and could certainly and legitimately have refused to go along with Morse. A junior senator does not have much affirmative power in picking the appointee, but all sorts of negative power. He has an absolute veto as a matter of fact. But he not only didn't

veto my appointment, he was very, very nice to me. In their private conversations, he said to Morse, "Wayne this is your show. I know Bob Belloni, I know he's a good judge and he's a good person and I know a lot of his friends and colleagues and they speak highly of him and, but as far as I'm concerned, I don't even have a vote to cast. This is your show, and I have no objection." From then on, though, he has always been a supporter of the court. During my confirmation process, he was right there, before the committee and said nice things. I've been eternally grateful for that, but the reason I was appointed is that at some time early along in the process, Wayne Morse decided that I was the number one candidate and that he was going to support me and he did, even against tremendous pressure from the White House itself. I can't help but be grateful for that. So that's the appointment process as it was, and it's quite contrary to the one the Portland newspaper prints.

JS: Yes, some of the correspondence you referred to I've missed. I'll have to try and find that, but were you very aware all this time of the rivalry between, and the tension between the Neuberger and Morse? Did that make any sense, in your thinking?

RB: Well, I knew that it existed. Yes. In fact, there was a lot of talk about it. Some of it even, in print. They did not see eye to eye on many things and then when Richard died, Maurine kept up the

feud and I don't know what was behind it except that they were two great egos. A face-off was perhaps almost inevitable. I know that during that period of time, though, they managed to get a lot of good work done on behalf of the state of Oregon.

JS: All this time, what were you able to do in your own behalf?

RB: I wasn't able to do anything in my own behalf. I just waited and listened. I did absolutely nothing, except wrote that very first three- or four-line letter to Wayne Morse. I think that nothing was the right thing to do. I think I would have hurt my candidacy rather than help it by having people write all sorts of letters on my behalf. Now, a lot of people did write letters, but I didn't promote a single one. Surely, the people who receive letters can detect whether they're promoted letters or whether they're written simply because a person wanted to do so. I had a couple of particularly close friends who unlike myself, were particularly close friends also of Wayne Morse. I knew from the beginning that unless something awfully unexpected happened, that I was going to get the appointment so I just sort of relaxed and kept on doing my work as a Circuit Judge and waited, but I never felt uncomfortable. I never felt that I wasn't going to get it. I know the dangers of being overconfident in those things, because I knew a lot of other people who were just as sure of getting these appointments and

never got them. I thought for a whole year that I'd get it, and I did, and I planned accordingly.

JS: These two friends, who were they, and were they advising you or, what were they doing?

RB: Well, the closest friend I had in this process was James F. Johnson. He's a friend of mine from my own county and was in the Bob Holmes' administration as Director of the Department of Motor Vehicles. He's just a good friend and happened to be a good friend of Wayne Morse and my own and he related to me what was going on in Morse's thinking. I'm positive he wasn't violating any confidence because Morse knew of our friendship and he spoke freely to Jim and Jim spoke freely to me, so I had pretty good reason to know what was going on.

JS: So that helped you know when Morse really committed himself to your candidacy.

RB: Yes. Very early on, I think, I think he didn't become firmly committed to my candidacy until after the bar poll, but I did score high in the bar poll. Those who might have been a little higher than me didn't fit into some of the other categories. Maybe their age was against them and I seemed to fit into all the categories. We had a Catholic and we had a Jew and I'm Protestant, and we had somebody from Eastern Oregon, we had somebody from

Portland, and here I was from Southern Oregon, so there was a whole bunch of categories that I just fit into and I had experience. Most of the other candidates didn't have this kind of experience. They had good experience as trial lawyers, but no judiciary experience. One of the things that the senator was interested in was my administrative ability because it appeared to some that I would be the chief judge very, very quickly because Judge Kilkenney was getting along in age, and Judge Solomon had a terrible heart and was expected to die, but he didn't die for a long time after that. I had that administrative experience, having administered the circuit court in Coos County.

JS: It was difficult for a down-stater to win a bar poll because the membership was weighted heavily in favor of the Multnomah County area, and up the valley.

RB: Yes.

JS: How is it that you succeeded so well with lawyers in the bar?

RB: To be number four out of fourteen on a statewide poll, I considered to be quite a victory. You know, even from the last election that it's so important to have familiar names on the ballot, and we've seen in the state judiciary over the past twenty years people from Portland who were far less qualified than their opponent from downstate or Eastern Oregon, yet the

Portland person almost always wins those races. I think I was extremely fortunate to do as well as I did in the bar poll. You ask me why. This state is not all that large, and at that time instead of having 10,000 lawyers, like now, there were something like 2,000 lawyers. I did do a lot of work in counties other than my own, including Multnomah County, in fact especially Multnomah County. I pro-temmed up here a lot over my full ten-year period. So I certainly wasn't unknown in the bar.

[End of Tape Eight, Side One]

JS: I wanted to just comment that I'm surprised to see that a state bar poll had quite an influence on this appointment. Isn't that exceptional?

RB: Yes, I suppose it is. The appointment process seems to be different everywhere. A senator from one state might have different procedures than a senator from another. I know in this case the bar poll was suggested by Senator Morse, so I suppose that's one reason that he paid some attention to it.

JS: Is that a kind of pro forma thing to do, to call for a bar poll, or is it sometimes not done?

RB: No. One of the procedures is, instead of a bar poll, the senator suggests that a blue ribbon committee be appointed and have them make some recommendations. And I suppose in a sense, it's kind of my

own speculation that the bar poll was important. It was important to me. I think probably if I'd have been number fourteen out of fourteen, I would have withdrawn my candidacy. But my impression is that it was important to Senator Morse, and you're right, bar polls are frequently ignored, at least by the voting public.

JS: When the dust began to settle, and the complications of this process, I wonder if you would describe for us what happened as you went into the official stages of the appointment.

RB: Shortly after the expiration of the term of Maurine Neuberger—Senator Hatfield went in about the first of January, 1967—immediately upon the expiration of her term, Senator Morse submitted my name to the White House. It being his recommendation, and it carried the approval, or at least there was no objection by junior Senator Hatfield. Then President Johnson sat on it awhile until after Valente had an opportunity to talk to Senator Morse about Hart, but the nomination was made by the President in the next month or two, and that required then that I go before the Senate for confirmation. The hearing was set before the Senate Judiciary Committee. I'd heard a lot about confirmation hearings and I wasn't very comfortable.

JS: I was wondering how you were anticipating that.

RB: One thing, I knew about Judge Solomon's experience. Judge Solomon spent two or three days on the witness stand giving his own testimony and having people testify that he was a member of ACLU, this Communist group and [laughing], he was opposed by some people who should have stayed out of it. One of the people, it's hard to believe this, who gave testimony against him was the law clerk of another federal judge *right here in this building*. So, there was some apprehension. I went there, and went to the proper room and was glad to see Senator Morse's face there. He welcomed me, and we found the place we were going to sit. It was about to start, we had just a few minutes to go and Senator Hatfield wasn't there, so Senator Morse said to an aide of his, "Ask Senator Hatfield to come over," and he did. He was there within minutes after that. One of them sat on one side of me and one sat on the other, and [laughing] pretty soon, Senator Irvin, you know Senator Irvin of the Watergate hearings, what was his name?

JS: Sam?

RB: Sam, yeah, he was the chairman of the sub-committee and he was the only person present. He was the sub-committee. So Senator Morse said some nice things about me and then Senator Hatfield said some nice things about me. Then, oh, the representative of the Attorney General was there and he gave the results of some letters he had received. This fellow from

the Attorney General's office (I have no idea what his name was, I think his name was George) brought all of the candidates from all the fifty states, for confirmation proceedings. He had introduced all of them and so he knew Senator Irvin well. And Irvin had his file. He looked through it and they followed my experience. He said to the Assistant Attorney General, he says "George, why don't you bring this kind of people over here all the time instead of the kind of people that you have been bringing over here lately?" [laughing]

And then he said "I see no reason at all why Judge Belloni should not be confirmed by the entire Senate and it will be my recommendation to the full committee and I'm sure their recommendation will be that he be confirmed." And then they started taking pictures, which seemed to be the real reason for the whole hearing. So I got some great pictures with Senator Irvin and with the two Oregon senators. But what I'm saying is it was not a very exciting, but a very pleasant experience and quite a surprise. I thought that I must have stepped on somebody along the line that would be there and say that I should not be confirmed, but no one did, and instead of it being an agonizing experience like it was for Judge Solomon, it was just a very pleasant occasion.

JS: So you had heard about the law clerk before. Was it from Judge Solomon?

RB: Judge Solomon told me about it, but—

JS: Was it a kind of conditioning [*inaudible*]

RB: I suppose so.

JS: Who all went back to support you?

RB: No one. I just went by myself.

JS: Oh, really.

RB: Mm hmm. Yes, you go by yourself, at your own expense.

JS: Did anyone bring forth an FBI report? Were you aware of that part of the process?

RB: Yes. I was aware of that. I was aware of the investigation that was going on because after they interviewed any friend of mine, he, or she, would generally call me and say, "The FBI was talking to me about you." They said all good things. Irvin had the FBI report before him.

JS: Judge Solomon got access to his FBI report. Did you ever get wind of how they reported on you?

RB: No. I never saw it. I never asked for it. It never occurred to me.

JS: And did the bar association do a report? Did you see that or know anything about that?

RB: No. I was aware of some of the things that were in the file. I remember a particular

Portland lawyer's letter was in the file and it was supporting me wholeheartedly. It was kind of amusing because he said that I was an excellent candidate and would be a good judge. He said that this recommendation should be meaningful because he tried a case before Judge Belloni and got the largest plaintiff verdict that he'd ever received, and Judge Belloni set it aside, so, I should be taking the other position, but I don't, because he's a good judge. I knew about isolated things that were in the file, but I never saw the FBI report.

JS: Who was this particular lawyer?

RB: It was Bruce Hall. Still a fine lawyer.

New District Court Judge

JS: When we discussed your moving into the work and taking up the position, there's so much happening fast, actually major cases before you, and so, if we could take it from your experience as you began getting into the work, and if you could tell me about the experience you had with your colleagues and the assistance that you were able to find.

RB: All right. After the confirmation hearing, an interesting thing happened. It shows you even a new side of Wayne Morse. Senator Irvin, as he promised to do, made the proper recommendation in the full committee. They approved unanimously. What ordinarily happens

is it goes on a consent calendar and the nominee is unanimously confirmed with no actual vote being made. That would have happened in this case and it would have happened on April 5, 1967—my birthday is April 4th. Wayne Morse, instead of waiting for the matter to appear on the consent calendar on the 5th, brought it up before the full Senate on April 4th, requiring a vote and the whole darned legislative process, and of course, it went right through, but he went to this extra trouble just for a sort of a sentimental reason which is not the image that very many people have of Wayne Morse. But I had never told him that it was meaningful to me to be confirmed on my birthday. I didn't even know that he knew that my birthday was on the day before, but he saw it in the file and he thought that would be a good thing to do, and so that's what he did. It was confirmed, it goes back to the President and about the next day or two I got a telephone call from Senator Morse.

Meanwhile I was looking for a house in Portland because I was far enough along then to be assured that it was going to happen so I was out house hunting in the Portland area one day and Senator Morse's staff had run me down from one realtor to the next and finally reached me at a restaurant where I was having some lunch. The Senator said "Well, the President signed your appointment this morning at 10:30." I was actually sworn in, I think, on April 10th, just a few days later.

Judge Solomon and Judge Kilkenny welcomed me appropriately. They had an

awful lot of work to do. Judge East had not been well for a long time and there really was more work than the two of them could do very well. As a result, they often did what they had to do, and I did this later myself, when I was the Chief Judge. You take the cases that have to be done. You take the trials of injured people who have to be receiving their compensation if it's ever to them any good in their life, and many of the very, very difficult cases just simply were not getting tried. The big antitrust cases, the big patent cases, big security fraud cases, and that sort of thing, and extremely heavy criminal cases.

Immediately, I had a very, very heavy caseload. I tried a big land fraud case, one of the very first things that I did on this court. It was called *United States v. Golden Rule Realty*, and it involved a whole bunch of crooks from all over the country who were selling land in this state and the state of Hawaii successively to a whole bunch of different people. It was almost an international fraud type thing. There were probably forty defendants, and I think there were about that many counts. Some of the defendants had one count against them and some of them had all forty counts against them.

It was a criminal case that was extremely difficult for a judge to handle. Thankfully I had experience in Coos County and I was able to do it all right, but the indictment, for example, was seventy-five pages long. I don't think I'd ever seen an indictment that was more than a page and a half before that. You almost had to

have a program of the players. So that was the first serious criminal case that I had.

Range of Work

The work in this court is so varied. It has so many different aspects to it. If you're a lawyer, you're always fascinated by the work. You have a different kind of a case every day, and that's what was happening to me then. You'd have a condemnation case one day, you'd have a patent case the next, an antitrust case the next, and criminal case, and ordinary personal injury cases of one kind or another, and you were always, almost always faced by specialists, specialist lawyers. That was true then and that's true now. The people who try criminal cases, both on the prosecution and the defense side try criminal cases, that's about all they do, and of course patent lawyers don't do anything except try patent cases. A judge in this court has to certainly know as much law involving the particular case before him as the lawyers on both sides.

Now that seems almost impossible to do when you've got specialists on both sides and a generalist judge. I'm telling you that he has to know as much law as those specialists, and there's at least fifty specialties, but that's the way it is. How do you do it? You work hard [*laughing*]. This is a terribly difficult job. You try cases all day and then you go home and you study for the case coming up tomorrow. You have absolutely the best people, directly

out of law school, as your law clerks. You could not even exist in this court without them, nor could you exist with incompetent ones. I tried a patent case, a very difficult one early on and the lawyers came to me after the case and one lawyer said, "You know judge, Pierre and I both agreed, much to our amazement, that you knew more law in this particular area than either of us." And I said "Yes, I know I did and the reason that I did is that I worked harder than you did." [*laughing*.]

But you can do that in the law. You're dealing with a small segment of the law within an individual specialty. Well, even though the lawyers are in that specialty it doesn't necessarily mean that they've ever themselves dealt with this particular segment of the law. So once the judge orients himself into the law of antitrust, or whatever you're dealing with, and gets firmly in mind what it is that Congress was trying to do with the antitrust laws, which is to foster free competition, after you've reached that point, then you're down to the specific points that they're talking about in your case. So you research prior cases and from there you form a pretty good idea of what the law is or should be. So that's what we do in this court. We do that day after day after day. I've been on this bench twenty-two years and I've been on a similar bench ten years before that. I would say that almost all cases that I've received have some aspect that I've never run across before in all this time. As a matter of fact, in the federal system, we run across fields of law that I never even

heard of before. We run across statutes that were passed in 1860 we didn't even know existed but they're still the law of the land. In appropriate cases, they have to be interpreted and enforced. Now I'm talking very generally instead of specific cases, because there have been so many of them over the years. I've always carried on a very heavy caseload.

JS: Do you remember the name of the case that you're referring to, with Pierre?

RB: No, I don't remember the name of that case. I always enjoyed patent cases.

One of the things that I've had to get around in many of the specialties, including patent, is that I'm almost a mechanical moron. I took the various Army General Classifications tests. In the one that tested what we think of as I.Q. I had some tremendously high score that only super geniuses have, and then I took the one on mechanical aptitude and I practically flunked it. A judge in this court has to understand not only the law but he has to understand the facts of the case. So I sometimes have to struggle on patent cases to figure out what they're even talking about.

This is also true to a very great degree in securities cases. When you're talking about the commodities market and whether someone did right or didn't do right within the market, whether he's an insider or whether he's entered into some fraudulent conduct or whether it

was legitimate or not, you first have to understand the market and there's nothing in the profession of law particularly that qualifies you to understand what goes on in the stock market or the commodity market. This you have to learn. In every case you have to learn it. Maybe I had a securities fraud case eight years ago and then I have one again tomorrow. I can't rely on what I learned eight years ago because it probably has changed in that length of time, in the first place. In the second place, it is probably irrelevant to the case before me now.

JS: So you depend quite a bit on the help of the law clerk.

RB: Yes

JS: And the relationship also [*inaudible*] that you have with the law clerk?

RB: It's a very close relationship. I think that if a judge didn't enjoy the law clerk personally, the work would suffer professionally. If you're trying to work closely with a person you don't like, I think it would be very difficult.

JS: What happens when that becomes apparent? Can you think of some instances where it was necessary to make some changes?

RB: Yes, I think that we owe it to ourselves and to the system and even to

our law clerks, if it isn't working out, to just terminate the relationship. Fortunately I've never had to discharge a law clerk.

[End of Tape Eight, Side Two]

Working Relations

RB: It has become apparent to me in the case of some of my law clerks that their standards were different than mine, their attitudes were different than mine. They had a hard time, I think, separating themselves from their philosophical point of view as far as the law in a particular case is concerned. I just couldn't get to a few of them, but I knew, before I ever hired them, that they're fine people and fine lawyers. So in several instances, it occurred to me that this person could work much better with Judge Solomon or with Judge Kilkenny, or Judge Juba, or one of the other judges. I always managed to shift that person to another position and it's worked out fine. I didn't do this frequently. I've probably done it, oh, three times. And in twenty-two years, I probably had thirty-five law clerks, so it doesn't happen too often.

JS: Perhaps at some point we could talk a little bit about some of the clerks that you've had and that experience. In the time that we have left today, I wonder if you could give some impression of the conversations that you had with Kilkenny and Judge Solomon as they told you what

you were in for and gave you counsel in these early weeks.

RB: During the ten years that I'd served as a trial judge in Southern Oregon, I heard all these tales about Judge Solomon. I'd been hearing tales about Judge Fee since I ever heard of the law, I think, but great legends had grown up about Judge Solomon. Judge Solomon had a great heart, but great intolerance for mediocrity. He really didn't like it when people came into his courtroom unprepared. People who would cite cases as authority, when, after two or three questions, he could tell that they had never even read the case, and, as a result, he was tough on those people. I came later to learn, when I'd listen to somebody telling me how tough Judge Solomon was and how difficult he was in a trial experience, I then knew that that lawyer hadn't done a very good job in Judge Solomon's court because any lawyer who understood the facts of his case, and understood the law of his case, was going to be treated fine in Judge Solomon's courtroom.

But anyway, I'd heard such scandalous stories over the years, that, while I was happy to be on that court, I knew that Judge Solomon must really be a rascal and that I wasn't going to have anything to do with him, except polite conversation, and a very formal professional relationship. Well, it took him about an hour and a half to completely charm me. *[laughs]* He turned out to be one of the best friends, and one of the closest

friends, that I ever had. I did a complete about face in the first hour and a half I spent with Judge Solomon, even though I was dead certain I wasn't going to like him when I got there and I wasn't going to have anything more to do with him than I had to.

JS: How, exactly, did he do that?

RB: Well, he just couldn't have been more helpful to me. He wanted to be sure I was comfortable in my chambers, and he wanted to be sure I had all the books I needed. He pointed out that I had an inexperienced law clerk, while he had experienced law clerks, he would offer their assistance. Once in awhile I'd have some problems. I'd go down to see him and I'd say, "Do you have time to help me with something?" He always said, "Of course I have, that's why I'm here." He just couldn't have been more helpful. And then I also learned at the same time of the high regard that Judge Kilkenney had for Judge Solomon. You know Judge Kilkenney is just a great gentleman and everybody's always liked him, everybody, even unprepared lawyers, liked Judge Kilkenney.

I don't know that I can state all the ways he helped me. I'd never met the man before. It's just that we got along fine from the very beginning and he was extremely helpful to me. He was not at all shy about telling me that my writing wasn't the greatest sometimes, and he'd

make suggested changes. He did this to the other judges, too, and we'd all laugh about it. Judge Skopil and I and Judge Goodwin, even. He'd take an opinion (we'd share copies of opinions) and he'd sit down, and he'd take your opinion, and a soft pencil and he'd start marking it up. [*laughing.*] When he got through with it, it was hardly recognizable. It said the same thing, though, in much better words.

It was funny, as independent as we are, nobody ever resented Judge Solomon's marking their opinions up. I don't know how. He was just a delightful man and you read him real quickly. I suppose if you were down in the courtroom and he was in an elevated position and he was asking you a whole bunch of embarrassing questions that you didn't know the answer to, you'd take offense all right. I'm convinced that's what happened to a lot of lawyers. There was a great relationship between Judges Kilkenney and Solomon that I just simply inherited. We didn't have magistrates then so the entire court consisted of we three people. They used to disagree and sometimes they'd even disagree rather noisily, but they always parted friends and remained so.

[End of Tape Nine, Side One]

Judge Gus Solomon

JS: In our last discussions, you had talked quite a bit about coming out of the court and those initial experiences. As you were suggesting, it might be good to go into a detailed history of your experience getting into the role of federal district judge. Judge Solomon was very important to you in the beginning, and, especially getting started. I wonder if you could tell me how things proceeded with Judge Solomon.

RB: Immediately after I received word of my appointment, even before confirmation, I came to Portland, met with Judge Solomon, whom I had never known. I'm sure that I shook his hand at some judges' meetings, or Oregon State Bar meetings, but never really knew him except by reputation, which was mixed. You talk to his colleagues, and he was something very extra special, and great. And this was true when you talked to a lot of experienced lawyers around the state. But, quite frequently, when you talked to some of the less experienced lawyers who had been before him on a very limited basis, or usually not at all, you heard a lot of horror stories about how difficult he was to try cases before, how demanding he was, and the word "unreasonable" was mentioned quite often. I'd heard a lot more of the bad stories than the good stories over the years, and so I didn't really know quite what I was going to encounter when I met Gus Solomon for the first time. There had

been some talk that came to my attention that Gus Solomon had actually favored another candidate over my candidacy. I really suspect that this rumor was started by people who seem to get some pleasure in causing trouble between other people, because this just didn't happen. Judge Solomon, as he should have, remained totally out of the contest for who should become judge, but I'd heard the stories.

JS: The rules of propriety wouldn't permit that?

RB: No. We stay completely out of the selection process. It's an executive function. Of course, the United States Senate has their part to play in the confirmation. The judiciary really has, and should have, nothing at all to say about who's appointed. One of Judge Solomon's close friends, Alan Hart, was a candidate. He was a good friend of Judge Solomon, and so I suppose people just jumped to the conclusion that he would have liked to have Alan aboard. But, in fact we talked about it. He brought it up, saying that "Maybe there was a rumor that I favored Alan Hart, and there's nothing to it at all." He said "I stayed completely out of the race."

And I said, "Judge, I know that's true, without even being told." But, he wanted to set that to rest pretty quickly.

To every judge that came aboard after Gus Solomon, he was our teacher, our mentor. He was always there to assist. We sometimes made a joke of it. We still have a policy of circulating our opinions

among ourselves before they're released to the public. The idea is that we would like to be consistent in the District of Oregon. If one judge says such and such is the law, then lawyers should be able to depend upon that, at least lawyers in the State of Oregon. We thought that by circulating these opinions allowing the other judges to comment on them, and disagree if they felt like it, that we would achieve much more consistency within the court. And we encourage each other to pick them apart a bit, but Judge Solomon, far more than anybody else, took that seriously and he would start marking up your draft opinion with a red pencil and when it finally came back to you, you could hardly recognize it.

He was great on form, and substance as well, but mainly the expression of the substance so somebody else could figure out what we were talking about. He was a great help to all of us, but he was pretty much a perfectionist as far as language is concerned, and this is what we joked about some times.

When Judge Otto Skopil came on the bench and he'd been with us a year or so, I talked to him about how he was doing, how he was enjoying the work, and getting along, and he said, "You know I write these opinions, and they seem logical and well-written and correctly state the law and I'm quite confident in them. It never worries me to get them past the circuit without reversal, but I have trouble getting them past Gus." *[laughing.]*

JS: Would Solomon look at it a second time after it was—?

RB: Yes, we'd usually sit down with him and let him tell us what we did that he thought was wrong. And sometimes we argued with him, and sometimes we'd have to say "Well, this is the way you would express it, but the way I express it is just as good, and sounds more like me," and he would agree with that. He had been on the bench a long time and he was a wise man, was always our teacher. He taught us things that we still talk about, so his influence in this court is with us today as always.

JS: Can you illustrate some of the established contributions of his?

RB: He was full of philosophies, usually humorous ones, but they all had a teaching and an advisory function. Judges are always looking at the appellate court, trying to out guess them, trying to get something that would stand review at the court of appeals. We say that we don't think much about reversals and affirmances and the records of each, and that's pretty true. On the other hand no judge that I know of ever likes to be reversed, and particularly they don't like to be reversed and have the case remanded, which means they have to re-try it. One of his philosophies was that you examine your case thoroughly, you understand and research the law, you understand the facts and the prior precedents, and as a result of all this

study of the existing law, if it still doesn't seem like justice to you, you rule on the side of God. And then if you're reversed by the court of appeals, you know what side they're on. This is rather typical of the advice we've had over the years from Gus Solomon.

JS: Sort of a higher sense of justice, in other words.

RB: Yes, that's correct. And, I'm sure that's what we do. It's extremely difficult to release an opinion, no matter what the prior judges have ruled, if the result just seems unjust to you at this time. The law changes constantly, it grows, as it should grow. It changes with the changes in society. Results that might have made sense even twenty years ago, might not make sense today. So that's what most of us do. We seldom depart from established precedent, but sometimes you have to do it and we do.

When I first came aboard, I succeeded Judge William East. The other two members of the court were Gus Solomon, as chief, and John Kilkenny. I enjoyed equally the relationship with John Kilkenny. I appreciated and enjoyed the relationship between those two men, Solomon and Kilkenny. They were indeed very close friends, like brothers. Being like brothers is not unusual in a court of this size. I feel the same way now about my present colleagues, as brothers, and in one case a sister. We work together closely to

conscientiously try to administer justice and, as a result of all this, we do become close. But Kilkenny's personality and Solomon's, as close as they were, were quite different. Friendly clashes took place between the two of them on occasion, and sometimes even with a little raised voice, particularly on the part of John.

JS: Can you recall these occasions?

RB: Usually they had to do with administration, or even national court policy. They, for the most part, in the early stage of my career, were matters with which I wasn't particularly concerned. I was a boy in the learning process and I wasn't about to change anything at that point. But sometimes there'd be a little excitement and I'd be an observer and John would be absolutely adamant and Gus probably felt at the moment pretty strongly, but it obviously wasn't that important to him. And often Kilkenny's counsel would prevail and the policy would be adjusted to the way he thought it should be. I remember one time shortly after one of those encounters in which voices were raised a bit, John left to go back to his own chambers and I was still there. Gus said "I learned a long time ago there's no use to get all upset about something that doesn't really matter in the first place."

JS: What were some of these things that they were getting into?

RB: Oh, I can't come up with a quick example of one.

I remember that they often arose as a result of meetings of the Ninth Circuit District Judges' Association. When I first came aboard, Gus Solomon was president of that association, the office that I undertook ten years later. So it was usually policy which was discussed at one of the meetings of that association and it had circuit-wide implications. The law says that the chief judge of the district assigns the cases to the other judges and this was precisely what was done. Gus Solomon assigned the cases to Kilkenny and me and himself on a very equitable basis; he wasn't simply arbitrary. It was a rather natural assignment system which the Clerk more or less administered, although it was always the Chief who really made the decision about which cases would go to whom. The Clerk was on top of the filings. He knew that the last case went to Judge Kilkenny and the one before that went to Judge Solomon and the next one should go to me so he'd make a preliminary allocation, and often would even come to us and say is this okay., and it almost always was. So the assignment was more or less an automatic thing. Except that when I first came aboard this court, I'd had ten years prior judicial service. There were an awful lot of very large cases, very large complex, lengthy cases that were stacking up. Because of my prior service, those were immediately

assigned to me. I had cases assigned to me, the very first thing, that were far more complex than anything that I ever encountered as a state circuit judge or ever would encounter. I remember the very first criminal assignment that came to me was *United States vs. Golden Rule Realty Company*.

Golden Rule Realty Company never really followed the golden rule very well. They were bilking people all over this country and some in Europe and had big interests in the Hawaiian Islands. There were twenty-four defendants charged in this massive indictment so the indictment was seventy-five pages long. As I told you, there were twenty-four defendants and there were twenty-two counts. Some of the counts were against just one defendant. Some were against all twenty-four of them and everywhere in between. I tried a lot of criminal cases in state court and I was used to criminal cases, but an ordinary criminal indictment that I'd run across was one page long. There would be one defendant or maybe two or three, but this one was seventy-five pages long and all those counts and all those people. It was a challenge from the very first; it was a learning experience.

You asked earlier about learning and that's how you learn this work. Unlike many other countries where one goes to school and studies to be a judge, he doesn't become a lawyer first. He, or she, goes out to be a judge from the very beginning.

Here, there is no such thing. You just go into the practice of law and if you're fortunate enough to be elected or appointed, then you learn on the job. I had been learning on the job in state court for ten years, but it was rather a shock to me to realize my learning experience had just started. I had to really go into high gear in order to understand the difficult litigation that was being assigned to me here. Being a Circuit judge, it's a court of general jurisdiction, highest trial court in the state, and we got a lot of variety of work. They did tend to run to tort cases, particularly automobile injury cases, that's where the volume was. But through our diversity system of getting into federal court, that is if the litigants are citizens of different states, we try all the types of cases that were tried in state courts. In addition to our diversity jurisdiction, we have all of these complex federal question cases, such as admiralty and maritime cases, patent cases, anti-trust litigation, both criminal and civil, racketeering cases, securities fraud.

After all this time on this court, I still get a hold of a case involving the interpretation of statutes that I had no idea existed, had never heard of before, surprised even to learn that the Congress fifty years ago had even expressed themselves on the subject, both in the civil and criminal field. So the variety of work we have on this court is so great that it's absolutely impossible ever to become bored.

Important Cases

JS: I'm really curious about how you actually did that first major case. I am imagining how you felt and how overwhelming it may have seemed. How did you manage to get that case handled?

RB: Through an awful lot of hard work. Try a case all day and then study half the night in preparation for the next day. But one of that magnitude with that many parties takes a lot of organization and dealing with human personalities that for the most part are very strong-minded lawyers on both the prosecution side and the defense side.

One of the things that I learned from Gus Solomon is that in this court, you're not simply a referee who sits up there on the bench and makes rulings, you are the governor of the court. He's convinced all of us that that's the case. We're to conduct the trial and we're to conduct it efficiently with the end of coming up with a just result. In a case of that kind, it's essential to have conferences with the lawyers prior to trial, to require the prosecutor to set out his case and what he's going to prove and how he's going to prove it, and through what witnesses, then absolutely insist that the defendants do likewise. You get some idea about them, about how long the case is going to take to try, and the way that we should require it to be presented.

For example, often times it's better not to proceed in the order that

the defendants are listed, which is often simply in alphabetical order, but to really analyze the case to find out who's the most involved in this transaction, which defendant through his lawyer is going to produce the most evidence, and the kind, and then rearrange the order. You don't ask them, you just do it. You just tell them. And, we find that we get the trial done in a much more efficient way and in a way that the jury can understand it. This is always on our mind. We—none of us—like to have a case presented to the jury and then look at the jury and realize that they really don't understand what their function is in this whole thing. we've got to see that it's presented in some sort of chronological or sensible order.

[End of Tape Nine, Side Two]

Dalkon Shield Cases

RB: The Dalkon Shield cases had a big effect upon me and my future in the judiciary because I was then one of the few judges that had very much experience with mass tort cases. Whenever one would come along anywhere in the country, I was likely to be invited to handle them. I wasn't too anxious to take on more than I could do, but that's how I got involved in the asbestos litigation, which I'm doing right now, to this date. Those injuries resulting from workers, usually in shipyards, who had been working with

asbestos and the asbestos dust. They had been breathing asbestos dust for up to twenty years and were in very, very bad physical condition; many of them were dying. Three thousand asbestos cases had been filed in the District Court in the State of Hawaii when I was assigned to that district. Those people had all been working at Pearl Harbor Naval Shipyards. I took those cases on as a senior judge and accepted them all and started disposing of them on a mass basis. I have now disposed of close to one thousand. There are still about two thousand to be disposed of over there.

JS: How many do you deal with at one time—the asbestos cases?

RB: I set, far in advance, one hundred cases at a time, but not all one hundred cases by any means go to trial. By the time the trial rolls around, most of the one hundred cases have been resolved one way or another, either dismissed outright because the plaintiff has determined that he isn't injured as bad as he thought he might have been, or by settlement. Indeed the plaintiff had been injured and severely, the company has recognized that and recognized it's their fault and have paid. There are other reasons for some of the dismissals. I don't necessarily need to go into. But by trial time, typically if I'd set one hundred cases, by the time the trial came around, there'd only be fifteen

or twenty remaining, and indeed those did go to trial and have been resolved. But we're right in the midst of that now, there are twenty or thirty asbestos companies, they're good companies who have marketed asbestos and caused injuries to people, but bankruptcy is beginning to play a part in those cases, too, now. We're right in the middle of them. It's hard to predict at this point what direction they will take. But that's the type of work I have been involved in, and I am currently involved with.

JS: The bankruptcy throws everything for a loop, then. It's hard to get a recovery for anyone after that, is that right? Or what does happen?

RB: Well, they go into an outright Chapter 11 bankruptcy. A trustee in bankruptcy simply takes over all of the assets of the defunct company and they're obligated under the law to distribute those assets among the creditors. Few bankrupt companies have much left to distribute, but in the asbestos litigation, it appears that one of the biggest companies, Johns Manville Company, who did indeed file bankruptcy, will be paying a fairly good dividend to these people who are injured. The bankruptcy court has done a remarkably good job in marshaling the assets of that company. They have worked out a system through the bankruptcy court for claims to be made against Johns Manville Company,

and they are paying a fair dividend. I don't know the percentage. Of course it's much less than the injured worker would have received had they *not* gone into bankruptcy, but the system is working. It's working fairly and justly, but I notice that almost every month or two, one of the other companies have either filed in bankruptcy or that a petition of involuntary bankruptcy has been filed against them. So that indeed they do go into the bankruptcy system.

[End of Tape Ten, Side One,
Side Two Blank]

Processing the Work

RB: In this first large trial, the prosecution had just begun his case. He started calling his witnesses and it became time for cross-examination. The first lawyer to cross-examine according to the order that I'd placed them in was taking an enormous length of time; he was asking repetitive questions. It became clear to me that this trial wouldn't get over for months unless I interrupted that procedure just a bit. I observed the lawyers carefully and saw that some of the other lawyers handled themselves much more efficiently. They asked a question only once instead of three or four times. So at the end of the first day of trial, I rearranged the lawyers and for the first to examine, I selected somebody that acted with much

more dispatch. The one that was so slow I put last, and when it came to his turn, all the questions that he intended to ask had already been asked and answered, so his part in it was very minimal. The case got over much more quickly that way.

There are several reasons why you want to get a case over quickly, and one of them is the quality of the trial. The attention span of juries is not unlimited. Usually if you get a case on and off quickly, the jury has a much better understanding of the facts, and when you tell them what the law is, of the law as well. Of course, another reason I like to get the cases on and off is that we have a whole bunch of cases waiting in the wings to be tried. So it's always been important to me to try a case with some dispatch and not take forever. I suppose, to get back to your question that I'm trying to answer, is how I handled that first big trial, what I thought about it, and how I resolved the problems; it was just by doing, learning by doing. I'm sure that I made many mistakes in that first case that I didn't make in the second and third, and so forth.

JS: Were you receiving some coaching or some close assistance from Solomon?

RB: No. We went through the process I told you about as far as written opinions were concerned. They had some binding effect upon the other judges, the non-authors of the opinion. But we hardly ever discussed a case with the other judges

during the progress of the case. Now, there's nothing wrong with that, and we didn't purposely avoid talking about them. In fact when we had lunch together, if there wasn't anybody listening to our conversation, we would talk, and say "Look, here's a problem that arose today and I don't quite know how to handle it." We still do that. Sometimes I even call one of my colleagues on the phone and say "Have you ever run across this problem?" Perhaps he has and perhaps he can give some help.

So while there's certainly nothing unethical about going to your colleagues during the course of a trial for advice, as a practical matter, one really doesn't have time to do that. He's just got to keep his case going. you make rulings, and perhaps they're wrong. And they'll be reviewed, and you'll be reversed, but that's the way the system works, and in an ordinary day of trial, I might make one hundred rulings on the law. Decisions that the law is this way or that; there's disagreement among counsel, so you make rulings. Eventually these rulings work their way to an appellate court. The appellate court examines whatever part of the transcript is necessary to resolve the problems that the appealing lawyer presents to them and the appealing lawyer will pick out his best case to try to get a reversal. Maybe of these one hundred rulings, the lawyers will find ten in which they think the trial judge made an error, so the appellate judges review those ten. Forget about

the ninety, because they're not contested. They'll find that the judge was right nine times, but on the tenth time, perhaps he wasn't. Now they have this case and they study it for six months, and finally rule that the judge made an erroneous ruling at the level below. But remember that the judge on the trial level, the level below, as they sometimes call it, had about twenty seconds to make that ruling and these judges have been studying it and researching it for six months, and then come down with a sixteen-page opinion of why [laughing] you were in error.

Instead of wrestling around with it too long and calling your colleagues to get their advice, it's just necessary that you keep moving and make a ruling, right or wrong. In fact, even lawyers will tell you frequently that they'd rather have a wrong ruling than no ruling at all. At least a wrong ruling can be appealed.

JS: Were your clerks involved in this? In a situation like that case, do you get much out of your clerks in terms of dealing with the overwhelming problems of the case?

RB: Very, very much so. We could not perform this function without good, brilliant young men and women who come up from the law schools. We get the finest; we get an overwhelming number of applications for the few positions we have for law clerks. One of the clerks I have now was editor-in-chief of the *Oregon*

Law Review. That's probably the highest honor that you can achieve as a senior in law school. And this is typical. Without them, the volume, the complexities, the difficulty of the work we have to do just could not be done.

JS: Now, you were talking about some of what you didn't bring to the situation from your prior experience. I wonder if you could talk a bit about what you did bring to your experience on the federal bench from your prior judging activity and also if you could talk a bit about what you might call your own style, or your own ways of handling things in court?

RB: The experience that I received as a state circuit judge was a great training ground for the elevation to this court. In routine cases, from the very beginning, I felt totally comfortable. Certainly, those cases that came here through diversity jurisdiction were cases in which I had been trying for ten years, and there's simply no difference to speak of between how you'd handle them in this court and in the state Circuit Court. We had different evidentiary rules, but not that different. We had different rules of procedure all the way around and ours were really more advantageous to the efficient disposition of the case than the state courts. In fact, the state courts have more or less adopted the federal system now. So I certainly wouldn't have been able to take on the immediate load of tough civil and criminal cases

that I took over here without having that prior experience. I just felt at home in the courtroom by that time so I think I brought a great deal of training and experience from the state system that was relevant in this system. In fact, I really wondered how anybody could possibly go on this bench without some prior judicial service. I found out, though, from my colleagues who came on later, that it's quite possible to do exactly that.

I would be glad to talk about each one of them individually if you want me to. I saw people come here without any prior judicial service, and I felt sorry for them, but discovered that they did very, very well, indeed. I no longer think that candidates for federal trial judge should necessarily have state trial experience, although it's extremely valuable. I learned that it isn't absolutely essential, because those colleagues who did come aboard caught on very quickly and became some of the finest judges we have. I talked a little bit earlier in our interviews about our system of education in the federal court and I'm not going to repeat that, but they do have good educational programs for us. They have a program for newly appointed district judges, which we all go to and we all learn a great deal, whether we have prior experience or whether we haven't. I suppose that the single most valuable aspect of my prior judicial service was, I took on this new task much more swiftly than I could have had without the service. As I said before, I was quite comfortable. The courtroom looks the same; everything

looks the same, and you just carry on and learn the new law and the new procedure a little at a time with the help of your law clerks as well.

JS: The second part of my question: I'm thinking of the ways that we come to understand Judge Solomon's procedures, the procedures and his own personal ways of working with lawyers. In distinction to that, your ways of proceeding and your ways of doing things in the court, that are really yours.

RB: Even when we were working together, Gus Solomon and I did things differently, but there were more similarities than differences. One of the practices that I have followed over the years, is the practice of having a complete understanding between the judge and the attorneys about how the case was going to proceed, and in what order. This way, the one who is judging is able to anticipate problems that might arise. When a very serious objection is taken to a point of law during the trial of a case, you're not totally surprised, you have anticipated that the question would arise. I've always made my in-court rulings promptly, usually without any argument on the part of counsel, to keep the case running. I think probably my own style has been designed to get the important elements of the case out to the jury in a way which is both short and relevant to the issues involved. It's so easy to digress from the real issues at trial, in either a criminal or civil case, and unless

a judge really exercises careful scrutiny of a trial, it'll get away from him. Now a lot of my colleagues wait for objections to come from the attorneys. I don't. If a case seems to me to be starting to digress to some collateral matter not related directly to the issue at trial, I set the attorney back on the right path without any objection of counsel from the other side. In fact, counsel for the other side might prefer to follow this path that diverges from the straight and narrow path to the truth because it might be to his advantage not to look too closely at the kernel of his own case.

A lot of the judges (I'm not saying they're wrong; I just say it's not my way of doing it) feel that we owe the attorneys the duty of presenting their case in their own fashion. Lawyers will say "This judge lets me try my own case." Well, this is a philosophy that I don't accept. I don't think it is his own case. I think it's the business of the judicial system to take an interest in how this case proceeds and that it proceeds to a just result, and I don't think that we're obligated at all to let the lawyer try his own case. You would be more popular and you'd get better ratings on bar polls if you did that, but you wouldn't be a better judge. I suppose that experienced lawyers who appeared before me over many years, and who have appeared before other judges of this and other courts over many years would be more able to say how my style differs from other judges than I would myself.

JS: It might be a different perspective.

RB: Yes, it would. As a matter of fact, I don't know about the styles of other judges because I never step into another judge's courtroom. I don't recall that I've ever seen another judge sitting in my courtroom. We're busy with our own cases.

JS: The lawyers have probably had more time to think about it.

RB: That's right.

Judicial Philosophies

JS: In your discussions among yourselves, perhaps this is one subject that has come up among you, the idea of whether the lawyer should be the one managing his own case without interference or direction, but if you could tell me about substantive differences, that have come up over the years among the judges that you've worked with, and give us some idea of this discussion among you of principle and approach.

RB: There's been an awful lot of talk nationally about the different philosophies of different judges, and activist judges and that sort of thing. The Reagan administration, particularly, was extremely concerned about the philosophies of the judges to be appointed by Ronald Reagan. A candidate would

be brought before the administration's advisors and asked many, many questions about personal philosophies. I mean, how do you feel about abortion, how do you feel about the environment, and every subject you could think of, they're questioned sometimes all day, sometimes a couple of days. Obviously, the Reagan administration thought that was a very important factor in the selecting of judges. But I've never found that to be true. Political parties have changed constantly since I've been on the bench. I've had colleagues who were conservative Republicans, others who were liberal Democrats, their philosophies were 180 degrees apart, but, frankly, I've never been able to relate those philosophies to results of litigation. I've never known such differences in personal philosophy to affect the outcome of any case, not in the least. Although your question was that I talk about the differences in opinion, I just automatically think about the lack of differences [*laughing*].

JS: (Inaudible) —over issues anyway—

RB: I'm sure that they exist. I'm sure that my upbringing from the beginning of my life up until this point at age seventy, the things that I've learned and come to believe in are reflected in my rulings. I grant that much, but I also insist that I don't know in any case of a judge whom I have worked with to be necessarily predictable. That because he disagreed with abortion, for example, that this would have some

bearing upon some case before him, even one that involved abortion.

JS: Because he would be governed by law?

RB: Right. He is going to follow the law. I don't think this is inconsistent with what I said earlier, that when you have to make a ruling, you make it on the side of God. By saying that I don't mean that we threw statutory law to the winds and ignore case law. I'm talking about close cases. I've given up some of my strong position by saying we're somehow affected by our past experiences and our beliefs. But I'm also saying that I don't know of a single case in which one could predict what a judge might do in a particular case because of his personal beliefs. One reason this never happens is that if a case came before a judge on which he had strong personal views, he would reveal that bias to the attorneys and probably recuse himself from handling the case at all, or if not that, at least give the lawyers an invitation to excuse him if they felt uncomfortable having him sit on the case.

JS: So there really are safeguards.

RB: Yes, there are.

JS: I wonder if we could at least raise the subject of the [Federal] Rules of Civil Procedure? The subject keeps popping up in my thinking as you talk in so many different ways. I'm thinking of one

difference in the federal court, as opposed to the state court system, is the absence of code pleading. Then I think of the differences between the judges, whether they are discussed or otherwise, there's the procedures that Judge Solomon introduced and his relationship to federal rules. In other ways I keep thinking about the subject. I wonder if you could introduce into the discussion, the federal rules and from your experience knowing about the federal rules—encountering them around 1938—knowing something about the history of the application of the rules in the District Court in Oregon.

RB: When I first came on to this court, the code-pleading rules in the state courts with which I had been familiar were in full force and effect and, theoretically, were a great deal different from the federal procedure. One was required in —[inaudible]

[End of Tape Eleven, Side One]

RB: Yes, they were required to be set out by the plaintiff who filed the case with particularity in the state court. In fact, that's how the issues were framed. The plaintiff would file a complaint making half a dozen statements of fact. The person sued would then answer that complaint and perhaps admit two or three of those six statements of what occurred, and deny the remaining three. Then the plaintiff might come back finally and disagree with some of the new material

that was suggested or alleged by the other side. A very formal way of doing things, and in the trial you had to be careful that those issues as framed by the pleadings were the ones to be tried at trial.

When I came into the federal court, instead of code pleading, we had notice pleading, and not very much required in the federal system of notice pleading. You make a statement that the defendant owes you \$100,000 as a result of his fraud in a real estate transaction and say very little more than that at the filing of the complaint. The difference was that in federal court Judge Solomon had instituted the procedure of a pretrial order, and that's where you'd come to the nitty gritty, with what it really was that the plaintiff was complaining about in ordinary layman English language, and the defendant would state his contentions and how he differed from those of the plaintiff. It was just simply done at different stages of the trial, but with the pretrial order, the judge was involved and would try to get rid of some of the things that were really non-issues. You'd come up rather quickly then with what really was bothering each side and the gist of the complaint and of the differences between the two sides.

That's theory; but in practice there wasn't that much difference between the two systems because the State of Oregon has had a good judiciary all of the time that I have been acquainted with it. They would also have pretrial conferences in those cases, and if there existed formal allegations and denials, which really were

not seriously taken, the state trial judges would get to the bottom of that the same as we do in federal court, and say, "Look, this is not really a serious contest, is it? Why don't we really get down to the issue of what really is the nub of the plaintiff's case and of the defendant's defense. Forget all these little side grievances that you have, which is not going to affect either the judge or the jury anyway, so we might as well make a one-day case out of this instead of an eight-day case." So, theoretically, the two systems were much different, but as a practical matter, they are much the same.

JS: Now, you studied under Orlando Hollis.

RB: Yes.

JS: And you remember his taking up the subject of federal rules?

RB: Yes, I remember he was the teacher that dealt more with rules of procedure than any other, and he taught us about both systems. He used the code pleading system as a means of teaching us legal history, as well as the theory of modern day code pleading which was necessary for us to understand in the practice of law, so I always felt I had a good basic understanding of both sets of rules and I was well-prepared to carry them out.

JS: The other person who was a large figure in the history of federal rules and

their application in Oregon is Judge [Alger] Fee, and Judge Fee, as you know from the history that you always hear, was very much opposed to the rules. Also, what was Hollis' general attitude toward the Federal Rules of Civil Procedure?

RB: I don't really want to guess about what his attitude was. It seems to me that he taught it to us in a very objective manner; knowing and loving Orlando Hollis as much as I do, I'm sure he still has his strong beliefs, but I don't really recall that he ever foisted them off onto us. I think he taught us both systems in a very objective manner, but my later experience was that as different as they are in theory, they weren't that much different as a matter of fact.

JS: Well, that's interesting how it comes out in history. But at the time that they were drafted in 1938—it's almost a new philosophy of law with a real social purpose, the union of equity and the law. That actually law is directly affected in a case where, and there's a settlement involving the equity of the case, the individual involved, how aware have you been, and have people been in general, of this kind the social purpose being to get law into the courts to make it easy to bring cases in. I'm interested in knowing how people were looking at this and what their difficulties with it or why they valued it.

RB: Yes, there was a great deal of

opposition to the new and modernized federal rules, both by judges and by attorneys. My preference for the federal rules, the simplified system we have in federal courts, is so great toward that system that it's a little bit hard for me to be objective, and so it's in that light when I say that most of the opposition came from judges and lawyers who had grown up under the code pleading system. Those rules were akin to the Holy Bible as far as they were concerned, and they weren't too much interested in learning anything new, or anything radical. The most liberal lawyer is pretty conservative when people start changing around any part of the judicial system. There was a great deal of resistance. One of the deans of the bar in this town, Bill Morrison, just despised the federal rules and spoke against them on every possible occasion. Bill was a fine student of law and legal history, and he understood thoroughly the intricacies of the rules of code pleading and he'd spent thirty years learning and studying them and understandably he just didn't like to see all this knowledge suddenly ditched [*laughing*] and down the drain.

I never knew Judge Fee, so I don't know what his objections to the new rules were, but I will say this, they are living and well and the states, including the State of Oregon, have come around to a version of the federal rules so that now their rules and our rules are so nearly identical that you can't tell the difference between the two. I think that those who were bent upon keeping things as they were with

no change were shortsighted and that it was not unpredictable that states would in every instance follow the rules of the federal judiciary into the relaxation of the strict and formal rules of pleading. And it used to be that under strict code pleading, if a certain wrong committed by one person against another didn't fit in a certain pigeonhole that had been litigated before, then he had no claim. Well, I think under most anybody's philosophy that's not right, it's not justice, and I think it was inevitable that the old system give way. It was also quite understandable that there'd be a great deal of resistance by those who had practiced code pleading and had seen justice administered fairly and justly over many years. It is understandable that they would feel that it should not be changed. The idea they had, I think, is that if the wheel isn't broken, don't fix it.

JS: —the conservatism is a kind of a household conservatism [inaudible] say, that a more sophisticated conservatism reacted to the social progressivism of the rules of '38, or am I wrong?

RB: No, I don't think you are wrong. I think that is it. I think that the federal rules are a very practical way of getting to the point of the litigation you are involved in and to handle it with dispatch. Another thing that used to be true, and it isn't any more, is that judges and lawyers didn't really have much work to do. [*laughing*] They could afford to be legal scholars and sometimes spend four or five days on a

twenty-five dollar lawsuit, but we can't do that any more. We have to have a more practical approach.

Range of Cases

JS: I wonder if at this point we could introduce some of your recollections of the actual cases that you worked on, beginning with a general introduction to it and describing the changes in the kinds of cases that you've experienced in your term on the bench.

RB: The federal court system has, all the time during my experience, been presented with different types of problems in surges or waves. Today there is a wave of environmental cases. We have always had a few environmental cases but today we are getting a lot of them. We have mass filings of securities fraud cases when the economy begins to go haywire. People invest in the stock market with their eyes wide open. They lose a great deal of money and so they look for a scapegoat. They sue their broker or somebody else so we have a wave of securities fraud cases. Some of them are well taken, of course, and some of them aren't. But this is a major type of case that comes in waves. One of the two types of cases that I have been involved in from the very beginning of my career, the cases which make my career memorable and distinctive from others, are clearly in two categories. One of them is the Indian

fishing cases that I presided over for many years. The other I'm still doing to this day in a much greater volume than most other judges—mass tort litigation. Would it be okay to go into either one of those or am I getting away from what you want me to deal with?

Multidistrict Tort Cases

JS: I was interested in knowing if the kinds of changes that have taken place in the case over the decades, but it would be good to talk about that in connection with some of your discussion of the events of this period, so why don't you continue into one of these cases in the time that's left.

RB: The last half of my judicial service has been one of heavy involvement in mass tort cases that has resulted from events that have occurred historically in our lifetime such as airplane crash disasters, in which a great many people were killed or injured. Half a dozen years ago there were a number of industries that caused a great deal of damage to people because of some products they had put on the market that turned out to be dangerous and one of those was the Dalkon Shield, an intra-uterine device which was designed to prevent pregnancy in women, that turned out to be a disaster. Thousands of women throughout the United States were seriously injured as a result of wearing one of those devices. Cases were filed by

the thousands in every state in the United States, in both state and federal courts. I think the federal courts probably got the bulk of them because in almost every case, the company that put the product on the market was an out-of-state corporation, therefore an in-state person sued an out-of-state person and through our diversity jurisdiction we got the cases.

As a general rule, a claimant in a case, particularly a case of this kind, could expect to get his or her case resolved much faster by filing it in the federal court than in the state courts. So I think that we got the bulk of those cases. It was of deep concern to the court system simply because of the volume of the cases. They just overwhelmed the courts. We were called upon to try to dispose of those cases with the limited resources we have, and since they were filed on a wholesale basis, we had to figure out some way to dispose of them on the same kind of a wholesale basis, yet, at the same time, doing everything we could possibly do to preserve the rights of the individuals involved and see that each of those individuals had an opportunity to present their claims and defenses in just that way, individually.

I was assigned to all of those cases in our federal system in Oregon and I don't know how many we had, but we did have literally thousands of them. It seemed to me that the way to go about disposing of them was to set them down for trial promptly and that's what I did with the Oregon cases. I set a couple

hundred cases for trial very early in the stage of litigation in the United States. I don't think very many cases had been tried to their conclusion when I inherited these cases. It ultimately did turn out the way I expected, that if the judge insisted that the cases be prepared and go to trial promptly, that most of the cases would settle at the last minute, literally at the courthouse door. Every judge that's been a judge more than six months knows that the way to get cases disposed of is to set them for trial. You can talk about settlement forever and it never would be achieved unless the lawyers on both sides knew that they were going to have to go to trial and produce some evidence and convince the judge and jury of the rightness of their case. So that's essentially what I did in the mass torts cases, the Dalkon Shield cases in particular.

I had a great deal of resistance from the lawyers on that. They thought that I was rushing them to trial prematurely. I listened to that criticism because I was as anxious as they were to see that justice was done both to the company and to these people. I kept telling them, look, there are so many claimants that this little company, the A.H. Robins Company, was going to go bankrupt. It seemed to me that they owed a duty to their clients to get the cases to trial and get a resolution and take what award they had coming as quickly as possible, because if they waited too long, their people weren't going to get anything at all, or a few cents on the dollar.

Anyway, there was a great deal of criticism because I was pushing these people to trial. I thought I was doing the right thing. I still think so. The cases were tried on a mass consolidated basis. I think I consolidated twenty-five or thirty cases in a single trial before the same jury. This was an experience I'd never had before because I was never called upon. We never had this kind of case early on. It was necessary to dispose of them as quickly as we could. The first part of the trial dealt a great deal with the general problem, explaining what this device was, and why it was defective, and if it was defective, and listening to the Robins Company explain their point of view. The second part of the trial simply had to do with the amount of damage, if any, that was caused by the device. We disposed of those cases in perhaps a month's trial time, perhaps five to six weeks, I'm not sure. As a result of the verdicts that were received in those trials, hundreds more that I had responsibility for immediately settled. The result was that the cases were tried, the people recovered what they were entitled to.

Within a very few months after my cases were over, Robins Company did as I predicted, go into bankruptcy. Had I listened to the objections of the lawyers and the women involved about bringing them to trial too soon, their cases would have gone before the bankruptcy judge, too, and at best they would have gotten pennies per dollar of entitlement recovery.

As a result of my trials in Oregon, the Chief Judge the District Court in Arizona, got in touch with me and asked me to take over all the cases in Arizona, so I took over all of the cases in Arizona. The lawyers there were experienced lawyers. They had investigated very carefully my conduct of the trial in Oregon on the Dalkon Shield cases and decided to present the law and the facts to the judge, and waive jury, so all those Arizona cases I tried without a jury. One of the reasons they were willing to do that and anxious to do that, was that after I completed my Oregon cases it was obvious to everyone that Robins Company was going to go into bankruptcy. I guess they felt that if they waived jury, we'd get them out of the way before the other shoe dropped and the company did in fact go into bankruptcy, and this is exactly what happened. I think within weeks after I disposed of the last Arizona case, the company was in bankruptcy.

[End of Tape Eleven, Side Two]

Becoming Chief Judge

JS: One of the subjects that is going to be profitable for us is the subject of your taking over as chief judge. We've touched on it before in general terms, in the number of cases that you handle, and so forth. If you could give us a picture of that experience, a little more closely, and with an account of how you came to grips with the problem of the caseload that you had?

RB: Right, the chief judgeship of this court is a rather heavy administrative role. We have close to one hundred employees all together here, if you include the Clerk's Office. Of course, it is part of the court. The probation office is part of the court and each judge's staff. Each judge has a staff of five or six people, and since the Chief Judge is the highest authority in the court, some of the problems trickle up to him. At the same time, he or she is expected to carry on a full caseload. I became chief judge when Judge Solomon retired. I found that the workload suddenly increased. One is, of course, expected to keep up his end of the caseload, which is difficult, particularly when the court is overwhelmed with work, as is almost always the case. An amusing tale is that several days after Judge Solomon retired and I took over as chief, he came in and said "What a difference. I don't get any mail and I don't get any telephone calls."

I said, "Yes, I know what you mean, I'm getting them now."

Just little things that trickle up: newspaper editor gets unhappy about something and wants to talk to the chief judge. Everyone always wants to talk to the chief judge, so you talk to them. It takes up a great deal of your day.

JS: A newspaper editor would want to talk about cases?

RB: Cases and policy. "Are you going to allow photography at this particular session which is partly ceremonial?" "Our reporters are having a hard time getting a hold of certain files in the Clerk's office because they're always checked out by somebody else, and can you do something about that?" That sort of thing. Just little matters for the most part.

Of course, there are some big matters too, concerning the chief. He has to figure out the budget for the next several years. He has to be very concerned about space planning, for the present and the future. All of the administrative details that go with being the head man in an organization of this size. I didn't personally find it very difficult for me to handle. I had been a judge ten years before I came on this court and I was what they call the presiding judge of my district in Southern Oregon. We had two circuit judges and two district judges for whom I was responsible. This court, in number of judges, was not much larger than that. I didn't find it difficult, I just found it very time-consuming, but very rewarding as well. I was able to think about some things

involving the mechanics of running the court system that I really hadn't bothered to think about before.

Magistrate Judges

JS: And how did the magistrates work into finding your way through the problems?

RB: The Magistrate Act was one of the biggest boosts ever given to us by the Congress. Prior to the institution of the magistrate system, we had commissioners to handle the minor matters, such as speeding in a federal reservation or federal parks, parking violations, and some more serious, such as shooting migratory wildlife unlawfully. Those matters really had to be handled by someone other than a district judge who was very busy trying large and important cases. The commissioners were more or less like justices of the peace, and they didn't need to be an attorney. Their authority was very limited. So we started thinking about a magistrate's law. We worked very hard to get it and we did get it.

The first magistrate appointed here was Magistrate George E. Juba, who is still with us. Immediately we were able to refer a lot of our detail work to him—largely pretrial preparation of cases, rulings that had to be made in cases before the trial. One of the troubles we began to run into immediately was that Congress, probably correctly so, was very cautious about giving the magistrates as

much authority as we would like to have them have. But they began proving their worth and Congress was more inclined to give them additional authority. Originally, they were not doing anything except very minor matters and then making recommendations to the district judge that he should rule this way or that. But the law was later expanded so that the individual courts could give the magistrates more authority, those that they had a lot of confidence in, and then they became much more helpful.

I've been talking about "we" during this discussion. The "we" I'm talking about is Judge Otto Skopil and myself. We both did a lot of work around the country on the Magistrate's Act to get it passed in the first place, and then to administer it after it was passed, to convince other judges around the nation that magistrates could be a very big aid to them in disposing of their caseload. Judge Skopil calls me "the father of the magistrate's system in the United States" which is a little over generous because he actually has done, and is still doing, more for the magistrate system than I or any other judge in the country. He's chairman of the Magistrate's Committee of the Judicial Conference of the United States and so his trial experience in this district in Oregon, plus his own salesmanship ability, has been able to steadily increase the powers of the magistrates so they are more and more helpful.

Much of this increase in authority to the magistrates came about because in

Oregon, where we really needed their help, we continually gave the magistrates authority to the fullest extent of the law. You understand that the judges can circumscribe their authority and give them less or more power, but within the perimeters of the act itself. We often went a little bit further than the law allowed by discussing it with the lawyers, and the lawyers seemed willing to let magistrates make more important decisions and do more important work. So we were always giving the magistrates more authority than the law allowed. In the next session of Congress, they'd see how this was working and they'd expand the law to include what we'd been doing for the past two years without any authority to do so. We helped the system grow, as well as being instrumental in getting it passed in the first place.

One of the biggest problems we had, which both Judge Skopil and I worked on, was to convince other judges around the country that they should make better use of their magistrates. So many of them treated the magistrates like a sort of glorified law clerk and didn't give them the authority that they really needed to be of much help to the court. Frankly, some judges seemed to be a little bit jealous of their own status and power, and did not want to grant authority nearly as great as our own to magistrates. Also, some judges could not quite conceive of how the magistrates could be helpful. Both Judge Skopil and I went all around the country making speeches. I went to Orlando, Florida to make one to the Conference of Metropolitan Chief Judges of the United States. I explained to them how magistrates

could be better used. One of the problems was that some judges didn't give the office enough status in their own mind. They were appointing people who were really not qualified. Often the senior law clerk would be named a magistrate, and he continued to be treated as a law clerk rather than a fellow judge. This we had to get across. A magistrate, even under the present system with the expanded authority of magistrates, cannot be any more effective than the bar will allow him to be.

To me, this means that the court must seek out the very best people, people who had the respect of the state bar before he was appointed in the first place. This we have done ever since the system has come into effect and in order for a magistrate to try a civil case sitting as the judge with full authority, the parties must consent to it. In many states, the parties will not consent partly because the magistrates aren't that sharp. In this state, we have no trouble at all getting parties to consent to the use of magistrates and that is because we do have now, and always have had, superior magistrates.

JS: I'm really curious about two or three things. How, did you work directly with the state bar? Is it just a matter of appointing excellent magistrates and then getting the proper response, as things go along, from the bar? Is there communication with bar directly, as an organization?

RB: Yes, there is. There is good

communication between the bar and the court in selecting magistrates, but it hasn't always been that way. When George Juba was appointed to be the first magistrate in the District of Oregon, he was simply appointed by the court. The active members of the court took a vote and it was unanimous and he was appointed magistrate for an eight-year term. In a way, it was a better system than we have now. But in a way it wasn't, because there could be abuses. In the case of Judge Juba, he was on the state bench when we appointed him, we looked around to find the best state judge that we could find who had that experience and had already earned the respect of the bar association and simply appointed him. We didn't discuss it with anybody. But later, the Congress, and I think it was probably wise, although we enjoyed the former system, the new rules sets up a specific way in which the magistrates must be appointed and it calls for a committee of the bar. I don't remember the details of it, but I think that the committee finally recommends three people, one of which must be selected by the court. But it's worked out fine in actual practice. It is a safeguard that I now think that it was wise to adopt.

JS: In pursuing the legislation, how did you work with congressmen, and who were the people who were helping you get this legislation?

RB: Our two senators, Hatfield and Packwood, have been extremely helpful

to the needs of the court from the very beginning. I think Judge Skopil handled most of the political aspect of the thing. I haven't had too much experience in that line, and I was rather inactive in the lobbying process.

JS: Well I wonder if you could tell me exactly what your part was in the magistrate's system.

RB: My part was mostly confined to selling it to my fellow judges all around the nation because by selling them on the idea, then bodies like the Judicial Conference of the United States who would see that we got our legislation passed. That was the way that was done.

JS: I'm still wondering why Judge Skopil wants you to be the "father of the magistrate's system."

RB: Well, I think he's just over generous. I've done a lot nationally, not only trying to get it passed, but to make it work after we got it passed—mostly the latter—but, yes, I wonder why, too, because if that title should go to anybody it should be to him.

JS: Fair enough. Originally as the concept began to develop, the germ of the idea, was that a thought you began to have in response to your situation.

RB: Yes, we came in and found that we had all these myriad of small matters that

nobody could resolve except a district judge. It became apparent that we were behind times in the mechanics of getting these things done. They were minor matters to us but for the people involved, they're not so minor. Shooting a migratory bird carries a very heavy penalty and they are entitled to have a fair trial as well as the people with very large cases. But still, it's almost impossible for us as busy active trial judges trying heavy cases to do it. We looked around the country. Our own state has a system of a lower court and a higher trial court. It was working very well. We thought that that should exist in the federal system.

Indian Fishing Cases

JS: Well, I'm glad that we talked about it. It's such an important recent development in the courts. During this period you are already quite involved in the Indian cases, and I think that at one point you were quoted as saying that you had been involved in it since 1967. Is that where we start? Could start farther back with your interest in the situation of the Native peoples, and is there a background to it?

RB: No, there's not. I started at ground zero. I'd never been well aware of the Indian culture. I became interested because the cases were assigned to me, and I got prepared for them and then began to understand the situation. I've handled many, many Indian cases. And

while Indian fishing cases are the most important cases I've ever handled from the point of view of altering the lifestyle and the industry, the fishing industry, in the historical sketch, should be talked about a bit.

The first case that I had assigned to me was a case brought by a man named [David] Sohappay [Sr.] against the Fish and Game Department of the United States. He alleged that the state was treating Indian fishermen the same as all other citizens and they were entitled to special rights because of their 1855 treaties. A short time later, the United States filed a separate action and they were always tried together. They were handled on a consolidated basis and the United States representing the tribes, Warm Springs, the Yakamas, the Umatillas, Nez Perce. But the theory and the request was the same. It was generally that the states had very little authority to make rules governing Indian fishing because the Treaty of 1855 made a big exchange in which the Indians gave up vast tracts of land and moved onto reservations. The thing that really put the treaty together and made it halfway acceptable to the Indians was their special rights to fish in their usual and accustomed fishing places. One must remember that most of the Indians of Oregon lived—their principal food was fish, mostly salmon, so that it became not only their living but their culture as well. The salmon had great religious significance. The states took the view that indeed the Indians had no more rights than any other citizens.

When I talk about the states, I'm talking about Oregon, Washington, and Idaho. As a matter of fact, the attorneys general of those three states had issued a joint opinion, in effect, which gave the treaty very little credence and did conclude that the Indians had the same rights and no further rights than other citizens. The way that came about is the treaty itself says that the Indians shall not be barred from their usual and customary fishing places and have all the rights of any other citizens of the territory, as it was put. But there's a lot more to it than simply the words. The history of the treaties clearly indicated to me that their rights were much greater than that. The fish were going down and down in numbers. There was a big contest between all the fishing groups, Indians, the sports fishermen, the commercial trollers out in the ocean, the gill netters at the mouth of the river. They were really in a battle over who was going to catch the last fish in the Columbia River system.

My ruling was that the state does have authority to regulate fishing, including Indian fishing, but only for the purposes of conservation of the fish. And while they could make rules regarding non-Indian fishermen in other areas than just conservation, as far as Indian fishing was concerned, they could only regulate Indian fishing to the extent that it conserved the resource. The burden of proof was on the states to prove that that was true, that the method that the rules

were designed for the purpose of fostering conservation. One of the big unknowns at the time, because we didn't get a very good press, the press was hostile, was that nobody ever read my opinion before they started criticizing it. [*chuckles*]

My ruling was, in effect, that the Indians were entitled to a fair and equitable share of those fish which were destined to pass their usual and accustomed fishing places, using the words of the treaty. But that before that happened, before anybody got any fish, any of the user groups or the Indians, there had to be an escapement of 90,000 adult salmon to protect the species from disappearing. This was the part that wasn't clearly understood and often ignored. At that time, that was the number of adult fish that needed to escape all fishermen in order to maximize the return. Any less than that would have diminished the return. Any more than that would have been a waste because the rivers will only accommodate so many fish.

As a matter of fact, it has really been gratifying to know that since that decision, the fish have actually increased.

[End of Tape Twelve, Side One]

RB: [I have here a current newspaper article. Its caption reads:] "The Squabbling Abates As Fish Runs Post Increase." Well, if that's correct, they're no longer out there fighting for the last fish in the system. But everybody wanted his fair share, to which they were entitled.

JS: Did that 90,000 hold up? Was it a pretty well established figure scientifically?

RB: Yes, at that time fish biologists didn't have much dispute about that. That's the number of fish needed to stock the system. The fish experts from both sides pretty well agreed to that. Now whether that's changed since then, I don't know. In my ruling then, I also required the parties to get together and come up with a plan to which they could all agree. They've been working on that plan now for all these years. Several times we thought that we had complete agreement, but it fell apart for some reason or another. However, it really has worked well in Oregon.

The reason I say in Oregon is that after my case, some years after my case, Judge George Boldt was handed a lawsuit by a group of Indians in the Puget Sound area. The area of my dispute was the Columbia River and its tributaries, no matter in which state they were located, Oregon, Washington, or Idaho. His case area was the Puget Sound area and the issues were the same in his case as they were in mine. His opinion came out five years after mine. In his opinion he followed mine exactly. In fact, he quoted verbatim about five pages of my opinion in his. He made one change, which I thought was a good one—where I had ruled that the Indians were entitled to a fair and equitable share of fish destined for their usual and accustomed fishing places, which were all above Bonneville Dam, incidentally—Judge Boldt clarified

that and he said that fair and equitable share will be fifty percent of the fish. Well this, of course, meant fifty percent of those fish that passed the upstream areas above Bonneville. It didn't award any part of those fish that were going to branch off into the Willamette and other tributaries, just those that were going to pass that particular point above the Bonneville Dam. In a way, his decision probably didn't differ from mine, but I was pleased that he did clarify that. A fair and equitable catch invariably had to be decided by the judge each year, what is fair and equitable. It made it a little bit easier when Judge Boldt came up with the ruling that this means fifty percent. Whatever a fair and equitable share is, is a matter for the judge to decide and fifty percent is a matter for the judge to decide, too, because there's fish out in the ocean, fish coming up the tributaries, and you have to make a calculation, listen to the best scientific evidence, to figure out what fifty percent, or a fair and equitable share, would be at that particular point.

JS: Where do you get that information?

RB: From fish biologists testifying in court.

JS: So that's a sort of supervisory role that you go through all the time?

RB: Yes, after I decided the case I realized that it wouldn't operate by itself. Someone in authority had to see that it was enforced, implemented, changed, if

need be, so I took continuing jurisdiction of the case—the case didn't end with my ruling. Whenever disputes arose under the system, they'd come to me after filing the proper papers and have it decided. I operated in that capacity for twelve years, I was more or less fish master of the Columbia River for that length of time. Finally, I stepped down from that case entirely and I gave the reason at that time, which is true, that it was a little bit hard for me to continue to be neutral. The Indians had won an almost one hundred percent victory in their original case and somehow or another as each year passed, they weren't getting the number of fish to which they were entitled on some theory or another. I really began to feel that they were being prejudiced in their rights because the other user groups didn't like the opinion in the first place. So you can't very well continue judging cases when you feel biased toward one side, as I became over those years, so I did step down, and it was taken over by Judge Walter Craig of Arizona. But the case occupied a very important part of my life and of my judicial career.

There were other problems. This has nothing to do with my stepping down from those cases, but the United States, of course, was on the side of the Indians. They took the same theory exactly as the Indians, as is the government's duty to do in these cases, but there were areas of federal government that were uncooperative. They're still losing a lot of fish to turbines in the dams and the

Corps of Engineers was unwilling to do anything about it. I remember one time the head of the Engineers was in my court testifying when the complaint arose that he was really defeating the treaty and the public interest by not being more careful about the fish runs and he said something to this effect: "It's our mission to create power with these dams and the Corps of Engineers has no intention of babysitting a bunch of fish."

Well, I looked at him and said, "Colonel, that's where you're mistaken. From now on the Corps of Engineers *is* going to baby sit a bunch of fish."

And of course, they have, and they've accepted that and the plan has worked well. I am particularly proud of the State of Oregon because the state fought very hard, in the Sohappay case in the beginning, to sell me, the judge, their point of view that the Indians had the same rights as anybody else, but once my ruling was made, the State of Oregon accepted it and worked very hard to implement it.

I can't say the same for the state of Washington. The state of Washington was pretty reluctant to give it the credence that it should be. When Dan Evans was governor, he made a statement after my ruling that the State of Washington had every intention of carrying out both the letter and the spirit of the Sohappay decision and, indeed, while he was governor they did. But then they changed governors, and his successors didn't feel the same way about it, particularly Dixie Lee Ray, who fired one of the best game people in

the United States. That's one reason why Judge Boldt later had much more problem seeing that his decrees were obeyed in Washington than I did in Oregon about it. There wasn't all that much controversy in Oregon because the state itself was so cooperative; Washington was not.

JS: What kind of support were you getting in the appeals rulings, the decisions in the circuit court, and also [from] Judge Boldt?

RB: I worked very closely with Judge Boldt on those cases. We compared notes often and in the process we became very close friends. It's kind of amusing that I decided my case in 1969. He decided his in 1974 in which he followed my decision right down the line, except to make the one improvement, that I mentioned. And somehow or another it's become known as the Boldt decision. [*chuckles.*] In a light vein, I tell you that I was very happy that they were calling it the Boldt decision at that time because it was very unpopular. [*chuckles*] But now that it's been a success and the newspapers have changed their point of view completely, I see it called the Boldt decision all the time. [*laughs*]

JS: Now it should be called the Belloni decision.

RB: Yes [*laughs*]. Not really, but just in a light vein, that's the way things worked out.

JS: And besides being reviewed in the Circuit Court, [Chief Justice William] Rehnquist of the Supreme Court, plays a role in it?

RB: Yes, I'm not prepared to give you the whole history of the court system's rulings on the cases. The Sohapp case was one that turned around the entire system of allocating fish, not only to the Indians, but as a result to the other groups as well; and the states fought it as hard as they could, the states of Oregon and Washington, and lost. And neither one of them even bothered to appeal my decision. I think that they knew perfectly well that I was right under the law and they were not. But it was their duty to fight to uphold the position of the states, and they did. But, when Judge Boldt made his ruling, it was appealed to the Ninth Circuit, and the Ninth Circuit affirmed his opinion. At the same time, they in effect affirmed mine, even though mine was never appealed.

JS: In the case of Washington, you indicated that they still managed to cut down on the Indian catch in certain ways in spite of the court's work. How did this happen?

RB: Well, I'm hesitant to make accusatory statements against any officials of the State of Washington. They were doing what they thought was right for their people. I don't like to be the one that just gives you one side of a story. But

once these rulings were made, it became the duty of the state police of the two states, Oregon and Washington, to enforce it on the Columbia River. Oregon did. Washington didn't. Finally, I threatened to call the Coast Guard out to enforce the law of the United States on the Washington side of the Columbia River and once I did that, immediately, they started enforcing the law in Washington, as well.

The Court of Appeals opinion, either Judge Boldt's or another, I'm not sure, called this, in effect, the most heated controversy ever reaching the federal courts with the exception of the school desegregation cases in the South.

JS: Is that right?

RB: Yes.

Pressure From Outside Groups

JS: What was it like experiencing this kind of controversy and the pressure from the groups, the interests?

RB: Well, a judge is used to not pleasing everybody with his judicial decisions. It does, though, get to you after awhile, when you feel sure that you are right and are continually criticized by huge numbers of letters coming into my office and by the newspaper. A judge is not in a position to go out and start making speeches and defending his opinions, so you just sat and waited for it to blow over. And in this

case, it has. I remember one man who was very involved in one of the fishing groups used to send me vicious letters and call me up and tell me how wrong I was. And not too long ago I got a telephone call from that fella, and my secretary said, "Mr. So-and-So is calling," and I said, "I don't want to talk to him." So she said, "The judge doesn't want to talk to you," and he said, "Well, I was just going to tell him, maybe you can tell him, that I've been wrong about this from the beginning and that you were right and I commend your courage in sticking to your guns."

JS: That's a remarkable testimony isn't it?

RB: Right.

JS: Who was this person?

RB: Well, I don't remember his name, and if I did I wouldn't tell you. [*laughs*] He was involved in organized fishing groups and he, too, was taking the point of view that he felt very strongly about.

JS: The sports editors, like Don Holm [*The Oregonian*], for instance, were writing about that issue. Were you getting any support from any of the media who were handling sports, or the public?

RB: No. No. They just were not supportive at all. Strangely, now, they are. Now they think this was the best move ever taken for the conservation of fish and the fair allocation of fish. They act like

they invented it in the first place. *[laughs]* It's a total one hundred percent turnabout from the attitude they took before.

JS: Well, it seems like such a frustration to be in a position as a judge, to be interested in justice, and not to be able to actually reach the public more directly than by the weight of your opinions.

RB: Yes, it's a frustrating experience, but I've had the inspiration of Judge Frank Johnson in the South. His problem was much more delicate than mine, in some of the school desegregation cases. His friends and neighbors were no longer friends. He was subject to vilification. His family was threatened. So I've seen courageous actions taken by other federal judges in the United States and I felt that this was one of the things I had to go through. I went through it all right.

JS: Did you ever meet him?

RB: Yes. Yes, I have.

JS: Share experiences?

RB: Yes. This particular case I was talking about, the Indian fishing cases. But Indian law in general is very much affected in other ways than this. I've tried many cases involving Indians and mostly in Oregon and Arizona. Ten years after my Sohappay decision there was a case in which the federal government was being sued to enjoin them from building a dam

on Catherine Creek in Eastern Oregon. It was a large dam. Had the dam been built, it would have flooded lands which were claimed by a group of Indians in that area. They brought suit asking that the government be enjoined from building this dam, claiming that they had rights to the fishing there and certain gathering rights, of berries and roots. So the government, as it must, represented its own interests. But the government was in kind of a spot because they had always been committed to the idea that the Indian treaties meant what they meant, and that was to give Indians some rights and so their theory was that the people hadn't proved that this was a "usual and accustomed" fishing place of their particular tribe. See, in my case, I didn't rule that all Indians could go up there and catch fish, only those particular tribes involved. And the government denied that this was an ancient place of fishing. So I held a hearing, held a trial. A lot of very old Indians appeared, and archaeologists and anthropologists, who convinced me that, indeed, these people were descendants of Indians who had fished there for 1,000 years. So I made that ruling. The dam was a huge project too. The dam was never built. The government never appealed. *[chuckles]*

JS: So you were asked to do cases down in Arizona. Is that so? Was that a fallout of your work with Indians, did you become known as a judge for this kind of a case?

RB: I didn't really want to do that,

because I made an effort not to specialize in any field of law. But I was working in Arizona on temporary duty there, and the case came up and it was assigned to me. I expect that is the reason, all right. But now, that was a diverse case, too, and the water cases. The Papago Indian tribe in Southern Arizona was a nomadic tribe. They were all over the place. The government, in an effort to make it possible for white settlers, made a deal with the Papago Indians, and said, "Look, we're going to give you this large reservation in Southern Arizona, Papago reservation, and you're to quit wandering around. You're supposed to go there and be farmers." So they taught them to be farmers. The Catholic fathers took a big part in that, taught them to be farmers, so they became farmers and ranchers on the Papago Indian Reservation.

Arizona, being in the Sun Belt, became a very popular place and so it started building up. Lots of housing developments and golf courses were being built, so the water table started going down. All of the water in Southern Arizona is underground water. The only place it comes from is by digging wells. The rivers, as you probably know, don't run in Arizona. I don't know why they call them rivers. They're just a bunch of sand. But it's all underground water and the water level started dropping so bad on the Papago Reservation that the Indians' farms dried up. And they said, "Now look, the deal you made with us one hundred years ago was that we come in here and we get this place to farm; in order to farm,

you have to have water and you've now given away all of our water. We want you to stop that. We want you to quit selling water to all these people." It ultimately was never litigated, but they had a very strong argument, very strong argument.

Much of the judge's work, unheralded, is through getting people together and it has much more effect and it's a much better way than to come out with court rulings which perhaps neither side is happy with. But it would have been a tremendous blow to Arizona to have lost that case. The towns of Tucson and Phoenix would have just have dried up and reverted to the desert. So I encouraged settlement between the government and the Indians, and they were able to get together. I think that the government was pretty aware of the strength of their arguments and as a result in settlement for their claims, the government built a pipeline which carried the Central Arizona Project, which already irrigated around the Phoenix area, now there's another 120 miles down—

[End of Tape Twelve, Side Two]

North American Indian Case

RB: There are all kinds of Indian cases and I've handled most kinds. But the Indians don't always win in my court either. There was a case I was assigned in Arizona in which the Yaqui Indians were making a claim that they weren't bound by Pima County's laws on sanitation. The

Yaquis were not American Indians in the sense of the United States of America. They were North American Indians, but they were south of the border into Mexico. They were treated very, very badly; the whole tribe became political refugees and moved up into Southern Arizona, and the United States, in a very benevolent mood, gave them land "This is your land, you're welcome, here, in Arizona."

But Congress also made a point of saying that this is not a reservation, we're not creating another tribe of Indians, and so I held that they were not a sovereign nation, like some of the Indian tribes are. But they were political refugees and as such they had to abide by the laws of Arizona. But you could see from that the wide diversity of cases there are in this country, and I think this dispute about what really are the rights of Indian tribes will be with us for another one hundred years. They have certain sovereign rights, the tribes do. What they *are* has never been completely defined and it's going to be a slow, evolutionary process to work that out ultimately.

JS: It's still not clear what that extends to, sovereign rights?

RB: Not at all clear. The United States Government could, if they wanted to, simply abrogate all of the treaties. The treaties are the highest law of the land, but the United States, just *ex parte*, by itself, can pass a law that says the Treaty of 185[5] involving the Indian fishing is null and void, and they

would have no more rights. But it doesn't do that, and it shouldn't do that either. But instead—not the government so much, but the states—have just simply interpreted the laws out of existence. The federal courts' rulings have done much to remedy the problem. They will be called upon to do more. And, as is the way with human nature, not all the Indian claims have merit. As I said before, it will take a century to build a sensible and fair set of rules which will clearly define the bounds of Indian law in all the disputed areas.

[End of Tape Thirteen, Side One]

[Side Two Blank]

JS: Judge, I wonder if we could step back and get back into your service as Chief Judge, and pick up the point of the Sentencing Council, which is such an essential operation. I believe that under your aegis it was developed somewhat further—or were you actually the one who created a Sentencing Council?

RB: It was during my administration as Chief Judge of the court that the Sentencing Council was instituted in this district. It was certainly not unknown in the nation. We had heard a few speeches given by other judges on the value that they found in the Sentencing Council, so we decided to try it out on an experimental basis. It seemed to be a very good thing for us and it's still in effect in this district. The idea of a sentencing council was to exchange ideas among ourselves, among the judges,

about the penalty that should be imposed in a particular case.

Judging, as I probably said before, is a very lonely job, and never more so than in the area of sentencing. Some offenses strike some judges as almost shocking, when another judge might not feel the same way about it at all. It was partly a way to avoid excesses in sentencing, either ridiculously long or ridiculously short, and it has proved to serve that function. The way it works is that a presentence report of a person to be sentenced—while it was previously just given to the sentencing judge and the defense council and prosecution—under the sentencing council procedure, is given to all of the judges of the district. Every Monday morning we would have the sentencing council at eight-thirty in the morning. Each one of us would have at that time the pre sentence reports of all those to be sentenced by all judges that morning. Each of us would give his or her idea of the appropriate sentence to be imposed and a short reason of why it should be that particular sentence. We found that it had the effect of modifying a sentence in many cases. I have been personally convinced on a number of occasions that my idea of a sentence was excessively long or ridiculously short and I changed it.

In the final analysis, a trial judge, the sentencing judge, makes up his own mind and imposes his own sentence. Certainly in not every instance did he change his mind even a little bit about the sentence to be imposed. In other

words, it wasn't some sort of an averaging process where everyone states his idea of a sentence and then you arrive at some sort of an average. It wasn't that at all. It was a means of exchanging ideas about the amount, or length, of a sentence, particularly the length of a sentence. Now, this is a lot of work. The individual judge must attend the sentencing council, which takes an hour or so. He must have also read a number of pre sentence reports ranging anywhere from two to twenty, and they are lengthy. In fact, it would tell the life history of everyone who was about to be sentenced. I think our district is about the correct size for a sentencing council. We have five judges, enough to really get a pretty good idea of each other's thinking and we're often persuaded by their argument. A court like New York City, with its thirty or so district judges really couldn't very well have the kind of sentencing council we have because the workload would be excessive, on top of the already extremely heavy caseload that their district judges have. But with only five of us, we were only reading five pre sentence reports, four more than we would have had to read if we didn't have the sentencing council, and it has been, as I say, effective.

JS: Yes, I see it as part of the brown-bag lunches that you judges experienced in opening up communication. Was it so much a correction of a situation, or simply an improving of things to open up communications?

RB: Oh, probably not; although the potential always exists in any court to have hanging judges and easy judges. You have a great disparity right within your own court about sentencing. We wanted to avoid that. Now, it wasn't a correcting thing because that didn't happen to us, but the potential for it happening is always there. So it was preventative rather than corrective.

JS: It sounds like a very healthy thing to do. But it sounds like it also could be difficult to get accustomed to.

RB: Well, it is. And you're right, your previous statement, it's has some of the same purposes of our brown-bag luncheon we have on Mondays. I think one who comes to this court becomes surprised at the lack of opportunity to talk to his fellow judges who are all so busy. I virtually have never visited another judge's courtroom, sat in the courtroom as a spectator and watched him try his case. I don't recall very many times when any other judges sat in my courtroom. I remember not too long ago when I was holding court in Hawaii, a new judge came aboard who was young and inexperienced. His Chief advised him to go sit in my courtroom awhile and as he put it—"watch the old master in operation." And he did attend, but it's very rare that that happens. It's rather rare when we get together in formal or informal meetings. And that is needed, so it helps in that function as well.

JS: Is it continuing today?

RB: Yes, yes it is.

Consientious Objector Cases

JS: This is a good time to stop and take a little longer perspective and consider the context in which the court is working and I'm thinking of the period of the Vietnam War. If you could give me your sort of recollections on the experience of the war and how you felt about it and then how it affected the court.

RB: Yes, it was an important era in the history of the courts of the United States. It was an emotional experience with all of us. I think most judges, on the average, being older than the war resisters had a tendency to think they were wrong and think that we simply had to uphold the Selective Service laws because even if we didn't approve of this particular war, there would be other times, other wars, where our survival was at stake; and we couldn't have a Selective Service situation where it was riddled with holes created by judges in the Vietnam era.

But after awhile, a sensitive judge, naturally, started listening to these young people and asking themselves, maybe they're right, or maybe they're partially right. So many of the cases we had were because some bright young people who had great promise, and indeed, had great character, felt so strongly about this particular war that they refused to serve in it. It became our duty to impose sentence

on those that either pleaded guilty or were found guilty. Historically, evading duty in time of war was considered a serious matter and it was a serious matter then. But to take a young person who acted according to his own conscience out of society and slap him in jail for five years didn't solve very much either. These people were, claimed to be, conscientious objectors, and they were conscientious objectors as far as you and I might think of that term. But conscientious objectors were protected by the law. If one was a conscientious objector according to the definition of that term in the law, he simply didn't have to serve in the military or could serve in a service rather than in a combat position. The trouble is, most of these people did not fall under the legal definition of being a conscientious objector. There were regulations written which defined that term very carefully and had to do with, often, religious beliefs, and they simply didn't fit because their protest was against a particular war and that wasn't good enough to make them a conscientious objector according to law.

So they were certainly guilty, as far as the terms of the statute were concerned; they had to have some punishment. They had to have a serious enough punishment so that the word got around that you simply didn't evade your military duties without some consequences to you. But, over the years, most of us dealing with those young people did soften our attitude toward them. In doing my own research, I ran across some of the clippings that

I, myself, have kept. One of them was by Peter Tugman, the headline of which is "Judge's Feelings Lead to Reduced Terms." And just a couple of words from it. The article says, this is a quote, "'Justice is not yet computerized,'" said U.S. District Judge Robert C. Belloni shortly after his appointment to the federal bench in 1967. 'For good or bad the subjective feelings of the judge play a good part.' Monday, on his own motion in the stilted language of legal documents, Judge Belloni did something he knew would bring down public displeasure. He cut two-year sentences of three different draft and war resisters to on hundred twenty days." It's a rather lengthy article and it goes on, explaining, I think, the agony of one judge in trying to do what was right in this field regardless of any personal consequences. I assure you that I was not alone in this agony.; it was felt by all of us. I did a lot of work in this field and Judge Solomon did a lot of work in this field so that we were called upon with some frequency to go different districts.

The two of us agreed that we would go in tandem to San Francisco in the Northern District of California and take on two hundred such cases they had. It was kind of an assembly line process but I think that the results we came out with were just results. I was particularly fascinated with Judge Solomon because most of these young men, I don't remember any women, young men, were basing their grounds on some Christian principles. Judge Solomon, who was of

the Jewish faith, started studying the New Testament and he knew more about the Christian faith than most of the Christians that I know, and he would question them: "How does this violate the tenets of your religion?" and he knew what those tenets were when he was asking the question, because he had done a lot of personal research on it. But that is kind of an aside.

JS: What year was this trip to the Northern District of California?

RB: I don't remember right now. It was right in the midst of the worst of the controversy over draft resisters.

JS: And why would the Chief Judge of the circuit assign you to that, or would it be just the other district calling you for it, without any role played by the Ninth Circuit?

RB: Well, I think the Northern District of California got itself in a bind. They just had so many of those cases that the rest of their docket was suffering and Judge Solomon and I both gained reputations over the years as being able to get a volume of work accomplished in a short time and so we were simply asked to come down and do it. We worked out our own way of doing things. Everybody was always asking me "How do you accelerate cases? How do you produce a volume of work?" It's always a very hard one to answer. But in this particular case, our method was that Judge Solomon would call the attorneys

of both sides of the case in and he'd have a conference with them, at some ungodly hour like seven thirty in the morning. Most lawyers are ordinarily still sleeping. He would try to work out some accommodations between the prosecutor and the defense attorney and if not, they would agree upon certain things that need not be tried.

Those cases that he could not resolve that way he would set for trial on that day before me. Lots of times between this conference and its failure to produce agreement, between that time and the time set for trial, probably ten in the morning, the parties had reached an agreement. There's something about setting a case for trial and the knowledge that it's going to come up in about fifteen minutes that causes people to really search their consciences and say "Maybe we can resolve this—maybe some reduced charge," some understanding on the sentence that the prosecutor might recommend to the judge, and so out of two hundred cases, we really didn't try very many. All those that were tried, I tried to a jury. They were very short trials. Sometimes we could handle two jury trials in a single day, and often did.

JS: Was part of the motive of the Chief Judge of that district to bring in people who would approach it from a non-severe or strict approach?

RB: Oh, I don't think so, Jim. I have never known of any Chief Judge of a district or circuit to assign work to another judge because of his

feeling that the results might be more palatable to him as our chief than some other judge. I have really never been asked that question before, but I feel strongly enough about my answer, in my experience, it is not done. Often I will acknowledge that the wrong judge gets a case which it would be better if some other judge handled, but nothing has ever been done in my knowledge to sort engineer cases to a particular judge because the anticipated result would suit the chief.

JS: It's the unthinkable thought of prejudging in a way.

RB: Yes, yes.

JS: Well, how was your thinking about the war in Vietnam? How did it progress through the period of the war?

RB: Well, it certainly made us of our era take another look. I was a combat veteran of World War II. This kind of an approach to a situation would have been absolutely unthinkable to me personally. But when you saw all these fine young men and you listened to them awhile, you just simply had to listen and say to yourselves, "Well, maybe there are two sides to this thing, maybe this war is so foreign to the American way of doing things that there's some room, at least, for disagreement." I'm not sure that I ever changed my mind at all about the Vietnam War. I thought it was a stupid war when we got into it. I thought it was a stupid war five years before we got into it, because it was

obvious that sooner or later we'd get into it. But, somebody else had decided that. And our nation was committed. Now, many years later, I feel even more strongly that it was a stupid war, and that 50,000 good young Americans died for not a very good reason.

JS: You know, it's interesting how the situation kind of flattens out, where your recollection of a period like that loses some of the excitement and other feelings of the moment, but if you start recalling the disorder of the times, beginning about 1968, civil rights disorder, and the disorder over the draft and so forth, can you recall how that affected your thinking at that time?

RB: Whether you were a judge, or whether you were anyone else, you just had to be turned off by people bombing Selective Service offices, because of the likelihood of killing someone. I really don't know what else to say.

United States v. Loud Hawk

JS: Yes. And, of course, it's been a very lively period that we've been through. After that, we're into the period of the Watergate situation and the oil crisis and it just seems like it's very active and actually a threatened period that we've been in. Could we go back to an earlier subject of the Indian cases. You know, we've talked about the fishing cases and the conclusion as far as you're

concerned, your final removing of yourself from the cases. There was another case that occurs earlier, an Indian case, and that was the case of [Kenny] Loud Hawk. Does that have any significance in the overall perspective of your dealing with Indian causes, Indian issues?

RB: Without volunteering for the work, somehow or another Indian cases seemed to gravitate into my court, not only in my own district of Oregon, but in other districts, such as Nevada and Arizona. You asked particularly about a criminal case I handled, the Loud Hawk case. The Loud Hawk case grew a lot of attention from the press and it certainly was newsworthy. One of the defendants was Dennis Banks, head of the American Indian Movement, a man almost revered by Indians of all tribes. A lot of emotion was involved in that, too. The history of the case was complicated by the fact that the law enforcement people handled it so badly that it became almost like an old Keystone Cops comedy. It's too bad that happened because it causes us to sort of mix things up.

The charge really against these defendants was that they were collecting arms and explosives and taking them to Wounded Knee [on the Pine Ridge Indian reservation in South Dakota] where they intended to kill a lot of FBI agents and maybe that is what they had in mind; I'm not sure. But our police intelligence knew what these people were doing;

and so they started surveying them and they knew that they were loading things into a van up in Washington State. They were to be arrested when they crossed the state boundary into Oregon because they wanted it in federal court and so they wanted an interstate transportation thing going. Well, somehow or another, they goofed up on that arrest. They got clear into the state of Oregon and nobody saw them enter. And they realized it would be difficult to prove that they ever crossed that border, so they decided to get them when they crossed the Snake River into Idaho. But the trouble with that is that when the van approached the border of Idaho, some eager Oregon policeman, probably wanting some credit for making a big arrest, arrested them on the Oregon side. So they had a hard time proving then that there was ever interstate transportation of anything. Had the officer let them across into Idaho and been arrested over there like was planned, they'd had a pretty good case on interstate shipment.

Well, they confiscated what they had in the van; and then in another foul-up, instead of storing what they thought was dynamite in some safe place to bring it out for use as evidence, they thought it was pretty unstable, old stuff, so they destroyed it. So they had the problem of trying to prove that this evidence, which they, meaning the government itself, had to prove (and who themselves destroyed) was in fact dynamite. So there was a big controversy about that. In fact, one

witness got on the stand, an expert, and they had taken pictures of the destruction of this substance. The expert said, "Oh, that wasn't dynamite. Dynamite doesn't even act that way." So, *[laughs]* in a pretrial setting, I had ruled that they had produced insufficient evidence that this particular substance was dynamite. So I kicked out their dynamite charges but left in the arms charges. On the morning of trial (you remember this had an awful lot of publicity), the courtroom was filled and people were waiting outside to get in, I asked the government to proceed with its case. The only case left was the arms case, but that would have been just as good as the combined case.

The U.S. Attorney refused to go forward with the trial because he disagreed with my ruling on the dynamite charge, and so I said, "Well, you've made a motion for continuance which was denied. This is the trial day, everybody's here. The jury's here, the opposing counsel—about twenty of them—are here. And you're going to have to proceed with your case or I'm going to dismiss it." The U.S. Attorney, Sid Lezak, still refused to proceed and so I dismissed the whole thing. Somehow or another, I'm not quite sure why, I told you the police officers messed it up, but I think the courts have messed it up just as bad. They took a very long time to get that case up on appeal and disposed of. Finally, years had passed. It came back to Judge Redden this time, because I didn't want to take it again. He dismissed it, too. And he was reversed, too. And it got ridiculous

after awhile. I don't think that that's very important to the legal history of Oregon, but you asked me and so that's the answer.

JS: Yes. Well, the history shows something about how the court works and the kind of problems it gets wrapped up in.

RB: And it isn't a perfect organization. We like to say, and we do think, that it's the best system of justice on earth, but it most certainly is not perfect.

JS: I don't quite understand why Sid Lezak didn't continue with the case then.

RB: Well, he was very anxious to have the trial, all of his charges, in one package. And he conscientiously disagreed with my dismissal of the dynamite cases. Indeed, he was not wrong, because the court of appeals later agreed with him, that I should not have dismissed those. He did his job, and I did mine.

JS: Is that what you mean by there were errors on the part of the court?

RB: Well, I don't know why it took so long to get those appeals back and forth. I think the Court of Appeals sat on them an awful long time and when it finally came back to Judge Redden, it was just years later, and he didn't see any good reason to carry the case on any longer. Finally, they settled the matter and agreed upon charges that were not serious charges at all.

JS: What recourse do you have in a situation like that where you need to get some action from the appellate court? Do you have a way of communicating to move things along?

RB: No, we don't.

JS: Just wait?

RB: We just wait. I'll modify that a little bit by saying that we're all people and we're friends, and we could, I suppose, call the chief and say, "Look, it would sure be helpful if you could get this case decided so that if it comes back here, we can get it retried," but it's very rarely that we do something like that. We do sometimes when the case on appeal is representative of a lot of other cases, and we're reluctant to start trying those other cases, with all the time and effort and expense involved, when this pending case at the court of appeals might change the law entirely. So if we ever do that, if we ever ask for some sort of an accelerated treatment, that's the type of situation in which it would be done, and not in a kind like the Loud Hawk case.

You were asking about Indian cases in general. We were talking about Indian fishing cases, and this one criminal case. But over the years I've handled many, many other types of Indian cases. The most important of those other kinds of cases involved water rights all over the country, particularly in the Southwest,

where the biggest one involved the water supply of the City of Tucson which was finally decided by a legislative enactment that provided other water supply for the Papago Indians in the Tucson area. Those were well-publicized cases and were extremely important to the areas involved, particularly the Southwest. Other cases, the Yaqui Indian cases in which the Yaquis—I don't want to repeat, perhaps I am—Yaquis were immigrants to this country. They weren't American Indians in the sense we think of American Indians. I ruled, and it was affirmed, that they, in fact, didn't have the rights of the organized tribes. But there were many other Indian type cases which I won't go into.

[End of Tape Fourteen, Side One]

JS: Well, the Indian cases sounds like very complicated law for a number of reasons. Are you relying upon law clerks who have a specialized understanding of these cases? What is the role of your clerks in working on some of these very complicated cases?

RB: Our law clerks are not encouraged to be specialists. They're encouraged to be generalists just like the judges are. One does, though, acquire a lot of knowledge and expertise by the overwhelming amount of work the law clerks do in preparation for their cases; they certainly are indispensable. There is just no way a judge can carry on this job without his or

her law clerks. But none of us that I know of ever selected law clerks because they're particularly good at a particular field, because we're so general ourselves that we want them to be also.

JS: In understanding the history of the Indian cases, if there needed to be mention of a particular person, a clerk or someone else, who belongs in this history, too.

RB: I think not.

Handling Tort Cases

JS: Okay. Another area in which you really kind of carved out a reputation is in the handling of tort cases, and we have just begun to touch on them. I wonder if we could get a little further into the history of the development of your expertise in tort cases.

RB: Well, I think probably the first important group of mass tort cases were the Dalkon Shield cases, the intrauterine device produced by the A. H. Robins Company, manufacturers of drugs and medical equipment and supplies. The mass tort cases that are now bothering the federal courts are the asbestos cases. People who've been working with asbestos and asbestos dust, which they've been breathing over the years, has also caused a great number of the serious injuries. One of the nation's biggest groups filing those

cases were in Hawaii. These people had worked at Pearl Harbor Naval Shipyards for twenty or thirty years, working aboard ships in the boiler rooms, close confined quarters, where the asbestos dust was so thick that the entire air seemed to be white. Indeed, when they'd leave their work in the evenings their clothing would be white with asbestos dust. They'd go home and it even caused some of the wives to get asbestosis because of breathing the material off their husband's clothing. Three thousand of those cases were filed in Hawaii. The judges over there had tried two cases out of the pending 3,000 cases. There's an awful lot involved in those cases. Questions of proof. What were the manufacturers' negligence? If not, was the product so inherently dangerous that it was bound to injure people? And whether this person had been injured at all by asbestos dust or whether it may have been smoking that caused his problems. Two of those cases had been tried, individually, separately. One of them took five weeks to try and the other one took six weeks to try. A little mathematics will tell you that the District of Hawaii would have been trying those cases for the next fifty or sixty years unless somebody came in with some way of disposing of them on a mass basis.

The first group of cases that I set for trial for myself was a group of one hundred cases for consolidated trial. I knew that I wouldn't end up with one hundred trials, and that the pressure of trial would bring about settlements in

most of them. It ended up so that we had twelve cases that actually came on for trial. Through pretrial conferences and getting agreements on, little things that normally have to be proven, didn't have to be proven by exhibits or witnesses because I could bring the lawyers to agreement on a lot of minor points. So the twelve cases were tried on a consolidated basis. It took twelve trial days to do it, an average of one day per case, in contrast to the five weeks and six weeks that it had been taking the local judges over there.

But that just goes with experience on the job. One simply gains an ability to dispose of cases on a mass basis and you can figure out ways of doing it. Did somehow the plaintiffs who took five weeks of six weeks to try his case get some better kind of a justice? I certainly don't think so. [chuckles] I think that the quality of justice didn't suffer at all. I know the judges over there were eternally grateful to me and some of the other judges that have gone in and helped them out on these cases. It was a situation, again, where a couple of things were important. One was to get the case to trial before the person died, and this was difficult because those people die right and left. They have asbestosis which is the mildest form of disease you can get from breathing the dust, but there are some much more serious diseases, cancerous type diseases, the most severe of which is mesothelioma. This is caused only by breathing asbestos dust. No other cause. It's always, and I mean that literally, always fatal. I was anxious to get these

people their day in court before they died.

As a result of this, I worked a lot harder than I probably should have worked, particularly as a senior judge aged seventy years, but one does become pretty conscientious about that. I encouraged settlement very, very strongly. People simply had to take less than they wanted and indeed less than they're probably entitled to. But it seemed better to me, and I think to them, when I explained it to them, that it would be better to take something less than they deserved in order to get the matter disposed of before they died. Their heirs would probably recover something, maybe a lot, through trial, but they would never see it happen. I think it worked out as well as it could have.

Here again, Johns Manville, the biggest producer of asbestos, had already gone bankrupt, and there were twenty or thirty more manufacturers, all of whom were sued, who had they paid large awards on individual cases would have gone bankrupt. The early ones to the courthouse would probably get very adequate awards, even punitive damages awards, but those who weren't the first in line to file in the courthouse would get nothing because the companies would all be broke. So that thinking was my approach, my argument to counsel for both sides and to the people themselves, that it's simply to everybody's advantage to settle and it was to everybody's disadvantage to hold out for a lengthy legal proceeding.

JS: Those were the real prospects.

RB: Right.

JS: It sounds like a very human situation.

RB: Yes, it had its emotional aspects too. I suppose that's one reason why I worked so hard on those cases. You could just feel it. Well, I was pretty sure that I would get some fairly just disposition of these cases or it wouldn't happen at all because the local judges in Hawaii could not handle those cases. They had other things that they had to do, criminal cases take priority on the calendar over cases of this kind, and I couldn't see anybody else coming in and handling those cases on the basis that I did. Later, I had a reason to change my mind about because when it became an overwhelming burden to me. I searched around in my mind, thinking about other senior judges in the Ninth Circuit and I came upon two, Judge Sam Conti and Judge Spencer Williams. In the end, I got hold of those two judges and asked them if the two of them together would take over the work I had been doing because I'm tired, I just had to drop it. I was absolutely delighted when I was able to convince them to do it. They like being in Hawaii. They're extremely able. They had experience equivalent to my experience. They are now carrying on with those cases and my fears that it wouldn't have been done at all if I didn't do it turned out to be unfounded, thankfully.

JS: So your sense of responsibility is helped by setting it up that way?

RB: Yes. And I am extremely pleased to have set up the system to dispose of those important cases with dispatch. And, of course, during the two or three years that I carried on the work we resolved hundreds of cases. Judges Williams and Conti are using the same system now and it is my understanding that they can now see the light at the end of the tunnel. I am still on the Hawaii team. Although I don't travel much to Hawaii anymore, I do talk to and advise those judges when I am asked to do so. I also consult with Judge Owen Panner, my colleague in Oregon, who acts as settlement judge. Without his help and support I could not have possibly made the system work.

[End of Tape Fourteen, Side Two]

State of the Federal Justice System

JS: Judge Belloni and I are at our probable last meeting here. I thought that I would open up a really large topic for you and spend some time on your observations of how the justice system is working now. With so many things happening, perhaps you could single out what has really struck you as most significant and what your reactions to the developments have been.

RB: Yes, I can. The overall state of the

federal justice system is excellent. There is certainly no better system of rendering justice in the world, characterized, I think largely, by the fact that the judges of the United States are excellent, hard-working judges, picked with a great deal of care by the various presidents. But it goes far beyond that. The national law enforcement agencies do a very good job, people like the FBI, and the Drug and Alcohol Enforcement people, and the Secret Service, and other such agencies of law enforcement. We haven't mentioned the state system, but we work so closely together with the state system. I'm pleased to be able to say that in this state, and in most of the states where I serve, they also have a very excellent state justice system. The relations between states and the federal courts are fraught with danger of conflict. We frequently have to review things that the state courts rule upon and we certainly have never, and still don't feel, that we're any sort of a superior upper level to the state courts. We're indeed partners, but because of the law we occasionally have to make rulings which upset state decisions and perhaps upset state judges, including myself when I was one.

But both the state and federal judiciary make a conscious effort to know each other's problems. We meet in council once or twice a year, so it works well. While our system is excellent, it is certainly not perfect. I think one of the real and permanent problems with the federal judiciary is that it's top-heavy on the appellate level. This has its own

tendency for delay and to stretch out cases; it makes them last such a long time. The public rightfully, I think, gets a little bit disgusted with them. A man's on death row, for example, for ten or eleven years before the death sentence is carried out, or he's given some kind of a reprieve. And there's danger in the appellate level becoming even more top-heavy than it is now. In our circuit of western states, we have about one hundred trial judges and about thirty on the appellate level, almost three to one. It just seems to me that we don't need that many appellate judges. A case is tried in this court and is given what we consider to be a fair trial, it's probably not necessary to even have a right of appeal in every single matter that comes up. Certainly the ones involving federal questions should be appealable and those with extremely important points of law, but not every case, and every case doesn't need to be analyzed completely and fully at the appellate level like it's done now.

There's a big move on to split our big Ninth Circuit. We do probably have too many judges in it. I am sort of neutral on that right now. I've always opposed a split of the Ninth Circuit and I still oppose it, but I don't feel as strongly as I did before. But one of the byproducts, probably, of splitting our circuit, which is the largest in the United States, is that then the two halves of the circuit making up new circuits will occasionally have opinions which conflict with one another. This happens, of course, in all the circuits, but the fact that

this large circuit splits is another reason for conflict among the circuits, which has to be resolved by the Supreme Court of the United States at the present time. Such a split would probably almost assure the necessity for the establishment of another appellate level. A person's litigation would be tried in this court, appealed to the present Court of Appeals, then to the new intermediate court and finally to the Supreme Court of the United States. And it essentially isn't necessary. If you get a good judge on the trial level, I think that in many instances, those rulings should be the final ruling with no more appeal.

JS: Is there talk of a higher, intermediate appeals court?

RB: Yes, there is. It's a serious proposal, seriously made and I respect those that make it. And the reason being that the Supreme Court of the United States itself is overworked. Really, those people on that court, for the most part, are elderly people. They have such a workload that I just cannot understand how they can do it. Because of the age factor alone, they're not as vigorous as they were in their younger years and they must work many hours a day in order to carry out their functions. In fact, they do work many hours a day, I've been told by friends on the court, and it's obvious that they do. But there must be other ways to reduce the work of the Supreme Court of the United States. We could go on with this a long time but I won't. It can be done in other ways.

At the present time the system is in crisis, the federal judicial system. I kind of smile a little because this is written for historic purposes and if someone reviews this one hundred years from now, I'm sure the courts will be in crisis then, too. The crisis will be of a different nature but they'll still be in crisis. But nevertheless, the problems have to be resolved as we go along and this crisis now is that we're overworked on every level. My colleagues in this court who are still active carry on an overwhelming caseload and it's getting a lot worse. Mostly by acts of Congress. Some courts are so burdened with criminal cases that they just can't take on any more civil cases. That is a disaster when people have serious disputes that can only be resolved in a civil suit in a United States court and the United States court can't handle them because of the heavy criminal caseload which takes a priority. Then this is indeed a crisis. We complain to Congress. Some of them understand our problem fully, but, for the most part, it's been falling on deaf ears. There's a lot of reasons for this overwork. Some of them I just jotted down. New legislation creating complex and lengthy trials. Every session of Congress comes up with some new reason to take your matter to federal court to be resolved. The Speedy Trial Act requires us to get criminal cases to trial at the least practicable time or those cases have to be dismissed. Well, that's where no civil cases come in and, not only that, we're almost to the point where some districts can't even handle

the criminal load alone, even though they've stopped taking civil cases; and that requires dismissal, sometimes, of very serious charges.

Another factor is that there is an increasing number of federal prosecutors, criminal attorneys, prosecuting cases being authorized for the United States Attorneys. It's brought on by the drug war. Twice in the last year the law enforcement agencies are adding people, but somehow or another Congress can't get the message that when they create more cases, we need more help in the trial courts.

Another factor is that part of the War on Drugs, which is really at the bottom of the whole thing, is that we allow prosecutions that would normally be in the state courts come into federal court. That's new, and prosecutors are taking advantage of that because, for the most part, we can give them more severe penalties than is allowable in the state courts. Then there is a problem of mandatory minimum sentences in criminal cases, which is parallel with the sentencing guideline statute that was passed a year or so ago. Since we have mandatory minimum sentences, there is hardly any room anymore for the prosecutor and defense counsel to get together on what we call a plea bargain. The defendant admits some fault, but he thinks he's been charged with something greater than he wants to plead guilty to, but he's willing to plead guilty to some lesser offense. But with the mandatory minimum, and the sentencing guidelines,

we have to take the whole picture into consideration, including the part of the charge that might have been too heavy a charge in the first place. So where we used to see only a small portion of criminal cases even going to trial, we now have a large number going to trial, a majority. An agreement prior to trial is becoming less and less frequent, almost unknown. There's the problem of not creating new judgeships when they're so badly needed. Not only that, the President's not too good at filling the vacancies that now exist, even though Congress has created them. There are a number of reasons. I'm not sure what the reasons are, but I think some of them have to do with partisan politics.

Another factor in the increasing workload of the courts is the very nature of the second branch's procedures. We have an awful lot of ambiguous legislation which has to be interpreted by the federal courts. This is a built-in problem and not a new one, except it probably happens more often than it did—ambiguous legislation. A piece of legislation comes to the Congress and it has its proponents and its opponents. They arrive at compromise, and the compromise is affected by writing a bill that is so ambiguous that each side thinks they have won. You and I look at the statute in a particular light and we can't really figure out for sure what it says. So the judge takes a look at the language of the new statute and looks at the history of the legislation, including the various speeches made by the proponents and the

opponents, and comes up with what they think the Congress meant. A judge rules one way and then if it's for the position of the proponents in the original legislation, the opponents will think, "Gee, that's a dumb judge, you know, clearly, the new law doesn't say that at all; it says what we thought it meant in the first place." The other side though, of course, thinks that they really have a brilliant judiciary to come up with such a right result. And so, we also have that constant interplay with Congress and they usually don't look very favorably toward the judiciary. They're almost always mad at us for something. *[laughs]*

JS: And vice versa?

RB: Yes, of course, and vice versa. But we see it because often when they're unhappy with us, they don't give much credence to our pleas for new judges or more adequate salaries. And I think that's to a large part behind it all.

JS: Are there some telling examples of the kind of legislation that you're referring to?

RB: There are, but I don't think I'll dwell on it. One of them, though, which is very, very much in the news today, is in the environmental area. Just how much of a part should the federal judiciary play in interpreting environmental issues—whether we should have, and do have,

any right of review or not. I'll call it an argument, for lack of a better term right now, between Senator Hatfield and Judge Goodwin who've been long-time friends and still are, but with totally different attitudes about the court's part in making rulings involving environment, such as the recent spotted owl problem. So that's my view of the state of the federal judiciary at this time.

JS: Yes, it opens up all kinds of questions. In the area of legislation, Congress legislating and laying responsibility on the courts, and sometimes it seems as though the courts would like to drop the responsibility back on Congress. Is there a feeling that there is a way to get Congress to legislate in a different way, either directly or indirectly? What can be done about it?

RB: Well, I think both sides try to keep an open mind and study the viewpoint of the other. Our own little local court, for example, follows a policy of inviting every one of our senators and representatives to meet with us once a year, and they do, not every year, but every so often. Each of the senators, each of the congressmen do. And at that time we don't try to lobby them; we point out some of the problems we have, they point out some of the problems they have. And I think that's probably as good an approach as any. At the present time, we're a little bit discouraged because we seem to be coming further apart rather than closer together.

JS: Particularly in the spotted owl and timber management issue?

RB: Yes. That's the hot issue today. You know, six months from now it will be something else. But you're right, in so many of these cases we would be delighted if we didn't have any jurisdiction to hear these matters. But that's one of the controversies. But this time it has a reverse slant. Some of the members of Congress think that we're not given the right to review, but those judges who have worked on it decided that we have and even though we'd rather not have the responsibility, it's up to us to exercise it.

JS: The explosion of criminal cases—drugs are really at the bottom of that?

RB: Oh yes. Oh, yes. It's hard to deal with percentages, but it's getting so that almost all criminal cases are drug related. Certainly not all, but many bank robbery cases, I would say that probably eighty percent of all the bank robbery cases involve drugs in some way. The people being all doped up on drugs at the time, or else they become so drug dependent they have to get some money some place, so they rob banks. White collar crimes are often drug related. Every field of criminal law you can think of is affected by the disastrous drug problem we have in this country. I'm not qualified to say anything about how you cure that. That's not up to the judge.

JS: I was interested in your pointing out the large staff on the appellate court, the Ninth Circuit. Would they feel that they were so under worked, it seems like you would have an argument there.

RB: I don't make a point at all that they don't have enough work to do to keep thirty judges busy. I just think that the way to reduce the size of the court to manageable proportions would be to do something about the input of cases into the court. They're doing an excellent job on the output. Like the trial judges, they have an extremely heavy caseload and they're taking care of it. But I just don't think it's necessary, even under our present Constitution, to have an appeal in every little case that comes along.

JS: In its management of itself, the Ninth Circuit could find ways to not receive appeals, is that right?

RB: I think it would require legislation for the most part. I really don't have any criticism of the way the present court is operating. I think that the place to alleviate the problem is on the input side.

JS: Right. You just briefly touched on the ideological aspect of things, or we might say the political aspect of it, that occupies a lot of attention. That is the composition of the Supreme Court to begin with. But then, there have been a lot of appointments in the Reagan period

that had a pretty definitely political bent, more than usual perhaps, in finding conservative appointees for the district court positions. How have you looked upon this as you've watched it proceed through the last ten years or so?

RB: I think it's unfortunate. We're certainly losing the balance between the conservatives and the liberals that we've always had. People worried about that for years but it never seemed to happen. Good Republicans like Earl Warren would be appointed and much to the chagrin of his appointing president, he turned out to be a real liberal. But this doesn't happen any more because during the Reagan administration, and I suppose it'll be followed again by Bush, I don't know, is that candidates for judgeships at all levels are really brought to account on personal philosophy.

When I was interrogated for my confirmation, this was never even hinted at. I mean, nobody asked me how I feel personally about conservative or liberal issues. I was asked whether I would discriminate against certain groups, including minorities, not only asked questions but my record was examined to see whether or not I could be fair to minorities, for example. But nobody ever asked me any questions about my political philosophy, conservative or liberal or otherwise.

The Reagan administration denies that they had any kind of a litmus test,

but they did have. I've talked to my friends who've gone back for interviews as judicial candidates and their personal thinking is gone over in detail. Not their scholarship or their energies, but just how they feel about things. So it's not surprising that the high court has taken a decidedly conservative approach to matters. And I think it's unfortunate. I think a conservative president would do well to appoint more liberal justice and trial judges as well, and vice versa also liberal president should look to someone who's not quite so liberal on occasion.

JS: Keep the balance.

RB: Yes, keep the balance.

JS: Well, in thinking about being the person who makes a decision like that, looking for a candidate for a judge, I wonder if you could give me a kind of an appraisal of what qualities that you particularly would value in a judge or a candidate for judge?

RB: Well, certainly, all of the obvious factors must be present, fairness and honesty. It must be some intensely loyal individual to our constitution and system of government. They certainly must have a good temperament, must be totally dedicated and hard-working. But now we need more. We need people who are capable of doing an awful lot of work, someone who can do a volume of quality

work and someone who can be reasonably innovative. This is a very practical thing I'm talking about departed from philosophy.

[End of Tape Fifteen, Side One]

RB: Congress does not now and never will create new judgeships until a crisis has occurred in the courts. This helps alleviate the crisis and we welcome it. But we're still behind on the number of judges we need to handle matters with dispatch. Before I became a trial judge, judges really didn't have a volume of work to do. They probably thought they did, but when you compare to what we do now, there's no comparison. And you could afford to be a student and come out with your brilliant opinions, which you spent two weeks of hard labor in preparation. We can't do that any more. I don't think we will ever be able to do that any more. We just simply have to get people who can do a lot of work, do it fairly and efficiently as possible. I've always felt that as a trial judge it was my duty to get the decision out, to make a ruling, to bring a case to trial quickly, and dispose of it, because there are people down the line who are pretty desperate to have their matters heard as well. We're not here to write lengthy opinions and make new law except where it's absolutely necessary to make new law. It's our function to turn out the cases so that the people down the line will have their day in court, too, in a reasonably short period of time.

JS: Have you thought of any improvements that could be made in the appointment process? Some things have been suggested. Is there a plan?

RB: No, I can't. I think that since the President has the right to appoint federal judges with the advice and consent of the Senate that it's going to continue to go on very much the same way as now. We don't have a single system of appointing judges now. The senior senator of the state, particularly if he's of the party of the President, is the one who's going to decide who are going to be the judges. We do now have a number of different methods employed by different senators throughout the United States. I don't think there's anything that can be done in the legislative field to change it. I don't think it's going to be changed very much. I expect that President Bush's system will be different than President Reagan's and his was different than Carter's and so forth.

Senior Status

JS: I believe you took senior status in 1984, is that correct?

RB: Yes.

JS: I'd be interested in hearing what the experience was like in your career and your life.

RB: Well, it's a very enjoyable position, being senior judge. You're in a position of being able to be a little bit selective on the cases you choose to take. You have no selectivity whatsoever, of course, when you're an active judge. You have no control over what's being filed in the courts, and so you take whatever comes along. That was enjoyable, too.

But now, since I've been at it so long and lost some of the physical energy that I used to have, it's just extremely enjoyable to take cases on a little bit more leisurely basis. I don't feel like I have to get a three day trial over in one day for example, like I used to think I had to do. The rule is that myself and other judges on senior status can take as little or as much work as we want to take, but almost all of us take on a very substantial caseload. I do, and I shall continue as long as I possibly can. I've had so much experience in all judicial fields after such a long time, and being a very generalist judge that I have a lot offer to my own district and to other districts in the United States. I've talked before, I think, about my work in mass tort cases. That's what I've done largely since retirement. I've taken very difficult groups of cases in Hawaii and in San Francisco and a few others.

The senior judge system is presently under attack, but I just can't see that these people can possibly be serious about this. I'm entitled to full pay for the rest of my life whether I work or whether I don't work. I think the fact that my colleagues

and I who are in senior status go out and try cases with no additional compensation is the greatest bargain the United States government now receives. But during the present effort of ourselves and our friends to get more adequate salaries for federal judges, the senior judge system has come under attack. As I say, I don't know how they can be serious about that. But they have pointed out that some judges on senior status don't do any work at all, and that's true, but there's some three hundred—close to it anyhow—judges on senior status, and they were able to find eighteen who did no work at all. Well, two of those eighteen were over one hundred years old [*laughs*]. Others have had a long and distinguished career, but either they're tired or they feel like putting their effort into something else which is related and still benefits the government. One of the targets of that approach was former Chief Justice Warren Burger. He doesn't do any judicial work at all. That is true, but the last year or so he has worked very, very hard on his duties as national chairman of patriotic groups and of the big thing they had not too long ago of our bicentennial and the celebration at the Statue of Liberty. Warren Burger is healthy, and he's vigorous, and he's hard-working, so it's utterly ridiculous to point out that he isn't doing any judicial work at all.

But to sum up the question about being on senior status, I think it's a good system for the country and I think it's a good system for the individual. There

comes a point in one's life, surely, that he can't do a full caseload and should not be doing it. And this is a good way a judge is not simply put out to pasture when he has an awful lot of talent and ability remaining that could be put to the service of his country. That's how I feel about my position now. I will always carry on a substantial caseload as long as I can. When I can't any longer, either because of physical or mental disabilities, I have no doubt that my colleagues will very gently, and very diplomatically, tell me that I should leave the service; when that happens, that's what I'll do.

JS: Almost as though there isn't an alternative to retiring and taking up some hobby or some activity.

RB: We can, of course, resign., I'm sure I haven't discussed this, but when a judge has reached the specified age, in my case it was sixty-five because length of service comes into play. I had both length of service and age to retire. I had two options: one of them is simply to resign. And if I'd resigned, I would continue to get the full salary that I'm receiving now. I would not, however, receive any pay raises that might come along. But as senior status, what I'm doing now, I'm entitled to the pay raises the same as the active judges. So we have that alternative.

JS: That's the difference. I wonder if you could give a picture of your personal life in these years.

RB: Yes. My former wife Doris, who I mentioned before earlier in the interviews, and I separated a few years before I reached time for retirement. We're still friends. Shortly after our separation, and ultimate divorce, she remarried. A few years after that I married the former Faye Dement. She's just an excellent companion. I've known her since childhood. We are both very happy and I think the whole matter personally has been resolved very, very well. She worked in the federal court system for many years so she knows my job intimately. She knows the pressure of it. She knows how to deal with it and does very well. I'm very happy and she is as well. I might go on a little further, and mention my children, James and Susan. James is thirty-seven now and Susan is thirty-five. Jim has been in the electronics field around the Portland area for some ten or fifteen years, and he's very skilled at it. Susan is the one who decided to follow in my footsteps. She became an attorney. She went to the same law school, the University of Oregon, that I went to, even shared one instructor, thirty years later.

JS: Who was that?

RB: Frank Lacey. He very recently retired himself, but only very recently. Susan has done awfully well in the practice of law. She was law clerk to a federal judge, then she went into a large San Francisco law firm in general practice, and then she moved over to the United States Attorney's office, where she is now. She's

an Assistant United States Attorney for the Northern District of California. She's in the criminal division. She tries cases in the trial and appellate courts every day. As we sit here now, though, she's seven months pregnant and is about to give me my first grandchild at age seventy. I'm as excited about that as the new mother is.

Faye and I have built a new home on the Central Oregon coast, in Newport. We've retained a home in the Portland area, Tigard actually, so that we have a place to live other than a hotel room when I come to my office. We spend all the time we possibly can over at our new home in Newport. It has a marvelous ocean view and we're very happy there and that's what I will continue to do, too, as long as I can—live over there and then come in as I am this week to try a case now and then.

JS: Well, Judge Belloni, I want to thank you for this, for me, very gratifying experience. I especially want to thank you for the effort that you've put into it, and the great amount of time that you spent doing this.

RB: I thank you Jim, I've enjoyed working with you.

JS: It's going to be very valuable. Thank you.

[End of Interview]

1. The Geneva Cross is a red cross on a white background designating a medical facility.
2. Sen. Joseph McCarthy served as a Republican U.S. Senator from the state of Wisconsin from 1947 until his death in 1957. McCarthy was noted for making claims that there were large numbers of Communists and Soviet spies and sympathizers inside the United States federal government and elsewhere. His tactics and inability to substantiate his claims led to his censure by the U.S. Senate