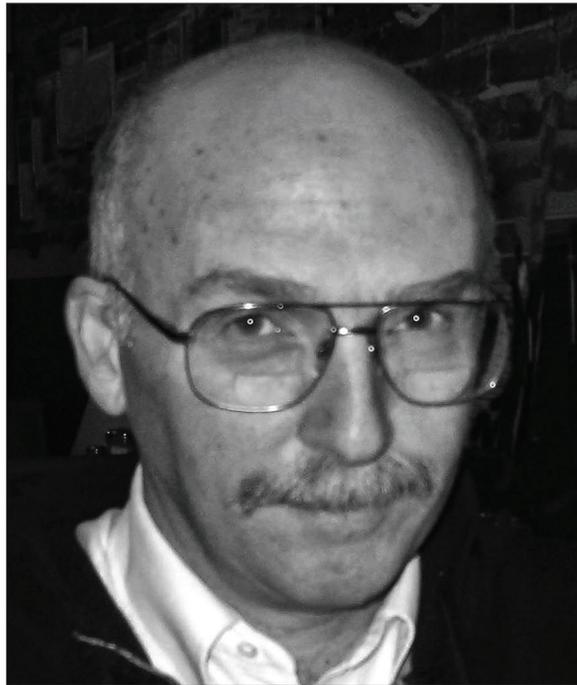


Stephen Bloom: An Oral History

Stephen Bloom

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

INTRODUCTION

In spring 2005, Article I Magistrate Judge Stephen Bloom recorded his oral history for the District Court Historical Society. A series of three interviews took place in the chambers of Judge Donald Ashmanskas. Judge Bloom was a younger oral history subject than many, but time was of the essence since he would soon leave for Armenia as a Peace Corps volunteer at the Constitutional Rights Protective Centre.

Stephen Michael Bloom was born June 10, 1948 in San Francisco, California, to Dr. Allan Bloom and Natalie Claire Levee. He grew up in the San Fernando Valley, where his father was a general practice physician. Bloom graduated high school in 1966, attended Dartmouth College for two years, and in 1970 matriculated at Stanford University with a degree in English. He came of age during the Vietnam War, which shaped his social conscience. During his time at Stanford, Bloom lived with fellow students from the Students for a Democratic Society [SDS] while serving in the Navy ROTC. After two years in the Navy, Bloom began working with the Equal Educational Opportunities Commission in the California Department of Education. Preferring the work he observed lawyers doing, Bloom headed to Willamette Law School in Oregon in 1974.

Almost from the day he arrived on campus, Bloom met his future wife, Becky Nelson, a Minnesota graduate of St. Olaf College, and a member of his class. Theirs was “one of the first classes to let women in, significantly.” During law school Bloom made the dean’s list and was on the Law Review. The Blooms first found jobs in Corvallis, but soon relocated to Pendleton. Steve took a position in the District Attorney’s office and Becky worked for the East Central Oregon Association of Counties writing an economic analysis of Eastern Oregon. She later worked for the District Attorney’s Office and on the Umatilla Indian Reservation. After four months in the DA’s office, Bloom joined the Hermiston based law practice of Don Morrison and Garry Reynolds (later a circuit judge in Pendleton). When a position became available at Kottkamp & O’Rourke, Bloom seized the opportunity, remaining with the firm from 1981 until 2005.

During his Eastern Oregon career, Bloom followed in the footsteps of partner Bob O’Rourke and became a water lawyer. He became a part-time magistrate for the U.S.

District Court of Oregon in 1988 and was reappointed in 1992, 1996, 2000, and 2004.

In this interview, Steve Bloom describes his childhood, education and formative years. He discusses water law in Eastern Oregon, the way he operated as a part-time magistrate in Pendleton, the benefits he experienced from being a magistrate, and his relationship with other judges of the District Court. We talked about politics and the rationality of the law as well as its cumbersome nature. Judge Bloom spent fourteen years as a part-time magistrate, trying four or five cases a year and managing the court's monthly Central Violations Bureau calendar in Eastern Oregon. During that time he developed a water law specialty and represented irrigators in some of the most significant contracts in Columbia Basin history. As a Pendleton-based magistrate, he provided the federal connection to Portland in a part of the state surrounded by federal land and near the border between two states.

As we began his interviews, Judge Bloom provided a two-minute overview of his life and ended by saying, "And that's it. It didn't take five hours." Although I convinced him otherwise, we barely scratched the surface of the issues he has been involved in, many significant to the state of Oregon. We did not delve into the personal tragedies that have touched him in recent years, such as the loss of his partner John Kottkamp in 2000 and his wife, Becky, in a car accident, in January 2003. He spoke warmly and with pride of his three children (Benjamin, Molly, and John) and his admiration for his wife and stepmother.

Judge Bloom did not regale me with tales about his many civic activities, his ethical views, or his commitment to social justice, but the stories he told reflect his values. As does his work in Armenia. He is currently serving as the Rule of Law Liaison to Armenia for the American Bar Association's Central European and Eurasian Legal Institute. Through email, he reports he is working on "amendments to the Armenian constitution, judicial reform, a code of ethics for judges, anti-corruption, and a whole lot more."

Donna Sinclair
June 2006

Background

DS: I am interviewing Magistrate Stephen Bloom in Judge Ashmanskas' chambers in the US District Courthouse and this is tape one, side one. Let me turn this around and start by asking you to state your full name and place and date of birth.

SB: Stephen Michael Bloom. I was born June 10, 1948 in San Francisco.

DS: Okay. And can you tell me about your family background?

SB: Okay, I was born when my dad was at the end of his second year of medical school at the University of California. Then my sister Karen was born in 1950 and he graduated. We then moved to Southern California into Panorama City I believe, which is the San Fernando Valley, which is a large suburb of Los Angeles and that's where I grew up.

We went from Panorama City to Northridge. My dad was a sole practitioner, general practice doctor. He had an office on the corner of Balboa and Saticoy in Northridge. My mother died when I was ten of Aplastic Anemia. And I had another brother, John, who was four years old when my mom died. I was ten; my sister was eight.

My dad remarried a year later, my mother. And she had two children from a prior marriage, so I have a stepbrother and stepsister. We then moved to Encino, California for a year and then to Woodland Hills, California where I went to junior high school and high school. I graduated from Taft High School in 1966 and went to Dartmouth College. I went to Dartmouth College for two years and didn't like it and transferred and finished at Stanford. Graduated Stanford in June of 1970 with a degree in English.

The Vietnam War was on and I was Navy ROTC so I went into the Navy. I was first stationed at the Indian Head Naval Ordnance Station in Indian Head, Maryland, which was essentially a Navy base for scientific experimentation and explosive ordnance disposal, schooling and testing, I guess, for lack of a better word. I wrote a lot of reports. There were like twenty officers, eighty enlisted men, and the rest were civilian scientists. I got to know the explosive ordnance disposal instructors, which is essentially the Navy bomb squad. And I volunteered for that and was sent to Key West, Florida to do that—learned how to scuba dive and then became an EOD, Explosive Ordnance Disposal. I got hurt doing that and was put on a ship out of Norfolk, Virginia for about a year. I went to the Mediterranean every month so it was good duty.

I got out of the Navy in '72 because they had too many Navy reserve officers. I got a job in Sacramento working for the California Department of Education. I was the assistant to the associate superintendent of education in charge of middle

school education, bilingual education, compensatory education, which is Title I, and the Equal Educational Opportunities Commission, which I essentially ran for my boss. And I did that for eighteen months, from January of '73 until I went to law school at Willamette in August of '74, where I met my wife. She was a lawyer.

We graduated in '77 and during law school I made the dean's list and I was on the Law Review. We got our first jobs in Corvallis and were there for about a year. My wife didn't like Corvallis because it had too many people and too much rain. So we went to Pendleton and I got a job in the DA's office and she got a job in the East Central Oregon Association of Counties writing an economic analysis of Eastern Oregon, which they're still using. She was a home economist.

After four months in the DA's office I got three job offers and I was neurotic enough to think I'd never get another job offer so I took one with the only attorney that was my age, Garry Reynolds, who is now a circuit judge in Pendleton. I practiced with Don Morrison and Garry Reynolds in Hermiston, Oregon, for about eighteen months, didn't like it and a job opened up at Kottkamp & O'Rourke where I have been since 1981. I started doing a lot of trial work, insurance defense with that firm. And in 1988, my partner, Bob O'Rourke, who's the preeminent water lawyer in Eastern Oregon, was negotiating with the Indian tribes on basically the exchange of Columbia River water for Umatilla River waters, a very complicated, long drawn out process.¹ He got very tired

of it, the twelve-hour negotiations with the Indians, the environmentalists, the Bureau of Reclamation, and the Oregon Water Resources Department. Our clients were all the irrigation districts. He suggested I take over and become a water lawyer, which was fine because I was getting tired of litigating. And that's when the magistrate job opened up, in 1988.

Art Barrows had been the magistrate before me for about eighteen years. And Owen Panner was the chief judge. Owen wanted the magistrate to become more actively involved in trying cases. He couldn't talk Art into trying cases, but he wanted the new magistrate to try cases.

When they first offered the job, or opened the job up, I was too busy trying my own cases and when my partners encouraged me to apply I said I was too busy. So I didn't apply. Then the committee that they appointed to look at all the applicants came back to the next bar meeting, the local bar meeting, and said that nobody was qualified, which I thought was really a tacky thing to say because everyone that had applied was sitting in the room when it was said. And, they opened it up again. During that month we had hired a young associate to do the trial work. I had taken on the water law, so now I had the time to go to being a part-time magistrate. And I applied and was selected, and that brings us to October 1 of '88.

Since then I've done a lot of water law, water litigation representing a lot of irrigation districts and large irrigators,

private guys, and then companies like Lamb-Weston and Simplot. I've been a magistrate since '88. Owen Panner was the chief judge, then Jim Redden, then Mike Hogan, and now Ancer Haggerty and they've all been very, very supportive of me trying cases. So if there's an Eastern Oregon case, rarely do one of the Article III judges want to come out and try it, and I end up being the judge.

And that's it. It didn't take five hours.

DS: But, I haven't asked any questions yet. *[laughs]*

SB: Oh, well stop it. I thought I covered everything.

DS: *[laughs]* That was a great overview.

SB: Well okay. That's as much as you're going to get.

DS: Is that as much as I'm going to get?

SB: Yep, that's it. My life in a nutshell.

Family History

DS: A lot of people think they have a ten-minute life in a nutshell and there's a lot more to it, I think. Can you tell me your father's name?

SB: My dad. Yes, I have three kids. My dad's name is Allan. And he's a doctor. In 1975, he and my mother and my three youngest brothers—I am now the oldest

of eight kids. My dad, in '75 he and some doctors owned a medical building and three of the guys in the building with him that were sole practitioners, all had massive heart attacks. My dad came home and said, "I've had it with LA I've had it with the traffic and the pollution." He had office hours six days a week, Tuesday night and Saturday morning. He said, "I'm tired of working this hard."

And my mom said, "I agree." And that was really unusual because she was born and raised in Los Angeles and I figured they'd never get her out of LA.

He had been heavily recruited by the Air Force and the Navy to go in as a doctor and he was going to be an Air Force Colonel in the Air Force base in Spokane—Fairchild. Or, he was going to be the Navy captain in charge of the Navy base medical dispensary at Sand Point Naval Station in Washington, which is in Seattle, on Lake Washington. So he was in the Navy in World War II before he went to medical school, just as a regular officer, not as a doctor.

So they went to Sand Point Naval Station and got a house on Lake Washington and I think that probably prolonged my dad's life. He's still alive and practiced until he was seventy-five. But if he'd stayed in LA I don't think he would have made it. That's my dad.

DS: And what was your mother's name? Her maiden name.

SB: My real mom or my stepmother?

DS: Both of them actually.

SB: My real mom's name was Natalie Claire Levee, L-E-V-E-E. And my mom now, who's my stepmom, but I really don't distinguish that, and I don't distinguish between brothers and sisters. My mom's name is Wilma and her maiden name was Morgan.

DS: And you said you have eight siblings?

SB: I'm the oldest of eight. There's Karen, who's a whole sister. Randy who's a stepsister, Rex is a stepbrother and John is a whole brother, and then Adam, Duffy and Drew are half brothers.

DS: Is that D-U-F-F-I-E?

SB: D-U-F-F-Y. He's a lawyer in Medford. He's the black sheep of the family; anybody that would become a lawyer.

DS: *[laughs]* So, there are two black sheep in the family.

SB: No, I don't consider myself—

DS: You don't consider yourself a lawyer?

SB: No, no. Not like Duffy. He's crazy.

DS: *[laughs]* Okay. So what kind of role model was your father? It sounds like he worked a lot.

SB: He worked very hard and when he wasn't working he was at home with

the family. He didn't golf, he didn't hunt, he didn't fly airplanes into the sides of mountains, and he didn't gamble. He was just basically either, like I was, either with the family or working. In his days, a great role model. Interestingly not one of the eight children became a doctor, because in the eighteen years that I was growing up we had one family vacation. And, every night at six o'clock, just as we sat down for dinner the patients would start calling and, "Doctor, I didn't want to bother you at work." So he'd be really, really pissed when the phone rang because he knew who it was. But he'd be very nice on the phone and then just be seething all the way through dinner and then he'd have three or four of those. So the rest of us, I mean, the kids are all watching this stuff and you know, you get a lot of respect as a doctor and you make a decent living but my goodness. It's a crummy way to live. So none of us became doctors. Duffy actually started to, but became a lawyer.

DS: And what about your mother? What did she do?

SB: She went to UCLA and married the captain of the football team, who went on to play professional football for the LA Rams. He was an all pro middle linebacker for the Rams. His name is Don Paul. She didn't finish UCLA and they got divorced after, I think, about eight years of marriage. So she's been a mom and a housewife her whole life.

DS: And she stayed home? And that's your mother, Wilma?

SB: Yes. Stayed home with eight children. And why she's not in a mental institution, I don't know.

DS: In terms of school and your education, you said you were an English major.

SB: Yes I was.

DS: So could you talk about some of your early interests?

SB: I mean, are you talking about Little League or are you talking in high school or college? What interests?

DS: Well we could go all the way back.

SB: In the summers in high school I was a fire fighter in Northern California for the California Division of Forestry. In the summers, in college, I was a lifeguard and a swim teacher.

DS: So you liked the outdoors?

SB: I did, very much. I do like the outdoors, and I like sports. That was about it.

DS: What led you to become an English major?

SB: It was the most interesting. I thought political science, but I didn't like the Poly-Sci Department at Dartmouth. I didn't like anything at Dartmouth. I thought about psychology. I really didn't

like psychology because at Dartmouth it was all rats running in mazes including electrical experiments. You know, it totally turned me off. And they had a great English Department at Dartmouth, and a great English Department at Stanford, with really great professors. If I'd had it to do over again I might have tried history, which I also enjoyed and did very well at. But English was very enjoyable. I wasn't a naturally gifted English major. I had to work my butt off, but it was fun. I enjoyed it.

DS: Did you read a lot as a kid?

SB: Yes, I did read a lot. Always have read a lot. My grandparents started giving me books to read when I was like six years old. Hardy Boys and Nancy Drew and Tom Swift and I just liked to read. So, yes, I've always liked to read.

DS: And did your grandparents live near you?

SB: My birth mother's grandparents lived in LA They emigrated from Russia in the Revolution. They were White Russians. They were educated, middle-class Russians when the Red Russians were basically killing the White Russians so they immigrated to Brooklyn. My dad's parents also lived in LA They also started out a generation before that, coming over from Poland and also immigrating to Brooklyn. Then, I think basically during World War II, my maternal grandparents—my grandpa was an aeronautical engineer so he came

out to LA for the defense effort during the war and worked for Lockheed—I believe, making airplanes or something. And my paternal grandpa was in the stock market, did foreign currency and then came out to LA and did something to do with business receiverships or something like that. I'm not really sure. They were both fairly successful. So, yes, both sets of grandparents were around when I was growing up.

And my mom's folks, she was orphaned when she was like eleven, ten or eleven. And grew up in a—from what I can tell—fairly exclusive girl's school. Her folks had money. She was one of six kids and they were all orphaned at like eleven, well she was eleven. The oldest one, Frances, was I think probably eighteen and married by then. So I never met them.

DS: But on your other parent's side you had a pretty large extended family?

SB: On, yes—no. My birth mom had one brother. And my dad only has one sister. But my stepmom has a big family. Each of them has like six kids and so we have these humongous Morgan family reunions and 125 people show up. They're a lot of fun. We've had them in Lake Tahoe and Sunriver and San Diego. The first one we ever had was in '62 at the Seattle World's Fair. I was like twelve years old.

DS: And you remember going there?

SB: Oh yes, because I was new to the

family and I was twelve and I had all these cousins on my mom's side of the family that were kind of juvenile delinquents, sixteen, seventeen-year-old kids and we were always in a big motel and the kids were at one end and the parents were at the other end. And the kids were always, you know, borrowing cars and we were going out at all hours of the night. For a twelve-year-old that was neat. That was cool. Didn't get in trouble but that was neat. [DS laughs]

No, the cousins, I really liked them a lot. And we always had great good fun in Southern California for the holidays or in the summer. We all had swimming pools. In LA everybody has a swimming pool. There's not a drop of water in the rest of the Southwest, but everybody in LA has a swimming pool. So it was always a good experience.

DS: So your cultural heritage is really Eastern European? Polish and Russian.

SB: Exclusively, Polish and Russian. And my mom, Wilma Morgan, is kind of Welsh and Irish but my birth mother is strictly Russian and Polish.

DS: And were both sets of grandparents immigrants?

SB: Yes, definitely.

DS: Okay, so did they speak—?

SB: My maternal grandparents from Russia spoke halting English and Russian and they lived in a Russian part of LA,

whatever neighborhood it was I don't know the name of it. But my paternal grandparents were a generation removed, or they had been here a generation longer, so by the time my paternal grandparents married and were having children they spoke English. So there was—you couldn't tell. They were New York and they had New York accents. My Russian grandparents had more Russian accent.

DS: Were there any sort of family traditions that come from that? For example, my father comes from Polish stock and so we say "nastravia" if you sneeze. Nothing like that?

SB: No. It's almost like they just drew a curtain on all that. I mean it would have been great if they'd spoken the language and we could have learned to be bilingual with Russian or Polish, anything. It's like all those Eastern Europeans, at least the ones I related to, didn't want it brought up. I think my Russian grandparents were concerned that someone was going to come and get them. They just didn't do anything. Nothing. Zero.

DS: Interesting.

SB: Yes.

DS: So it sounds like it was a big transition when you were about twelve years old.

SB: Ten. When my mom died.

DS: When your mom died.

SB: Yes. And that first year was awful. Yes, obviously the first year without a mom, the first Christmas was obviously miserable and we were really very glad that my dad remarried. I'm convinced that it saved us from, you know, being juvenile delinquents and pains in the butt. You know, rich kids' stuff. Because my dad was practicing medicine and we had a housekeeper and she was an alcoholic. It was an exciting time.

The only reason I know this is later my grandpa said, "Well we had to get rid of" whoever it was, "because she was an alcoholic." And of course at ten and eleven years old I had no idea, I mean, at fifty-five I don't recognize when people are loaded but I certainly had no idea that she was drinking a lot, but she was.

DS: So in terms of deciding to go to law school, you went through a number of different jobs.

Becoming a Lawyer

SB: Well, okay, I had a lot of jobs, you know, I was a fire fighter, I was a swimming teacher, I was life guarding. I got into the Navy and you do whatever the heck you do in the Navy just to keep your sanity. And I had some very, very good experiences in the Navy and made some great lifelong friends that I am still very close with and they were best men in my wedding and all that. But there's nothing I learned in the Navy that translates into civilian life. I came out and I worked in the Department of Education and they

were good people and they wanted me to stay there and they got me into a PhD program in Education and I started and I took four classes and I got A's. And I could tell I didn't want to do that. I didn't want to do that bureaucracy and that civil service, all that stuff.

I was working—my boss was Xavier. Harvey was, back then we said Chicano, he was a Hispanic American. His dad was one of the most influential Hispanic Americans in California, which was a big deal, I guess. And Harvey was real bright. Had a Ph.D., real charming and handled most of the legislation for the department. In other words he would either write it or review it. So he had me going over to the legislature to sit with the assemblymen on the Education Committee or the Senate Committee and they didn't know anything. They were all politicians, but the people that worked for them were usually lawyers or assistant attorney generals. And the more I worked with them, that seemed a lot more interesting than whatever the heck we were doing at the Department of Education, which as far as I could tell was moving papers around and spending other people's money, which was easy to do.

I didn't know what a lawyer did, other than, you know, Perry Mason on TV. I had no clue. My dad's best friend was a lawyer. My dad gave all of his relatives and Uncle Al, my dad's best friend's family, free medical care. In return, Al represented my mom and dad for free, which consisted of doing their will, because my dad, fortunately, never had legal problems. I mean, he was never

sued for malpractice and they didn't get into boundary disputes. I mean he was just a doctor. And so I knew Uncle Al but Uncle Al was a business lawyer. He did wills and contracts, which means nothing when you're in high school. I mean, yes, contracts. I didn't know what a contract is. What's a contract? I didn't know. So I had no idea what a lawyer did, but I decided that being a lawyer looked more interesting than being an educator in the Department of Education.

And I decided that I wanted to live in Oregon. I didn't like California, thought there were way too many people. I thought that in high school when they had like half the people that they have now. I mean I thought it was just crazy. There was just too much traffic and too much pollution and that was when they had no traffic and no pollution. Now it's like all the freeways are parking lots. And so I wanted to go to Oregon. Tom McCall was here, land use, all that stuff. And the minister I grew up with, Father Williams, was from Portland and his dad was a lawyer, his grandpa was a lawyer, his uncles were lawyers, his brothers were lawyers. So I called him up and I said, "If I'm going to be a lawyer in Oregon, what's the best law school?" I figured I should go to law school where I'm going to live. It doesn't really mean that, but when you don't know anything—

He said, "Well the only school is the Willamette Law School. It's by far the best." And a hundred years ago that was probably true but now they're all the same. I mean they're equally good or equally bad. But that's why I went to Willamette.

Family Religion

DS: You mentioned Father Williams. What was your family's religion?

SB: Episcopal. When my mom came into the family, I was eleven years old and we were heathens. We'd never been to church. And her kids had never been to church. And she said, "We need to go to church." And she had been raised, until her folks died, she had been raised as an Episcopalian. "We're going to go to the Episcopalian Church."

My dad could care less. He said, "Do what you want to do. I'm working." You know, that kind of stuff. So we were all baptized and confirmed and communicated in the Episcopal Church in Encino, California at St. Nicholas's and that's where we went the whole time I was growing up, which means from the sixth grade until the twelfth grade when I went to college.

DS: And did you continue to go to church after that?

SB: Hardly. Not in college. Nobody goes to church in college. Even my good Irish Catholic friends don't go to church in college. No, I didn't go to church in college. I didn't go to church in the Navy. I didn't go to church in Sacramento.

We got married in the Episcopal Church in Salem. Becky was a Congregationalist. She thought the Episcopal Church was too structured. I thought

the Congregational Church was too unstructured.

She went and talked to the Congregational minister in Salem where we were going to get married. Since our families were everywhere and our friends in law school were in Salem, we figured we'd focus on the friends and the folks could come and anybody else that wanted to. And the Congregational minister was kind of a twit. He was going to do this and charge her that and she said, "You're a jerk." Didn't say that but just came back and said, "I didn't like that guy." And we went to talk to the Episcopal guy who is one of the most charming, decent people ever. Father Steinberg. How's that for a creative Episcopal name?

DS: It's interesting. *[laughs]*

SB: Yes he's a great guy. I think he ended up being the Bishop of Nebraska. Great guy, and he was very nice to us. And we got married.

DS: And did you raise your kids in the Episcopal Church?

SB: No.

DS: No church.

SB: What happened is, we were in Pendleton and were going to start a family and we went to the Episcopal Church, which is sort of what I was thinking we should do, because there was unfortunately no Congregational Church. In the Episcopal

Church in Pendleton back then, the average age of the congregant was about ninety-four. And there wasn't a young person in the place. And there wasn't a kid in the place. We moved to Pendleton at a time when a lot of young couples were moving in, lawyers and doctors and veterinarians and we all were friends. And the ones that were going to church were going to the Presbyterian Church and they had a great minister—one of the all-time best—and a real charming guy. Everyone in the church was very friendly and that was where all of our friends were going. It was sort of a compromise, it wasn't as structured as the Episcopalians and it wasn't as unstructured as the Congregational. So the kids were all raised in the Presbyterian Church. Of course, none of that stuck, they don't go to church.

My wife was killed a couple of years ago. And I went back to the Episcopal Church. And the reason I did that is one of my doctor friends said, "Hey, there's a new minister in town."

And I said, "Who cares."

And he said, "No, it's a woman. You really should meet her."

I said, "What church?"

He said, "The Episcopal."

I said, "Well that's convenient." And she's a really good, good minister. Her name is Paula Whitmore and she's a very nice lady; very nice lady.

DS: So that's what drew you back to being Episcopalian?

SB: Yes, strictly her personality. I mean I have friends that I go to church with every

Sunday. I pick them up at eight o'clock, we go, suffer through the hour service and then go to breakfast. But Paula is really a very warm, good person.

[End of Tape One, Side One]

Family Life & Siblings

DS: The next question is, what kind of discussions did you have when you were a kid growing up, say at the dinner table? Sort of an off-the-wall question, but what kinds of things were important in your family?

SB: There were, at times, between five and ten kids at the table, plus, my mom and dad. My mom and dad at each end, and four on each side. And if my mother put like a hamburger patty on the table or a side of beef, whatever it was, it was gone. I mean, literally, everyone ate everything that was there.

I don't really remember anything really concrete. I was always interested in current events, but when you have that many little kids at the table it's more kind of herding cats. It's hectic. My mother never ate with us. She was always serving and breaking up fights, you know.

DS: So if you were to describe what it was like, it was loud and—

SB: It was hectic. Yes. And we would, you know, invariably one or more of my brothers or sisters would have someone over for dinner in addition. Plus, we had a

full-time live-in housekeeper. My mother and father, because they didn't have enough kids in the house took in, I think, two kids that lived with them when I was in college. I think it was two.

The one I remember the most, I can't remember her name. I think her name was Jennifer. I came home from college after the first year or the second year and I woke up the next morning and I went for a swim. And I was swimming laps, which, a lot of my exercise is I swam a mile everyday. And I was swimming laps and this nice, attractive, red-haired gal comes out in a bathing suit and she's putting suntan lotion on and I had no clue why she was there. So I say, "Hi."

She says, "Hi. Do you remember me?"

I say, "No."

And she said, "I'm Jennifer." My sister Randy's friend.

I said, "Hi. How are you doing? Randy's not there."

So I finish swimming and I get up and I go into the kitchen and I said, "Randy's not here, but Jennifer's here." I'm talking to my mother.

She said, "Well Jennifer was having a lot problems with her family."

Her family was really a dysfunctional family. I think her dad drank and the mother—it was a really miserable home existence. And so they said Jennifer could live with my folks and my folks bought her a car to finish high school. They may have paid for her to go through college, because she did finish college. And I think she's living now back East. But that, I mean, so, you know,

which was great. It didn't bother me. I mean I didn't care if they were spending my inheritance on Jennifer. Because I've already told my folks—one of my brothers, Adam's handicapped. And I told my folks, everything they have should go to Adam and to hell with the rest of us because he didn't have the opportunities and I said, "If you want to split it up among the kids, give my share to Adam."

And then there was another guy named Gary Regal. I think Gary lived at my house for a while. My Aunt Frances was married to Ray. My uncle Ray was from Minnesota, a very conservative, Swedish, farming guy. And Ray's brother had a son, Gary. And Gary happened to be gay. And being gay back in the '50's and '60's, or the '60's and 70's—he's still gay. But whenever he came out of the closet I don't know, and maybe he always was, I have no idea. He was a very nice guy. He was a hairdresser in Los Angeles, or that's what he did after he got through with school. I think Gary lived at our home for the same reason. I think his folks kicked him out and he ended up in LA and was bouncing around and would come to our family gatherings because of Ray. And Ray didn't like him because he was gay. So, I think he ended up living in our house too.

Again, I was swimming and Gary was there swimming and I said, "Hi."

He said, "Hi."

You know, he was always very friendly and part of the family.

DS: What was the house like?

SB: Huge. Huge. My folks built this—

we had a house in Northridge. My mom had a house in Encino from her divorce and we sold the Northridge house, lived in the Encino house for a year while they built this huge house in Woodland Hills, which is in the furthest west end of the San Fernando Valley. And they had just built a brand new high school that was supposed to be a big deal high school. Really, it did look like a college campus and there were like 4,000 students. It was a huge high school, only three years, tenth, eleventh and twelfth. And they built this huge house. I think it was 6,000 square feet. Yes.

DS: So you could lose siblings. *[laughs]*

SB: Well, but I mean—I shared a bedroom, eventually with two brothers, because we had, you know we had other kids there. We had a full-time housekeeper, you know.

DS: And she was a live-in housekeeper.

SB: Yes. She had her own bedroom, own bathroom.

DS: It sounds like your mom must have been a pretty warm personality.

SB: Very, very, very, warm. Very warm, very strong, very intelligent, very charming.

DS: And what do you think that you've gotten from her?

SB: If I am lucky, her strength and her

warmth and all that, intelligence. I mean no blood relation but she's exceptionally—I mean my folks had to be, I think, very strong to raise a family of yours, mine, and ours and have no one end up in prison, or on drugs.

DS: Everyone got an education and —

SB: We all finished high school. It's really interesting. My dad's a doctor. My mom went to UCLA back when women didn't go to college. There's a phenomenon in Southern California where all these kids coming out of high school—when I say all I don't mean a hundred percent but a great number get married out of high school.

So my sister Karen, who's very bright and very attractive, could have gone to any school she wanted. My folks offered to send her to Hawaii, Arizona, Miami, Colorado. "You want to ski? You want to surf?" Santa Barbara. She had to marry her high school sweetheart. Went one semester to college at Cal Poly San Luis Obispo, was heartbroken, went back, married him and was divorced in five years.

Randy, the same thing. Rex, the same thing. So none of them have a college education. John, it took him like ten years to get a degree from UW. He would start and he would stop and he would become a landscape guy, you know. And then Adam was handicapped and I think he has two years of college but he never could get his act together. Duffy was pre-med, straight A's, going to medical school, came home in his third year with his hair dyed pink and an earring and said, "I want to be in

the movies.” We have friends, we had neighbors that are in the movies so Duffy thought that he could capitalize on those and you know, talk to this director or this actor and become like, whomever. And he went down to Los Angeles with his live-in, I think, girlfriend for three years and was a delivery boy and, you know, she was a waitress—you know, that stuff. And then he came back and decided he wanted to be a lawyer. Drew, the youngest, never got his act together through junior college. I don’t think he has even a junior college degree. It’s a real interesting phenomenon. I was the only one that, you know, went right through high school, then college.

DS: Well I would imagine education was viewed as important or expected.

SB: Well, you would think so. My dad, obviously, he was a doctor and my dad reads all the time. He loves to read. My mom went to UCLA, this was before women went to college. I think most of her siblings went to school. I don’t think anyone graduated, because that was back in the ‘40’s and before World War II, I don’t think people did that that often.

So yes, you would think they would, but they didn’t. I mean they didn’t force anyone to do it. I’d always told my kids I didn’t care what you did, “You’re going to get a college education. I don’t care what you end up doing,” I said. “You can grow up, after high school, the years between eighteen and twenty-two are tough. You can grow up on your own, doing minimum wage, not much fun. You can go into the military as an enlisted

person, not much fun. You go to college where it’s an enclosed environment, you have kids your own age, you learn things, go to football games, drink too much, get an education.”

DS: Study on Sunday. Right.

SB: Oh no, they went to schools where you had to study a lot. Which is fine—when they insisted on going to private school—I mean, I went to private schools, Becky went to private schools. I tried to get them to go to a public university but they didn’t bite. I took them to all these football games. We visited every public university in the Northwest. They wanted to go to private schools. And, they got great educations and it was worth it.

DS: And as long as we’re talking about your kids, why don’t you tell me their names and when they were born?

Children

SB: My oldest is Benjamin Jacob and we call him BJ and he was born in ‘79. Molly was born in ‘81, and John was born in ‘83. BJ went to Walla Walla High. There was like 2,000 students and he was number one or number two in his class. He went to Grinnell College, which is a very good school; small, liberal arts college, got a great scholarship and is now in graduate school at the University of Virginia. He’s going to get a Ph.D., very bright.

DS: In what?

SB: Political Science with an emphasis on Middle Eastern studies. Really interesting stuff. He'll have job security for about a hundred years. And this summer he just got accepted at some language institute, the best in the West, where he'll learn Arabic, intensive immersion Arabic. I think he's number one in his class at UVA. He's doing really well. Hard worker, very bright. Unfortunately, he knows it, but that's another story.

Molly went to Macalester College, another good Midwest liberal arts college. Graduated with honors, very bright, hard working, pain in the ass, very stubborn, love her very much, but she's just very stubborn and opinionated. She's like a vegetarian Nazi.

DS: *[laughs]* I have a twenty-year-old like that.

SB: Yes. Right. And—why are you doing this? Just aggravation. No, no. And when she graduated—all my kids have really loved to hike, camp and stuff. You know they always have these senior trips. The kids will go to Hawaii and Mexico, get into trouble. BJ went on a backpacking trip through Glacier Park with two other guys. Molly went camping and hiking up in Northwest Washington. And I think John went to France. That's what John likes to do.

Anyway, so Molly was an International Studies major, with a Geology minor. She graduated, she said, "Dad, before I go to grad school I want to do outdoor stuff with the National Park Service." And she did it in Northern

California and Southeastern Utah where she would take people on geology hikes. She's fluent in French and there are a lot of French tourists apparently, and so they really—the geology and the French—she was really well liked there.

And she went back to New Hampshire. Her boyfriend was a guide on the Colorado River. They went back to New Hampshire and did that same sort of thing. And I visited them and all the places. She's great. She's like a mountain goat. And fortunately they broke up and now she's in Portland student teaching and she lives out in Hawthorne. She's really having a good time. And she applied for and was accepted in an internship to work on an organic farm on Sauvie Island. She really likes organic farming. She's really into that Earth Mother stuff which is fine. I said, "Molly you're supporting yourself." Very independent. So independent she won't take anything from me. Literally. A friend of mine and I went and visited her in Southeast Utah and we're hiking around, having a great time and I would take her and her friends out for dinner. The last night I took her aside and I said, "Molly, here's a couple hundred bucks so you guys can have beer and pizza."

She said, "Dad, I'm on my own. I don't need your money."

I said, "Molly, no strings attached, this is a gift for beer and pizza."

My friend, Fritz Hill, a farmer in Pendleton who was there before farming started, was with me. His wife said he needed to "get out of Dodge" so we went down together. He was cracking up.

He said, "I can't believe it." He said,

"If I offered my kids twenty cents they'd pounce on it."

So anyway, "Molly" I said, "You're independent, you're single, you have no responsibilities, you want to do the organic farming, you're supporting yourself, eighteen months. That's great." So she has an eighteen-month internship that starts next month.

My youngest son, John—who may be the brightest, but is the most hang-loose character of the three—just got a note from Saint Olaf College, where he's going, that he's graduating with honors. But I had no clue until I got the note. I didn't know Molly was going to graduate with honors until I went to the graduation ceremony. You get the little thing that says *cum laude*. I knew BJ was like *Phi Beta Kappa* because I was getting stuff from college for him because he was really doing well, but the other two kids, I figured as long as they were progressing I didn't care. I wanted them to get A's obviously.

DS: You can't push too much or they'll rebel.

SB: So, John is a French major, which really surprised me. He spent his third year in France at a university. And when he got to the university, they said, "You can take classes with the American kids, which is kind of a dumbed down deal or you can take them with the French kids."

He said, "I'll take classes with the French kids."

So he took French History in

French language and French Physics, all the stuff in French. Second semester he took an English class. Because he was a native speaker they moved him into the master's level class. He called me about halfway through the semester and said, "Dad I think I know what I want to do."

I said, "Great. What's that?"

He said, "I want to teach English at a French university." He loves France and he has a French girlfriend.

I said, "That makes sense."

And he did so well apparently in the program that he was promised a teaching assistant job after he graduates. So he's going to go to graduate school in a French university, get a PhD in English, be a TA in the English Department of the French university and like my oldest son, you know, is putting together grants and scholarships and loans. And my son John says, "Dad, you know how much graduate school in France costs?"

"I don't know." [laughs] "Lay it on me. What's the damage?"

He said, "Nine hundred dollars a year."

I said, "This is good." I said, "I'll pay for that."

Well and, the French have a great system. When John went to school he said, "I'm going to spend the whole year in France."

I was always concerned about medical care. My dad's a doctor. So, and I represent a lot of the doctors in Pendleton. I called up one of my friends and I said, "Norm, John's going to France. So, what's the medical system like?"

And he started laughing.

So I say, "What?"

He says, "The French have the best medical system in the world."

I said, "Cool."

So I called my health insurance, which is through this outfit [District Court] and they said, "No problem. We'll cover him." And unbeknownst me, when John registered with the French side of the university he got a little card. For twelve dollars he got a medical card. And for twelve dollars he was covered for the whole year for anything, broken legs, liver transplant, you name it. No deductible or co-payment. He got sick. He went to the doctor.

I said, "How's the medical care?"

He said, "They are really great people. Most of the doctors are women, will spend as much time as you need and they don't charge you a nickel. They don't ask you to fill out forms, they don't ask you to do the co-pay. They say, you're a student at Rennes University and you have your medical card. You're in like Flynn."

I'm thinking we are screwed up in this country—

[End of Tape One, Side Two]

College & the Vietnam War

DS: This is Donna Sinclair and today is the twentieth of April 2005. I am interviewing Judge Steve Bloom in the chambers of Judge Ashmanskas. This is tape two, side one. So I wanted to start today by taking you back to about 1968 to 1970 when you were at Stanford.

SB: I was.

DS: Could you talk about what that was like at the time?

SB: It was during the Vietnam War and there were a lot of protests on the Stanford campus. And I had joined Navy ROTC because my best friend in high school was writing me from Vietnam saying, "You don't want to be here in the Army."

And it looked like when I transferred I didn't have really a place to land from Dartmouth to Stanford, so Dartmouth notified my draft board. So I got my little notice, "What are your intentions?" So I went up to Stanford and joined the Navy ROTC.

Well there was a lot of very—I lived with a whole house of radical people. SDS.² Everyone, including me, hated the war. We had to do drill marching. It was stupid for the Navy to do this. We had to do it once a week and we did it like at five a.m. on a

Monday morning; otherwise, there would be protesters. And we'd have protests on the campus and the Santa Clara Sheriff's Office would come on campus. And it was a disconcerting time to be in college. Interesting, exciting, but disconcerting.

DS: Who were the people that you lived with?

SB: Well I lived in a place called the Grove House. They didn't have sororities on the campus, but back before World War II they had sororities. On Sorority Row they had these two big houses and the Grove House was this kind of educational seminar house where you—if you lived in Grove House you had to agree to take a seminar. And they would bring in some hot stuff person to teach the seminar. One year we had a guy, a French Communist from the Sorbonne. I can't remember who the heck we had, but they were interesting seminars and we'd write papers and stuff. Like Margaret Mead would visit, because whoever was teaching knew Margaret Mead, and she was still walking around with her big cudgel and she would visit and have dinner with us and stuff. So it was really interesting but most of the people on campus were very liberal and radical.

DS: What about you?

SB: Oh yes, well I mean I wasn't radical but I thought the war was stupid. Even my folks who were kind of Eisenhower Republicans thought the war was stupid. And this best friend of mine in high school

had been killed, a guy I played football with in high school. He had been killed. It just seemed stupid. It wasn't going anywhere. Johnson was an idiot. He decided not to run. Nixon was elected with a "secret" plan to end the war, which really didn't exist because it didn't end until like '73. We were still there in '75. So it just seemed like a stupid thing for us to do.

You can go back to Dien Bien Phu in '54 and the French were asking the Americans to help and the reason we wanted to help is we didn't want Communism spread from China, but we didn't help the French because we didn't want to antagonize China and Ho Chi Minh was running around. And, then there was kind of a split in the country after Dien Bien Phu, north and south, but then Ho Chi Minh started coming in and then Eisenhower started sending people over and then Kennedy started sending people over. It was stupid.

So yes, I didn't like it. And I didn't like the Navy. I didn't like the military. I wasn't cut out for it. I was very resentful of having to go into the service because of the war, but like I said, I had a really nice time and I made very good friends while I was there. And looking back it was okay, but at the time it was miserable.

When I was on this ship out of Norfolk and we were in the Mediterranean in '72, the Ex-O came into the wardroom and said, "We have way too many officers in the Navy." They had over-drafted, over-enlisted, whatever you want to call it. And we were just, you know, basically stepping all over each other, even on this old stupid supply ship that had no business even

being at sea, really. He said, "Who wants to get out early?" He called, "Early outs!"

And of course I almost dislocated my arm along with all of my friends. So we all got out early. That's why I only did two years. Otherwise, it was a three-year commitment I think.

DS: And were there any long-term impacts of how you think about war?

SB: I think the government's stupid. I don't trust politicians. I never trusted Nixon. I have very little respect for the people who run for political office and get elected because they have to give up too much and compromise too much. Basically all they're trying to do is raise money to get re-elected. So, you know, it's not a great legacy that they've left for the American people, in terms of what they do for us but I've—I'm not real impressed with them. You know, even our local guys, Congressman Greg Walden and Senators Gordon Smith and Ron Wyden, I'm not too excited about.

I think President Gerry Ford was probably honorable but was in a crummy position; because people wanted Nixon to be lynched and he wanted to get on with the business of the country so he pardoned him, which killed him to be re-elected. And I voted for Carter because I believed him when he said, "I'm an honest guy. Trust me." Which, he's an honest guy, he was just a completely ineffectual president because he was micro-managing how many paperclips should be on the paper. And then we got Reagan who was a complete ditz. And the reason I know that is I worked in the Department of Education

when he was the governor of California. The greatest public university in the world was the University of California and he tried to dismantle it and hurt it by doing all of his stupid stuff. And so, I'm not real happy with our political people. How's that?

DS: That's fine with me. *[laughs]* That leads me to ask you about, you mentioned yesterday that part of what you wanted to do was to be able to be involved in policy and so how do you see a position in—

SB: When did I say that?

DS: You said that when you left the Department of Education you were more interested in policy than in education.

SB: I was more interested in—no, not policy. I'm not a policy wonk. What I thought I said was that the activities that the lawyers were doing with the legislature made a lot more sense to me and seemed more interesting than the bureaucratic stuff that we were doing at the Department of Education. The guys that I worked with in the Department of Education were doing policy but it just seemed silly. And the assistant attorney generals tried to talk me out of going to law school. They thought law school was stupid. They thought being a lawyer was stupid. Stick with education, the law is stupid. But, I went to law. I'm not a policy wonk

DS: A policy what?

SB: Wonk.

DS: A policy wonk. I wanted to make sure I got that right.

SB: Yes, like Clinton. They always say Clinton was a policy wonk. He loved to talk about policy, policy, policy.

Judicial Branch of Government

DS: Well I guess the real question is how do you see the judicial system in terms of policy? I mean the judicial system really has the final say much of the time.

SB: Yes. Essentially, all the time. I mean, eventually, the U.S. Supreme Court says that law is constitutional or unconstitutional, or that policy is constitutional or unconstitutional, or the way that you've implemented that law is constitutional or unconstitutional. I think the judicial branch is probably the sanest and most rational of the three branches. It's the one that tries to make decisions without being concerned about the political pressures, which is really money, and the pressures that come from raising money and spending money. Which is all the legislative and the executive branches do. I mean the amount of money that is wasted in government is just obscene. And they are always spending other people's money, which apparently is easy to do with not a lot of concern. But the judges, we're not making policy. We're basically interpreting the law and applying the law to the facts of the case.

DS: There are policy implications

through the way that the law is interpreted.

SB: Well sure there are policy implications but most judges, I don't think, are trying to do policy decisions. They are trying to make decisions in the spirit of the way they see the law has been decided in prior cases and how it should be decided in this case and apply it to the facts in this case. But yes, we're not trying to—I'm not trying to make policy. The judges I know aren't trying to make policy.

Now the guys on the Supreme Court have a much broader job and maybe even the Court of Appeals, as to the implications of a decision but we're not doing—the judges I know are not activist judges that are trying to legislate judicially.

DS: I guess what I think is interesting is the way that administrative decisions have policy implications, even though people aren't saying I'm trying to judicially legislate policy. But there are policy outcomes and I find the whole system—the way that the system works is very interesting because of that.

SB: Well, when you say administrative, do you understand the difference between administrative law and real law?

DS: And constitutional law?

SB: Well, administrative law. Let's just talk about it at the state level.

DS: Okay.

SB: You know you have the state statutes that are enacted. I do a lot of water law and so the legislature says, this is a statute on water, on ground water, surface water, whatever. And then the Water Resources Department prepares and implements administrative rules to implement the law. Then if you have any sort of dispute, the decision, in many cases, is heard by an administrative law judge who doesn't know anything about water law. And it's pretty much binding, the decision that judge makes. He's appointed by the governor, he's appointed by somebody and he writes a decision and administratively takes away a lot of the rights of the people who appeared before him complaining about the actions of the water master, or the actions of an administrator at Children's Services or something like that. And that's something that's done because, just the sheer volume of cases. You can't have all the cases heard by a real judge, so it's very frustrating.

So Social Security is in the federal level. All the decisions that the Social Security system, at the trial level, are heard by an administrative law judge. Most of them are trained just in Social Security so that generally the level of expertise is pretty high. So they pretty much know the law in Social Security and how it applies to this person who is trying to get disability or SSI or whatever the issue is. But then the person that's unhappy appeals and the district court judges have to then make a decision on those cases. So the system is

cumbersome. It's not streamlined, just from the sheer volume of the number of laws we have and the number of people that are unhappy, because the government says you can or cannot do this. Or, some private individual's infringed on my rights because I'm Black or Gay. Excessive force and police brutality cases, I mean it's just a whole series of things like that.

DS: Before we go on let's talk about water law a little bit more.

SB: Yep, that's not a federal court, that's state court. The feds don't have much to do with it.

Water Law

DS: Right. It's something that you're —

SB: In my private practice that's what I do. That's the majority of my practice. I'm probably the only water law attorney out in Eastern Oregon and maybe even one of the best out there, since I'm the only one.

DS: *[laughs]* Well that's a pretty significant position to be in, in some ways, in Eastern Oregon.

SB: But in a month I'll be gone. Somebody else will do it.

DS: That's why we're documenting your history.

SB: I've done it since '88, so that's seventeen years.

DS: Mm-hmm. Pretty significant years, too, in terms of what's happening in Eastern Oregon.

SB: Oh no. I've had cases that have had every issue in water law. Almost every issue that you can raise in a litigation, I've had. You take them to the Supreme Court and won. And then I was one of the litigators, my partner and I were the two lawyers from the irrigator's standpoint that implemented the Umatilla Basin Act which was essentially a \$100 million project to keep water in the Umatilla River for fish and get water out of the Columbia for the irrigators.

DS: I'm familiar with the Umatilla Basin Project so I planned to ask you about that.

SB: Most people aren't and I did the contract between the Bureau of Reclamation and the districts to implement it. Which was a joy to negotiate, because the Bureau would come up—and they're good people. And they'd come up and we'd spend hours, you know: "How are we going to do this?" Once we figured out how we were going to do it, then putting it into writing to make sure we had it stick. So far it has stuck.

DS: How long did you work on that?

SB: A long time. Years. Years. Yes, my partner Bob O'Rourke recognized, probably back in the late '70's or late '80's, that this was coming down the pike. And

there was a very, very good lawyer, a great guy who was the general counsel for the Umatilla Reservation, the Confederated Tribes of the Umatilla Indian Reservation. His name was Doug Nash. Doug is a Nez Perce but was the general counsel of the CTUIR Confederated Tribes of the Umatilla Indian Reservation. And Doug and Bob started these discussions and it was Doug and Bob that kind of envisioned the way this thing should go. Then Doug would go back and talk with the powers that be in the tribe, which is basically Antone Minthorn. And Bob would talk with the irrigators and we'd all talk with—essentially it was Hatfield's project because Hatfield was very pro-Indian and pro-fish and we wouldn't have raised a hundred million dollars without Hatfield.

And then I think I mentioned it yesterday that Bob just got really tired of all the aggravation and the twelve-hour negotiating sessions with the environmentalists and the Indians and the Bureau and the districts. It was Bob and me and a bunch of bureau people and Water Resource Department people and Water Watch, which is the big environmental outfit, their lawyers and then the tribes and they didn't have good lawyers there. The tribes had all these policy people who weren't lawyers and so that always slows things down.

And then Doug, I can't remember when he got out. He and I did some other big stuff. I represent a lot of banks out there. And the tribes were just starting to kind of move into the development and

their casino and they wanted to have new buildings and better housing. So I was doing loans from my clients, the banks, to the tribes. Doug and I worked on that a lot. And then Doug went to Lapwai to become general counsel for the Nez Perce Tribe. Then he ended up at the big firm, it's a big firm out of Denver, I think it was called Holland and Hart and he was their Indian rights guy out of Boise. But I think he's working from his home outside of Lapwai and then flies to Boise. He's a great guy. And he did that for a while and now he's a teacher at the University of Idaho Law School.

DS: I'm going to Boise next week.

SB: Yes. He's a great guy and Boise is a great town. If my wife and I had known how nice Boise was we might have gone there. We didn't know. We didn't know anything about the Northwest and nothing about Boise. And when I was trying cases I had two big cases in Boise and so I had to go down there frequently. And it's a great town. It is a great town. It just seemed like a nice clean, small city and it was growing and Micron and Albertsons and Simplot, they were good businesses that were kind of booming. But we never went to Boise because I didn't want to take another bar exam.

DS: Different state.

SB: Different state. Now we have reciprocity with Idaho but at the time I didn't want to take that bar exam.

Indian Tribal Courts

DS: What was your initial introduction to the Tribes? Like, if you came from California and you moved to Eastern Oregon, in Pendleton, you know the reservation is a really significant presence there. So what was that like?

SB: Well, maybe my chronology's off, but I think initially, Bill Johnson's the tribal judge and he's been the tribal judge for twenty-five years or so. Great guy, nice guy, and before that I think he was one of the elected trustees. He got tired of all the political stuff—he was a lawyer, a tribal judge. And originally, back in the early '80's he asked me to be a *pro-tem* judge, to substitute when he had a conflict, relatives or something, or he had to be somewhere else doing other stuff, because it was only like a half-time job back then. Now it's full-time but then it was half-time. So he had to supplement his income by being a judge for other tribes. So originally I would just go out there and be the *pro-tem* judge. It was very narrow because I knew all the people in the tribal clerk's office and Bill and a few of the cops and some of the administrators and things like that. And then my wife became the tribal prosecutor. And Becky did that for a while. I can't remember how long. And yes, that was a really, a tough job because, you know, she'd meet with the tribal elders, the board of trustees or whatever and they'd say, "We want you to prosecute A, B, and C."

Becky said, "You bet." And she'd start prosecuting A, B, and C, meaning

selling fish to the White guys, or you know, doing something against the tribal code.

So she'd start prosecuting people for crimes A and immediately she'd get seventy-three calls from somebody saying, "Well you can't do that because that's my brother or my son or my nephew." It was very difficult.

So when you say it's a big presence. Up until the casino it wasn't really that big a presence. There wasn't a lot of commerce between the city and the tribes in terms of bank loans or people going out there to do work—like I represented a couple of big contractors that didn't do a lot of construction work out there until the tribe started getting money. Then they started, you know, wanting them to come to build houses or to build roads and then we would get involved in doing contracts. So they weren't really a big presence until the casino came in. But they were a presence legally for my firm because of the water in the Umatilla Basin.

DS: And so, what did being a *pro-tem* judge there involve? Did you need to bone up on native history or anything like that?

SB: No, no, no, no, [voice trails off] no, no, no. This is minor crime because the tribal court only has jurisdiction for misdemeanors. I didn't do any civil stuff. There are civil cases out there where they have tribal housing and you still have to pay fifty dollars a month rent. They wouldn't pay the rent and then they'd—you know, that kind of—I didn't do any

of that. And I didn't get involved in any of the civil stuff. Any felonies went to the federal court, the FBI. There's two FBI agents in Pendleton. They investigate the felonies, the murders, and the child abuse, the deaths, stabbings, things like that.

But what Bill handles is basically what you'd find in city court, driving under the influence, that kind of stuff. So it's basically, if my memory serves right, they basically just adopted the Oregon vehicle code, and the criminal code and so most of the crimes involve alcohol, stealing, burglaries but are not charged at a felony level, just handled.

And they don't have a jail. So you're not putting anybody in jail. If they're going to jail it's a big, big deal, because then you have to contact like Yakama or Warm Springs [Reservations] that have the jail. Then you have to pay for that. No one wants to pay to have some guy housed for twenty-five dollars a day, because he's not going to be able to pay the fine anyway, much less pay the cost of his jail.

It was real low level. No tribal history, there was no Indian law that I had to know. There are Indian law issues at the federal court but not in tribal court. Tribal court only involves people that are tribal members.

DS: But it sounds like it gave you some experience in being a judge.

SB: Yes, well you know, a little bit but it wasn't like, if you had a trial it wasn't like big evidentiary issues or anything. I mean, I also have a good friend in Milton-Freewater, Sam Tucker, who's the city

judge there and he would ask me to *pro-tem* up there when he had a conflict or was out of town. Again, city court. It's drunk drives and misdemeanor assault.

DS: Pretty clear guidelines for sentencing.

SB: Yes, and very low level misdemeanors, no one's going to prison. With the tribal court it is a very small, unpretentious courtroom. City courts are even less so. So it was, you know, I can put it on my resume. It looks good but in terms of practical experience it's not much. It's more than nothing, but not much.

Becky was the *pro-tem* judge in Pendleton when—it's Bob Ridgway now. Before that I can't remember who the city judge even was. Oh, it was Art Barrows, I think. And Art would have a conflict or be out of town and Becky would be the city judge. But again, it's mostly people coming in saying, I'm guilty, or let's have a trial and at the trial the cop says, "I saw him run the stop sign."

He says, "I didn't do it." You know, so it's not complicated.

DS: And how long did she work for the tribe?

SB: About a year. It was all part-time. Everything was part-time. The prosecutor now's a gal named Lynn Hampton and she took the job, I'm confident, because it's part-time. And again, she's just prosecuting misdemeanor stuff. It's sort of like prosecuting in the city of Portland and if it's anything significant the FBI

comes in, does the investigation, hauls them in front of me and we send them to Portland. It's prosecuted in Portland.

DS: And that has happened?

SB: Oh yes, all the time. Not every week but yes, when there's a murder or a knifing or arson or serious drugs, child sex abuse. Felony stuff. The FBI investigates, arrests, brings them in my court, I do the initial appearance. You know, these are the charges. And I don't take guilty pleas because they are always unrepresented. I refuse to take a guilty plea or do anything with someone who's not represented, even though I know they're going to plead, "not guilty." It's just once you do that all these timelines start running, discovery, motions, all these things and so I just then remand them to the custody of the marshals to transport it down here. They appear before another magistrate, do the arraignment, have their attorney enter a "not guilty," and set a trial date.

DS: One of my questions was what the relationship between the district court and Pendleton is, and the reservation.

SB: There's not much of one because the district court in Pendleton is really the district court here. And you're a judge, you're not an investigator, you're not a policy maker, you're not a negotiator, you're not trying to impose taxes, or collect taxes, or negotiate fines or anything. There's no relationship really with the reservation. The defendant is personally and individually brought in front of

you. So I don't ever have the reservation contact me to say, "We need to talk about something." I would say, "There's nothing to talk about."

DS: But it's the FBI that goes into the reservation and brings people who have potentially committed felonies before the district court.

SB: Yes. Yep. Right. There's two FBI guys. When I first started there was one and then it got busy and now there's two. And those guys handle an area that's bigger than most states. They're not bigger than Texas or Alaska but certainly bigger than Connecticut or Rhode Island because it's a huge area. It's essentially from The Dalles to Idaho, and from Washington to Nevada.

DS: The two FBI agents.

SB: Two guys. Yes.

DS: And where are they based out of?

SB: Pendleton.

DS: Out of Pendleton. Okay.

SB: Right now one lives in La Grande and one lives in Walla Walla. You can tell what a lovely town Pendleton is. Everyone lives somewhere else. When I first started it was Dan Jacobson who had replaced Bennett Stetcher and Bennett was our neighbor and he was the old FBI guy that didn't even know where his gun was. Then Dan came in and then he ended

up being transferred to Harrisburg, PA, doing undercover drug work, after being in Pendleton doing essentially nothing involving high duty and high crime or high risk. And then after Dan, Mike McPheeters and then after Mike, Scott Jensen, who's now one of the top guys in Portland. Then Scott was busy enough that another guy came in and that was Ariel Miller, who's the guy in La Grande. He's a computer, electronic guy so he does all the, you know, pornography on the Internet stuff. He's real good at that. And then Scott got promoted, came down here. He was replaced by a guy named JB Bentz.

[End of Tape Two, Side One]

Willamette Law School

SB: —Paul Erlich's book *The Population Bomb*, he was one of the professors. Stanford was kind of on the cutting edge of the environmental movement and certainly on population and deforestation and I don't think they called it the "greenhouse effect" yet and stuff. I don't think that had quite come along. But yes, we were all very concerned about—and this was way before the population anywhere was really obnoxious. Like California is over 30 million people. The San Fernando Valley where I grew up is about a million-and-a-half people. When I was there it was probably 600,000 and I thought that was about 500,000 too many.

DS: So you were aware of the environmental movement?

SB: Paul Erlich's a great guy. And I went to a lot of his lectures and stuff. And then UC Santa Cruz, has a real strong environmental department. Environmental Studies, I think, is what it's called. Santa Cruz is not that far from Stanford so I went over to that campus. It's a gorgeous campus that's in the forest and it's right on the coast. And I think if Molly goes to grad school and she doesn't become a teacher, she wants to go to UC Santa Cruz and get a master's in Environmental Studies. It's a good program but even back then Santa Cruz was talking about the environment.

DS: And so my question was about your awareness of that, and you mentioned that you moved to Oregon partly because you wanted to get away.

SB: Yes, absolutely. Absolutely, partly because it was a clean state. They had great land use planning, sort of on the books or in the process of being developed, which is now being gutted by Ballot Measure 37. But, you know, they had Tom McCall, and it wasn't heavily populated, and it was pretty green and it was clean. So yes. That's why I specifically came to Oregon.

DS: So you went to Willamette.

SB: I did.

DS: And what interested you most in law school?

SB: Interestingly the things—criminal law, criminal law procedure, I did well in those classes. I was really interested in

admiralty. I think I got the high paper in admiralty.

I took environmental law at UW in summer school after my first year. Willamette had—well when I took the bar exam there were twenty-five subjects on the bar exam. And so I was anal enough to think that I should take those twenty-five subjects that I was going to be potentially tested on. So I was taking corporate tax, and the estate and gift tax, stuff that I normally wouldn't have been too excited about. So I took all the tax classes.

There were certain classes I could see I wouldn't probably get a chance to take at Willamette if I wanted to do the whole twenty-five. So after the first year of law school Becky went back to Minnesota and I went up to where my folks were living in Seattle. My dad is a Navy guy. And I worked in a garage and took environmental law and products liability. And I think I got the high paper in environmental law. So I was in environmental law, criminal law, and the admiralty.

DS: Were there any professors in particular who influenced you?

SB: Oh there were great professors. They really were. We had really good professors. We had Barns in contracts and he was very good. Ted Butler in torts was very good. I was disappointed in the property guy, who was just there for one year, I can't remember his name. I was very disappointed in the constitutional law guy, who I thought was a complete idiot. Civil procedure was Isom; he was very good. Evidence was—that's my advisor who

I wrote my paper for. I can't remember his name. Real good guy. Criminal was a subject I liked. The professor was average, but a very nice guy, Turner. Admiralty was taught by the same guy that did evidence. Ah. One of the best teachers, was our probate trust, trust and estates, I think they call it now. That was Paulus and he was excellent. And he was the guy who taught the bar review. After you graduated you took like a six-week course and Paulus taught that. It was the Paulus Bar Review and he was great.

DS: Was that Norma Paulus' husband?

SB: No, no, no. Norma Paulus' husband is Bill Paulus, and he, I think, he died.

DS: Yes, he did.

SB: And he was a lawyer in Salem and he did have something to do with schools. He was a school lawyer of some sort. I don't think I ever worked with him. But no, this guy was Paulus, he was just a great professor, very, very bright and a very, very good teacher.

DS: And what was the atmosphere like at Willamette at the time? You were at Stanford where things were pretty liberal. You know, it was the late '60's early '70's.

SB: Yes. By the time I went to law school in '74, the war had essentially wound down. A lot of the people in law school were guys that had been in the service. I mean I had taken a four year break from undergrad to law school and maybe half

the class was right through. And that's what Becky did. Becky always said she wished she'd taken a break because it's just a grind not to have a break.

And so, I think this is maybe true of most law schools, it wasn't all twenty-two year-old people. There were a lot of twenty-five, twenty-six, twenty-seven year-old people. And it was a fairly nice group of people trying to learn to be lawyers. There wasn't any political activity on campus that I knew of. And maybe Willamette was like that through the Vietnam War. I don't know. It was a really quiet little school. It's a good school but it's kind of tucked away in Salem and it's fairly, from what I can tell, students are sort of conservative and Republican.

DS: I was just there yesterday, as a matter of fact.

SB: Yes. I was there last night and God, it's really, that whole Salem area around the university is really built up since I was there. Of course it's been thirty years but—

DS: There are strip malls everywhere.

SB: I don't even want to talk about any of that.

DS: *[laughs]* Let's not get into that.

SB: When I went to Stanford there was San Francisco and thirty miles was Palo Alto and thirty miles from San Jose and there was a distinct block of wide open space between those. You go down there

now and it's just solid people from San Francisco to San Jose and the Bay Shore Freeway and it's really ugly.

DS: Where did you live when you were at Willamette?

SB: In the dorm. I had lived on my own for four years and I was pretty confident that I was incapable of doing the studying and the shopping and the cooking and doing all the things you need. So I figured, okay, I'll go live in the dorm right across the street from the law school. And they provided meals and the food was, you know. And I had the GI Bill, so I was pretty much covered on that. I figured I'll live there and see how things go. And Becky lived right below me.

Meeting Becky Nelson

DS: How did you meet, you and she?

SB: It was the first day of law school. Well you get there like a few days before law school starts and they have all this orientation, you know. They have like a picnic in Bush Park or something. I can't remember where. But she was in the dorm, so you know, you met at meals and stuff, and met at these orientation things.

DS: And at what point did you get married?

SB: Right after the second year. As Becky said, she chased me for three weeks until I caught her. I didn't want to get involved.

I wanted to be a serious student because I had been out of school for four years. I didn't know how I would do, you know. I mean I had gone to good colleges and I am adequately intelligent, but who knows after four years how it's going to go. And I don't know, law school's different than undergrad. It's a different way of thinking. So I just wanted to be a student and she was much smarter than me and she was much more relaxed about it and she thought we should have a social life, which we did.

DS: So how did she chase you?

SB: She just was there all the time. She never drank coffee. And she's Scandinavian from Minnesota and that's like everyone drinks coffee. She never drank coffee, but I would not take any time off to talk to people except after a meal I would have coffee. She'd have coffee and we'd sit there and shoot the breeze. That was one thing she did.

And then there was always, not always, but like in the weekends there would be social things among students, let's get together at So-and-So's house and there'd be a whatever, where they said let's all go to—most of us didn't know Oregon. "Let's go to Portland." The two people that we spent time with, the couple that were the RA's, Brad Swank and his wife Nan—who since got divorced—but he was a second year law student. And Nan worked for the League of Oregon Cities. Well because of the League of Oregon Cities, Nan was in Portland a lot so she knew the nice restaurants and there were a couple of movie theaters that showed old

movies and stuff and so Nan would say, "Hey, why don't we go to Portland Friday night or Saturday night and we'll go to dinner at the Ringside and we'll go to see a movie or go to the movie." And, that kind of stuff. So Becky and I sort of ended up being a couple doing that.

DS: Are there any other relationships that you developed at Willamette that have carried on, and I don't mean romantic relationships but with people you knew?

SB: No, the only romantic one was Becky. Oh, yes, I had really good friendships that we developed in law school that have lasted. The guy that I'm having dinner with tonight, this guy who's going to call, he's a stupid city judge in Salem and he's supposed to call. *DS [laughs]* It's the most God-awful boring job and he's been doing it for as long as I can remember.

Anyway, Frank Gruber and his wife Pat. Pat works for the school system. Tom Evans who was probably our best friend, he was in our class. His wife Margie was a schoolteacher. Tom gave up the law and he's in one of the suburbs of Denver doing worker's comp and computer work or something, where he sells computer programs. And after law school he got a job working for the State Accident Insurance Fund, SAIF, and became like the number two guy and developed all these computer things and then went out on his own. He's doing very well.

Actually, those are two that I can think of from law school. And occasionally I'll see people but—we went to this ten year and twenty year reunion and they weren't

a hundred percent attended but everyone was really nice and friendly. It's really interesting. There were a couple of people who came up and apologized because they were alcoholics and they were going through the twelve-step and they wanted to apologize. I didn't even know they were drinking but apparently—they were kind of butt-heads in law school. But they said they were butt-heads because they were drinking too much.

DS: At the reunion that happened?

SB: Yes.

DS: Oh that is interesting.

Women in Law School

SB: Yes it was interesting. One was a woman, I can't remember who the other was, a woman. She's a really nice gal. She left the law and she teaches drama at U of O, or she got her Masters in Fine Arts at U of O and teaches. Anyway, she's a really bright law student, but she's kind of a real, you know, pain.

Our class was one of the first classes to let women in, significantly. I mean Norma Paulus was like one of two people in her class or something. But the mid '70's is when they were actually recruiting women law students. So Becky was recruited after her—she was a real good student and then she did well on the LSAT and went to Willamette because they were the best in terms of financial aid, but also the ones that were the nicest. Lewis & Clark just wasn't

anywhere near as communicative. We had a big group of women, and most of them were pretty aggressive and assertive.

Becky was a Home-Ec major, and when we got married she took my name and the women were, "You can't do that." So the women in the class, a lot of them were very aggressive and assertive, which I didn't care for. I wasn't dating them and I wasn't going to be with them and if they wanted to be that way it didn't bother me.

DS: Well it sounds like it was kind of an interesting atmosphere at the time.

SB: It was. It was. It was different. I'm sure now it's not—I mean now I'm sure the men and the women are more used to each other at that kind of level, but back in the mid '70's it was more unusual for women to go to law school. Not because women couldn't do it, just either they didn't apply or they weren't accepted. I don't know what happened in the old days.

In the old, old days when there were three women in class I'm assuming that they didn't apply. But, take the first woman Supreme Court Justice, Sandra Day O'Connor. Stanford, top of her class and the best job offer she got was as a legal secretary after graduating. I mean, it was terrible. I mean this is probably, well she was one of the top students at Stanford, which is a heck of a good law school. The reason I didn't even apply to Stanford is I didn't want to work twenty hours a day. When I was in Navy ROTC there were a couple of law school students in with us in ROTC and those guys were just, I mean they were just pale from overwork. And I

had already done that as an undergrad. I didn't want to do it in graduate school.

DS: How rigorous was Willamette?

SB: It was adequate. I worked hard. I worked a lot. It wasn't impossible. And maybe if I had gone to Stanford I would have found the same. The people I know that graduated from Stanford that practice in Eastern Oregon are not by any stretch of the imagination the good lawyers. I mean I'm sure they're bright but they're not very effectual or good or confident lawyers.

DS: So you don't see that the training was a whole lot better or?

SB: It was good. It was adequate. Some of the best lawyers in Oregon are Willamette, Lewis & Clark, and Oregon people, not Harvard and Stanford and Yale.

DS: And a lot of people tend to stay in the Northwest it seems.

SB: Yes.

DS: Who graduated from Lewis & Clark and Willamette.

Beginning Law Practice

SB: That's why I did it. I came here because I figured if I wanted to live here I should go to law school here. It's not necessarily true, but, I mean Harvard has like 1,000 students in a class. Well at the very, very top, they're out of control. But

in the middle and the bottom they're just like us.

DS: So you went to Pendleton and you went to work for the district attorney's office?

SB: I did.

DS: Can you talk a little bit about that?

SB: Yes. I had spent a year in Corvallis doing essentially criminal defense and really disliking it. The idea of the mastermind criminal is only in fiction. They're essentially incredibly stupid, don't bathe very well, and there's nothing like going to jail at eight in the morning and sitting with a guy who's hung over, stinks because he hasn't bathed, chewing tobacco, and is trying to convince you that he didn't do it even though it's on video. So I did that and I didn't like it.

I figured if I was going to go into a community I should go to the DA's office and get some trial experience and meet the lawyers and get established in the community. So we went out and interviewed with Pendleton, La Grande, Baker City, Ontario, John Day, Bend, Roseburg, and Grants Pass. And I could have had a job probably in a number of those and one that I was actually, I think, offered a job was Roseburg. I really liked the DA, Bill Laswell, who is now a circuit judge.

And from the standpoint of doing criminal law and getting experience, it's great because they have a like a murder a week. In terms of raising a family—I mean

Roseburg has red-neck loggers, Indians, a bunch of hippies growing grass and probably now making methamphetamine. And then all the crime that comes off of I-5 up and back from California to Canada.

So there's a lot of crime. It's good if you want to prosecute but I didn't. And Laswell was great. He took us out to a vineyard for lunch and we had a lot of wine. I really liked him. But the most warm, charming, all that stuff, people were in Pendleton. And Jack Olson was the DA but he was going into transition to circuit judge. He'd just been elected. And the DA was Fred Bennett and the guy I had dinner with last night, Hal Harding, was the chief deputy DA in Benton County. I worked for Hal. And he knew Fred. Fred called him up and Hal said, "You bet." So I got the job and we moved out.

We had not a pot and not much of a window. We loaded up our car and we hired two of Tom Evans' brothers. Tom is our friend from law school and he has a big Mormon family in Lake Oswego and he had two brothers that were like college students and so we hired them and rented a U-haul and moved our stuff and drove out there in Pendleton.

When we were in law school we rented a house from Mr. and Mrs. Fletcher. They were very successful farmers east of Salem. They owned an awful lot of farm ground between Salem and Mount Angel, or Silverton. And they had a house and five acres and then up grounds and then all this farmland. They were snowbirds. They wanted to live in Arizona. They wanted someone to basically care take the house and the five acres, but they

had three sit down lawn mowers, so it wasn't that hard. And they left us all this furniture and a house and freezer full of food and the basement was full of all the preserves and vegetables she had put up. And we could eat anything, take anything we wanted. Well we got married and they gave us—I mean they didn't give it to us, but we bought our bedroom set for like twenty bucks and the couches for like twenty bucks and that's what we had. We had just enough for like an apartment in Philomath, which is where we lived before we moved to Pendleton.

DS: And did she get a job at the same time?

SB: In Pendleton? Yes. She worked for the East Central Oregon Association of Counties, which is a consortium of all these Eastern Oregon counties. And they hired her to do an economic analysis of Eastern Oregon. And they're still using it. She wrote it. Marie Hall, she met Marie through that job, Marie's husband is Bob Hall, he's a vet. They're old friends of ours. And Marie and Becky—Marie was doing something with—what the heck? She had gone to OSU and gotten a degree in Agricultural Economics, I think. So she was doing something with that. But she and Becky drove all through Eastern Oregon, you know, with a company car, interviewing people and taking notes and writing reports. And she did that for about a year. No, actually she did it for about six months because she followed me into the DA's office. When I went out to private practice she got the DA job. Deputy DA job.

DS: I see. And what was that job like, the Deputy DA job?

SB: It was mostly prosecuting misdemeanors and doing arraignments.

DS: You mentioned the master criminal mind, and I know that you had a psychology undergraduate degree, or you were interested in psychology.

SB: No. No. That was one class.

DS: One class?

SB: One class.

DS: That's what it was.

SB: Yes. One class and that sure convinced me that psychology—well at least at Dartmouth it was all synapses and mazes and they didn't do the Freud and stuff. No. No I took one Psych 101, or whatever it's called at Dartmouth, and really disliked it. And what I meant is that criminals are essentially under-educated, under-employed, poverty stricken, not very intelligent and there's no such thing as, at least in my experience, the mastermind criminal. "To Catch a Thief," you know, the stuff you see on TV or in movies.

DS: You didn't see those in Corvallis or in Eastern Oregon. *[laughs]*

SB: No, You're dealing with just impulsive morons essentially. I decided I didn't like to represent criminals.

DS: And then what came next after the DA's office?

SB: I went to work for Morrison and Reynolds in Hermiston, Don Morrison, and Garry Reynolds, Don was fifty-five or sixty and Garry was my age, about thirty. And I was in Hermiston, which is a fairly ugly town.

DS: I've been there. I did a project. Just so you know a little bit about where I'm coming from. I did a project that was focused on the history of Umatilla.

SB: Umatilla County?

DS: No, the town of Umatilla.

SB: That's a charming place.

DS: And, well it was the building of McNary Dam. I worked for an organization that is called The Center for Columbia River History and so that's why I know about the Umatilla Basin Project. I focused on changes in Umatilla since the building of McNary and John Day and so I'm familiar with the issues surrounding the Umatilla town site and I was going to ask if you have anything to say about that?

SB: I know about it, but I –

DS: So, I've been to Hermiston because I did some interviewing –

SB: The five ugliest miles in Oregon is Highway 395; that's that highway be-

tween Hermiston and Umatilla. So we were in Hermiston. Garry was a great guy to practice with. Don was a greedy SOB; I did not like the practice. I liked Garry, but I didn't like the practice. It was mostly divorces and criminal work. I disliked it enough that I applied to tax school and was accepted and I had one more year on the GI Bill.

Becky said, "I don't think you want to do this." I mean, she figured it out. We'd have enough money to live, you know, on food stamps, get back East but probably not enough money to come back to Oregon.

And she said, "Remember all those classes you took and all those people that got all excited about those footnotes? The sub, sub, sub paragraphs and little footnotes?"

"Yes, they drove me crazy."

She said, "That's what you're going to be doing."

I said, "I don't want to do that."

Well, Morrison got wind that I had applied to tax school and he got really upset. And he said, "You either buy me out—" he wanted to retire. He was about fifty and he wanted to retire and he had made a lot of money in land speculation.

I said, "Well, I don't have enough money to buy you out." Because he wanted a couple hundred thousand dollars.

He says, "Well go down to Jess Foster, who's the president of Inland Empire Bank, who's my client, and borrow the money from Jess."

I said, "Jess's not going to lend me that kind of money because I don't have any collateral, other than my stupid law

degree." I mean because the practice, other than a hundred dollars worth of tables and chairs, is what you can produce. It's nothing. And that's why it wasn't worth \$200,000.

So Garry and I went down to talk to Jess and Jess looked at him—and we had financial statements because Morrison said, "Fill them out."

So Jess says, "I can't loan you that kind of money."

I said, "I know that."

Morrison wanted cash. And so, Morrison said, "Well you enter into a contract at ten percent interest and so much down."

I said, "I'm not going to do that. I'm not going to tie my family up for you. Plus, I don't like the practice and I don't like you." And just coincidentally and fortuitously, my good friend Sam Tucker was in Kottkamp & O'Rourke. He was their young associate. And he didn't like all the pressure of the trial work and he wanted to move to Milton-Freewater, which is where his family's from. So Sam called me up and said, "Hey, I'm moving on, the job's open. I applied. There were a lot of people who applied; I got the job. And poor Garry had to pay Morrison way too much money. And he had to struggle for many years until he became a judge to pay Morrison.

DS: So he's the one that took over the practice.

SB: He took it over and then he brought in his brother-in-law about five years later, Kurt Bendixsen. He's a very nice guy.

DS: And what was it that you liked about trial work?

SB: I didn't.

DS: You didn't.

SB: I didn't like it.

DS: Oh, I got the impression that you did.

SB: No.

DS: How did you feel about trial work, is a better question.

SB: Getting ready for the trial would be the depositions and that was okay. And the trial itself, actually being in the trial was okay, but the week before with worrying about did I have this, did I do this, should I have done this, how about this? I didn't like it. It was too stressful. Most lawyers are control freaks and you can't control a lot of what happens in trial, in terms of what the witnesses say, what the other guy says, what the judge rules. It's, you know, if medicine were adversarial like the law and I were the surgeon, I'd open someone up. My adversary would be spitting into the body cavity, knocking the tools on the floor, you know, throwing dirty sponges in the body cavity, pouring water on my head. And that's what happens, you know—you're essentially fighting with someone.

[End of Tape Two, Side Two]

Water Law Practice

SB: I just didn't like trial work. I was really lucky when Bob—who was real busy with water stuff—was developing a real good probate practice and wanted to get out of the water. And he and I had worked together on the water. He thought I could handle it and trusted me. And I liked him and I could learn from him. So that was really a good experience for me to get out of the litigation and we brought in another guy to do litigation. And I was happy to get out of litigation.

DS: And you moved into the water law?

SB: Water law.

DS: And you said that you took the class in environmental law.

SB: But I never took the water law.

DS: But you never took a water law class.

BS: I never envisioned water law as a practice because I was in the Willamette Valley where it rains all the time.

DS: You mentioned the option between Roseburg and Eastern Oregon.

SB: Right.

DS: Those are very different places, different environments.

SB: Very, very, very, very. And I'm glad. In terms of raising a family, Pendleton is far superior. In terms of making a good salary, a good income, Pendleton is great. I've made much more money than I ever thought I would. Kottkamp & O'Rourke, we had a great practice. We culled out people we didn't like; we culled out people that didn't pay. So we basically represented people we liked and people who paid, and irrigation districts and insurance companies and banks. So we had a real good successful practice.

DS: How large is the practice, or was it?

SB: It was John Kottkamp, who was one of the best trial lawyers in Oregon. He was just incredibly bright. He was like six foot-two, slim, with silver hair and incredibly charming. And he was *the* trial lawyer in Eastern Oregon and one of the best in Oregon. He was great. Bob O'Rourke who was incredible on water law, great business lawyer and now does great probate work. And me.

And then we brought in an associate who didn't work out for a variety of personality problems, most of which dealt with marital infidelity, and a lot of other things that I don't need to go into. And he left. We brought in another associate. A young guy who had just graduated from Case Western and he was doing a good job. And he decided after being with us

for five years that—I think we made him partner, maybe not. We were going to. He decided he wanted to be a personal injury lawyer. Plaintiffs' work. All we did was defense. We said, "No, that's not what we do." And he basically tried to call our bluff.

He said, "You let me do plaintiff's work or I'm walking."

We said, "Don't let the door hit you on the way out." So he left. And then John developed a terminal disease, a blood disease. Myelodysplasia. He died about 2000. So it's just Bob and me.

And then last July I told Bob that I was gone by this June. I didn't know where I was going but I knew I was moving on. And just fortuitously at that time, the big law firm in Pendleton was looking at us because they really liked my water practice, all my irrigation districts. They didn't know I was moving on but they wanted to have me in their firm. Bob has a great probate practice in terms of we have hundreds of wills of all these really very successful ranchers that will come to fruition, and they kind of approached us about joining them, which was great because we had forty years of files that I didn't know what I was going to with. Bob was really stressed out because I have a very, very active, busy practice.

And he said, "What am I going to do with all these clients?"

And I just go, "Oh God, I don't know."

Because I didn't want to leave him in the lurch. I really like him and I didn't want to leave my clients in the lurch, but I also didn't want to stay in Pendleton.

So it worked out real well. We sold our practice to them and I think we've sold our building. We have a building. I think we've sold that too.

DS: So someone else will take over the water law?

SB: Yes. There's been a lot of discussions and infighting between the guys at Corey Byler & Rew about who gets it.

DS: What is the name of the other practice?

SB: Corey Byler Rew Lorenzen & Hojem, about twelve lawyers.

DS: Okay.

SB: It's the biggest lawyer firm in Eastern Oregon, which isn't saying much because Eastern Oregon's not that big, but it's a very good group.

DS: I'm sure everyone knows everyone else in the legal community.

SB: Absolutely, which is nice. The one thing that's nice—my sense is that people in Portland are fairly, act collegial and they don't try to screw each other but it's a big a town and you can screw somebody and hope you never see them again. You can't do that in Eastern Oregon. You know, if you screw me on this case I'll see you later and I won't forget. And your reputation and your word are very important. If you breach anything, in terms of ethics or your word or honesty you're in deep doo-doo.

DS: So if you're adversarial you'd better be above board about it?

SB: Well if you're adversarial you can be adversarial but still do it ethically and professionally and not try to cut corners and stuff. So, by and large the bar in Eastern Oregon is a real good bar. Not in terms of we're all brilliant lawyers or anything but just that we're all straight shooters.

DS: You mentioned that in terms of water law that some things have gone to the Supreme Court?

SB: Oregon Supreme Court.

DS: Oregon Supreme Court. What cases are—

SB: The biggest one was *Maag v. Orchards Water Company*³. I represented Orchards Water Company. That was when they had every water issue that you could possibly have. Every statute, every issue, Bob and I were down at Orchards, which is outside of Vale, Oregon. Have you ever been to Vale?

DS: I haven't been to Vale, no.

SB: It's a very small town. Malheur County is as big as most states, but there's Ontario. The county seat is Vale and then north of Vale, about thirty miles is Brogan and in Brogan is Orchards Water Company. And you're going through hundred year-old files, records, dust, rat droppings, just you know, getting bitten by mites from the rats—we thought we were going to get

bubonic plague. So it was a real historical case, and the Maag's was like three or four related families. Very successful farmers, and Orchards was the other successful irrigating entity in that area. And the Maags were claiming that our water rights were their water rights. So, that was an interesting one.

I did another one that actually has become a big deal case. *Dorothy Norden v. The Water Resources Department*.⁴ Dorothy is a really nice woman who lives right on the outside of Pendleton, hundred acres, irrigated, cows, beautiful setting. And the water master—she had a spring on her land that arose on her land. It didn't leave her land. So, that means it's her water. She doesn't need water rights. The water master decided that the water, if we hadn't done anything, would run into the Umatilla River, so we had a big lawsuit. We won at the trial level. The judge went out and looked at everything, heard all the evidence and wrote a long opinion in our favor.

Well, there was an administrative law component to that. Remember I was telling you about administrative law?

DS: Mm-hmm.

SB: The administrative law component basically says the judge can't second guess the water master. And the way I got around that is that it says that the judge has to basically be stuck with the administrative record that the water master prepares. And in this case there was none.

The water master just went out and looked at the spring, said, "Nah, I think it

will run into the river." And that was the extent of the record.

So I said, "That's great because there is no record and we all have this evidence, Judge."

Well, what the judge did is, he let them bring in all their junk over my objections and still ruled in our favor. Then the Supreme Court changed the administrative law on this case basically saying that even though there was no record made by the administrator of the department agency, the water master in our case, they can back fill with information. So in other words, he had nothing to justify his decision, other than his gut feeling. That's what he said at the depositions. But then at trial all the hydrologists from Salem had been out to the property and made tests, on and on and on, and the Supreme Court said you can do that. So the statute that says you're stuck with the administrative record that exists when the decision is made, it's been changed now.

DS: It has been changed.

SB: On that case. Yes.

DS: Okay.

SB: Those are the two that I know. I handled the appeal on *Orchards* where we won everything.

DS: You lost it in the Supreme Court.

SB: No, no. No, no. On *Orchards* we lost at the trial level and won at the Supreme Court. Okay. And the Supreme Court just

said, "You're right Bloom, the judge was out to lunch." And he really was. Nice guy but he didn't understand water law.

On the Dorothy Norden case, my partner Kottkamp was always of the opinion that if you tried the case you probably shouldn't handle the appeal because you really have a lot invested in the case and you can't see the forest for the trees. So he always recommended to me that I get outside counsel to handle the appeal. So I was a big hero in Dorothy's case because we won and we got a thirty thousand dollar judgment against the state for attorney's fees. Hired a real good appellate lawyer and he lost it.

DS: So what was it that the water master wanted her to do?

SB: He wanted her to essentially [*paper shuffling*]*—yes. You're not going to have this but here's Dorothy's property and McKay Creek running into the Umatilla and here's McKay Reservoir [draws map on paper].*

DS: Okay.

SB: This is a hundred acres and Dorothy's spring was about here. Her house was here and all this is pasture. The spring would come out like this and Dorothy took the water about here and flood-irrigated her pasture.

DS: I see.

SB: And the water master said if you didn't interfere with it here and just let it

go here it would augment this. So he is not allowing her to take any water anymore here, even though the water's not really getting to McKay Creek. What happens is it flows, it kind of disappears and it sub-surfaces into McKay. But when he went out, he went up to the spring. He walked—and this was when it was dry. He walked down here and you could see little—the whole area is spring-lined so water's kind of coming up through the bottom of this ditch and he said, "Well if you let this water run without diverting here," but he had no record, he had no hydrology, he had nothing, just by gut feeling.

I said, "That's great because that's what I'm going to take to court."

The judge, when he made the decision he had no record so you can now hear all of our evidence and overrule and then the state brought in [information] and back-filled saying. "Well if Tony had done this test and this test and this test, this is what it would have shown." And the Supreme Court bought that.

DS: So it allowed for, by changing the way that the rulings are made, it allowed for that kind of investigation.

SB: Yes, after the fact.

DS: After the fact.

SB: After the fact, which really, I didn't think was fair but it's the administrative law and if you think I didn't think it was fair you should talk to Dorothy and her significant other, Lou Wells. They are really not happy. And they said, "Steve,

you won a trial and you did all this good work and how could you lose? How could the other guy lose on appeal?"

So I had to try to explain to them administrative law. They're nice people but they're no lawyers and so it was very hard to explain to a client how your victory at trial, your vindication under the case law, under water law—a spring arises on your land and doesn't leave your land, it's your water. You don't need a water right, which makes sense if you think about it. If you have a spring on your land and it goes right into the McKay it probably is connected to McKay and you do need a water right.

DS: Which is connected to the Umatilla.

SB: Right.

DS: Which doesn't have any water.

Oregon Politicians & Water Law

SB: And Umatilla has been closed for all appropriation, as has the Columbia, on our side, not on the Washington side. But Barbara Roberts in her infinite stupidity said, "We need this water for fish. There'll be no more appropriation of any tributaries of the Columbia River"—Columbia, Umatilla, McKay.

I got the last water right for a client out of the Columbia in 1990 or '91. Incredibly hard thing to do because Water Watch was *screaming* that we were going

to hurt the fish. With the amount of water my client takes out of the Columbia, you cannot measure. If you go to McNary, you go to John Day and you measure and my client takes his 15,000 gallons a minute, you cannot see any difference. There is such a heavy flow of water in the Columbia 15,000 gallons a minute is not measurable. The Water Resources Commission agreed with me and we got the water right. But after that Barbara shut down everything.

DS: Well, that's interesting because if you think about 15,000 gallons a minute for one person, but for 100 people, then it might be measurable. Mightn't it?

SB: Well, but I'm not asking for a hundred people. I'm asking for one person. Now, what happened is when Barbara Roberts, friend of the Water Watch people, shut down the appropriations on the Oregon side, she can not affect the appropriations on the Washington side. So while we're shut down Washington farmers are taking all the frigging water they want and the fish runs have gone up significantly, even though Washington's irrigating a lot, as is Idaho. So that was Barbara's stupidity.

Kulongoski is even stupider than Barbara and I'm going to tell you why. The minimum stream flow for the Columbia is at 257 feet above sea level. So we'll say minimum stream flow is 257. Okay. On the Columbia between the John Day and McNary I represent a lot of irrigators, but one of the biggest is the Columbian Improvement District. Have you ever been out to Boardman, seen all those trees?

DS: Mm-hmm.

SB: That's the Columbian Improvement District.

DS: Okay.

SB: That's 25,000 acres worth of irrigated wheat, potatoes and a bunch of poplar trees. And the CID, when we formed it, it floated a \$7.8 million bond, we built the pipeline, we put the pump station in, we engineered it for 257. So if they ever dropped it down to minimum pool, we'd still be able to pump. They've never dropped it to 257 because most people on the Columbia there are pumping at about 263. So, we're fine at 257, everyone else usually maintains a level of 263, 264, 262 and the John Day Dam can't really work much below 260. Kulongoski said, "My plan for the fish is to drop the minimum pool fourteen feet below minimum pool. So then it's 243. First of all he's affecting not just the Washington side but the Oregon side and Idaho. Plus he's probably violating federal law, because it's set at 257 federally. Plus, if he does that, everybody on our side and everybody in Washington is pumping air so there's no irrigation, there's no electricity coming out of John Day, there's no barge traffic. So when he does that he effectively shuts down the Port of Lewiston, the Port of Pasco, the Port of Kennewick, the Port of Umatilla, and the Port of Morrow. And that was his idea.

Now is there any proof that lowering it fourteen feet is going to help fish? "No, I just have this gut feeling." He

came up with this proposal and he told the public.

The public doesn't know, but he told the irrigators and the ports and the cities and they went ballistic. "You're gonna shut down everything." There won't be any barge traffic, there won't be any hydropower coming from John Day, so if you think the cost of your electricity is high now, look out. And there's no irrigation so he's essentially gutting all of the economy of Eastern Washington, Eastern Oregon and Idaho.

"Oh well I just thought that would be a good way to start negotiating."

Everyone is saying, "You can't negotiate like that." I mean, it's beyond stupidity. And so either Kulongoski is stupid or the people advising him are real stupid and didn't realize what they were doing. But I mean, nobody understood the effect of lowering the Columbia River fourteen feet between John Day and here. Those are the politicians that are running our government and spending your money.

DS: Well and they have advisors.

SB: Well of course he has advisors. So the advisors are idiots. I mean for an advisor to say, "Okay Governor, here's what I think your plan should be for fish. We're going to take the John Day down fourteen feet, which will increase the flow of water, which will help fish." Ostensibly. But first of all, "We don't know that's true but, oh yes, we haven't thought about barge traffic, we haven't thought about hydropower, we haven't thought about

irrigation. We haven't thought about the fact that not only are we affecting Oregon, but Washington and Idaho, and not just the irrigators but the ports." So Potlatch, if he wants to send timber down, he ain't going to send any timber down. So you're going to have more truck traffic, more pollution, more break-up—I mean it goes on and on.

And whoever was advising him, either is very stupid or thought that this was a way to get what they wanted or to be, you know, kind of a shock approach to the environmentalism. Which, I'm more green than not—when something like that happens it pisses people off and if they were leaning in any way towards the environmental green solution to a problem they're saying, "These people are crazy. To hell with them."

DS: And then they want to fight.

SB: Then they say we're not talking to you. We're not negotiating. This is not the way you start negotiation by basically taking away my livelihood and basically making my \$100,000 per acre investment worthless by taking the water that I planned to put on potatoes. Potatoes are in the ground. If I don't irrigate them I'm losing four or five hundred dollars an acre, not product, but I mean just the cost of the irrigating water and the fertilizer and seed.

DS: So what's happened since then?

SB: Well, Kulongoski was very embarrassed. They came back and said,

“Oh well, you know, that was just in negotiating.” And nothing’s happened since then. So now they’re regrouping. I’m sure they’re having their discussions. They’re going to try to figure out a way to do this. But they’re not going to be able to do it that way.

DS: How do you see the negotiations taking place? Because it’s very complicated out there.

SB: Very complicated.

DS: I mean with two states and the tribes and you know, all of the different stakeholders.

SB: Three states. Idaho.

DS: Right, three states. All of the different entities that are involved.

SB: It’s crazy and it’s expensive because Phase I on the Umatilla Project was West Extension. Phase II of Stanfield was in Hermiston. Phase II—Westland. We represent Stanfield, Westland, and Hermiston Irrigation Districts. When we were doing the negotiations for the Umatilla Basin Project it started out as Stanfield, Westland, and Hermiston. Westland is very hard to get water to, very expensive. They dropped out and the water now is for the Stanfield and Hermiston, McKay flow, letting it go, Umatilla letting it go, getting water from the Columbia on the exchange.

Well now they’re talking about a Phase III for Westland, which will also

possibly include the cities of Stanfield and Echo and Pendleton. Phase II that I worked on, cost \$100 million. Phase III is going to cost enormous amounts.

I’ll tell you how smart our Congress people are. Have you ever been to Wallowa Lake?

DS: I haven’t. I want to go there but I haven’t been there.

SB: Beautiful. Wallowa Lake. The Wallowa River runs into Wallowa Lake. They have a dam to prevent flooding, you know, because it would flood out Joseph and all that stuff. Nobody really knows who owns the Wallowa Dam but it’s kind of been taken over by an associations of ditch companies. And the dam is fine. It’s safe. It works.

Walden wants to spend \$13 million, which nobody in Congress cares about and we can’t get anybody’s attention because \$13 million is not that much money. I mean literally. They were going to spend \$13 million on a stupid idea and they’re not excited about it or trying to block it because it’s just \$13 million. He wants to take the dam and completely reconfigure it and take the water and push it out to the Lostine River for fish.

Well, two things are going to happen. One, I don’t think there have been any fish in Lostine, the spawning, returning fish, probably since the Pleistocene Era. The Indians say, we remember historically 8 million years ago there were fish in the Lostine because our great, great, great, great, great ancestors told us this and it’s been handed down on the bathroom walls

or something. The other thing is all the water that used to irrigate the Wallowa Valley will not be there, and so Walden is doing this and Gordon Smith, who's very, very pro-Indian and Wyden who's very liberal, are trying to do this.

They're basically trying to hijack this. No one hears about it. It's not good policy. It's basically going to destroy the Wallowa Valley irrigation. And for what? Maybe it's going to help the fish? Plus, it's going to cost \$13 million.

DS: It is very complicated.

SB: It's very complicated.

DS: There's so many different entities that are involved—

Klamath Falls Water Issues

SB: No, you've got agriculture, which is, really—go down to Klamath Falls. I had a three-week trial in Klamath Falls a couple of years ago, and my co-counsel was from West Palm Beach, Florida and my client was out of Tampa, Florida. Have you ever heard of Sykes Enterprises?

DS: Mm-hmm.

SB: They do these computer service centers. You buy a Microsoft product, software. And you buy Microsoft or a Walt Disney game or computer game and on the back it says if you have a problem call this 800 number. That's Sykes. Sykes provides

the computer support, the software support, for all of these companies. So it has all these buildings all over the world, literally. And one of the first ones they built was in Klamath Falls.

And since Klamath Falls—I handled the one in Milton-Freewater and they were really happy with the water rights issues and land use issues and it worked really well and they were really happy. So now I'm their attorney.

The company that built the one in Milton-Freewater, builds all the ones in the United States, through Oklahoma City. They're kind of homogeneous. They all look the same, same plan, same contract, and the Oklahoma City people do a good job. Klamath Falls was one of the first ones, they figured, "We'll go locally."

So they went to a guy name Bogatay. Nice guy, local boy. He went to his friend, the soils engineer. They both figured, hell we've lived in Klamath all our lives. We don't need to test the soil. So they built this 50,000 square foot brick building, with 700 employees and millions of dollars worth of wiring without doing any soil bearing tests. So after awhile the building started sinking, settling, and sliding.

So we we're having this big lawsuit. And that's when the Indians decided that the water should be for fish and not the earth eaters. And so all these people in Klamath had put their crops in, if they had been told back in the fall that come spring you're not going to have any water they wouldn't have spent millions of dollars—and so the crops are in. No water.

So we're going to the courthouse everyday for three weeks. And there are all these people protesting, people working at Wendy's, people working at the John Deere tractor place, people working at the shoe store. And my client, the managing partner or whatever, managing director of Sykes and his trial lawyer—I agreed I'd help on the Oregon law but I wasn't an engineer. And their main lawyer is Foley & Lardner, which is like 1,600 lawyers. One whole department is construction law and the head of the construction law was a guy from West Palm Beach and he was going to try the case. So his name was Chip. He was a great guy and the client, the managing director, Dave Reule.

And so we're going in and out of the courthouse, all these protests, picket signs, all this crap and we're at lunch and so Dave says, "Well I understand the farmers don't have any water but why are the Wendy's people picketing, the John Deere people picketing, and the Safeway people picketing?"

I said, "Okay Dave, the farmer can't grow his crops. He can't make any money. He can't buy any John Deere equipment. They lay off people. The John Deere people can't buy food at Safeway or Wendy's. It's a domino effect."

"Oh." He doesn't see the connection. He gets all his food at Safeway, you know. And so that's what's happening. I mean they unilaterally have basically emasculated the farmers in Klamath and they have in Umatilla. You just don't know it. And I'm not going to be there.

DS: [laughs] You're leaving.

SB: You're damned right.

DS: It will be interesting to see what changes take place between the time you leave and the time you come back.

SB: If I do.

DS: If you do.

SB: If I do—

[End of Tape Three, Side One]

Eastern Oregon Magistrate

DS: Let's start by talking about your transition to the District Court

SB: Yes.

DS: Okay. How did the appointment come about?

SB: Well, magistrates are appointed. The judges decided they are going to have a magistrate. Actually, in this case Art Barrows retired. And they formed a committee of two lawyers and a layperson, or three lawyers? I think mine was three lawyers. And a lot of people applied and we interviewed and filled out applications, and then the committee makes recommendations to the judges and the judges appoint. And I was appointed in October of '88 and then reappointed in '92, '96, 2000 and 2004.

DS: And my question is, what made you want to do it?

SB: Well it seemed interesting. My partner, Kottkamp encouraged me. I thought it would be interesting.

DS: Mm-hmm. And was it?

SB: Yes. Very much.

DS: In what ways?

SB: Well, Owen Panner was the chief judge at the time and he wanted to make the part-time magistrate in Pendleton like a regular magistrate. Oregon is unique. They treat the magistrates like regular judges. You know the difference between Article III and Article I judges?

DS: I read a little bit about it but go ahead and tell me.

SB: Article III's are appointed for life but handle mostly criminal, felony stuff. Article I's, the magistrates, are appointed for an eight-year term except part-timers, [who are appointed] for four year terms, and we handle misdemeanors and civil cases. And so Owen wanted me to try civil cases, which they hadn't—and in Oregon all the judges get assignments equally. The magistrates can't get felonies but all the civil trials are parceled out equally. In other states they have full-time magistrates, just do Social Security hearings, writs of *habeas corpus*, arraignments. It's really boring stuff. It would drive you crazy.

I was at a conference in Chicago and two other magistrates and I took a taxi out to O'Hare, traffic—we were just sitting talking, having a nice time. That was a

long taxi ride. And one guy was like from Denver and one guy was like LA and they couldn't believe that I had been trying civil cases, you know, where someone's suing someone for a million dollars for police brutality, or wrongful termination because of sex bias or something like that. Because all they were doing were Social Security hearings, review of the Social Security decision from the administrative law judge, *habeas corpus*. Everybody in prison thinks that they should get out so they file a writ saying that they had ineffective counseling and they were not doing the stuff I'll be doing at one-thirty, which is initial appearances and arraignments and search warrants and things like that.

So Owen and the judges in this district have been very, very supportive of the magistrates. They want [magistrates] that the lawyers all respect and will allow to try cases. I tried a lot of cases in Pendleton. And that was interesting.

DS: Do they try cases in Pendleton?

SB: You bet.

DS: How long have they been doing that?

SB: Since I came.

DS: Just since then?

SB: Well, actually, we've had a courthouse here for like a hundred years. If there were trials, it was one of the Article III district judges taking the case—that's a Pendleton case, because the accident or the whatever happened in Eastern Oregon—

and then physically going out there and trying the case. The magistrate before me, Art Barrows, didn't want to do that. And before Art there wasn't a magistrate, so the trials that occurred were few and far between and would necessitate Judge Skopil or Judge Whoever, you know, driving out to Pendleton and trying the case. Now they have someone who's there that can do it.

DS: What determines whether the case is sent to Portland or if it's tried in Pendleton?

SB: Well, if the case arises in a certain number of counties and it's in the local rules but essentially everything east of The Dalles. Let's just say that. So if there's a car accident in La Grande between people from different states, or for some reason it should be in federal court. I don't want to go into diversity and all. They hold law school classes on this but if the case should be in federal court and it's filed in federal court and it arises [that] the essence of the case, the gravamen of the complaint, the accident, the contract, the sex discrimination, whatever it is, the police brutality, the wrongful termination. I've had a couple of cases where the Baker County Sheriff's office was sued by deputies who had been fired for wrongful termination. Well Baker County's in Eastern Oregon.

So you have to file all the lawsuits that arise in the Portland District, Portland division. We do not have a clerk's office. I mean I don't have a person that takes the complaint when it comes in and stamps it.

So all that's done here, but if the case arises out of Eastern Oregon, like these couple of Baker County cases.

I had what they call an excessive force case out of Baker County, where a young guy was violating his stalking order against his soon-to-be ex-wife. He was harassing her physically. I can't remember what he was doing. And she called the cops. The cops arrested him. He claimed police brutality, essentially, excessive force. So that's a Baker County case filed in federal court because of all the federal statutes.

Either the plaintiff or the defendant can file a motion under our local rules to have the case tried in Pendleton. These are never my cases because they're assigned to the full-time judges or magistrates. But if the case is say, Judge King's or Judge Brown's or Judge Stewart's—Jan Stewart's a magistrate—and they don't want to come to Pendleton, they'd rather stay in Portland. They'll call me up and they'll say, "Steve would you take this case?"

And I always say, "Sure." Then it becomes my case. They assign it to me.

DS: Okay so it isn't tried in Pendleton unless there's a motion to have it tried in Pendleton. Otherwise it would be tried in Portland.

SB: Yes. Absolutely. Absolutely, because everything is filed in Portland and then there's a local rule that says if it arose in Pendleton and you want it to be there someone has to file a motion.

DS: Okay.

SB: And so if Anna Brown gives a motion—in the old days, and Anna’s not been a judge in the old days but let’s just say, in the old days there wasn’t someone out there to try it. So Anna would say, “Well, I can stay in my nice home with my husband in Portland and my familiar court setting or I can drag my butt and all my staff people out to Pendleton for a week.” Generally they would sign on the “Let’s stay in Portland [side],” and it would be tried in Portland. Well, Judge Panner and Jim Redden, Everybody else has decided that we should. Eastern Oregon has a courtroom and Eastern Oregon people, if they want the case in Eastern Oregon, should have that opportunity.

DS: And that didn’t happen until you were hired?

SB: Pretty much. Absolutely true. I’m pretty sure Art Barrows never tried a civil case. And Owen, I’m pretty sure told me, “We want to use you in that capacity, would that be okay?”

And I said, “Sure. That would be great.”

Owen likes to come out to Pendleton because he has three kids and one daughter, Rene, is married to Dick Levy and he’s a cattle rancher in Echo and so Owen comes out to see his daughter, son in-law and grandkids. But he’s getting up in age so he doesn’t travel as much.

But a lot of times Owen would have a conflict. He would call me and say,

“Steve I have a trial next week and I’ve got another trial down here. It’s running over. Will you take it?”

I say, “You bet.”

So he lends me a law clerk and a courtroom deputy and they come out and we try the case. This is assuming that my calendar’s open. See, one of the nice things that happened when I became the magistrate is I also gave up all my trial work, other than water law. And so when you’re a trial attorney your calendar is just chock full of stuff, trials, motions, depositions, you don’t have any block of time. Well once I got rid of that, I was doing mostly water stuff, when I would have a block of time and Owen would say, “Can you take this trial December 1st through the 4th?”

I’d say, “Yes,” because I don’t have to worry about trying a case in Ontario or Baker City. I mean, personally as a lawyer.

DS: So how much time have you spent over the years?

SB: Who knows.

DS: Is this something that’s ongoing every week or there would be intermittent busy periods?

SB: I actually make quarterly reports that show my time spent in court and my time spent out of court and yadda, yadda, yadda. I would say I get maybe three or four cases a year assigned and maybe one or two I’ll try.

On the Bench in Portland

DS: And then how often do you come into Portland?

SB: Ah, whenever they need me. But when I come to Portland it's to do criminal calendar mostly, which is, like yesterday I met with DEA, ATF, FBI, doing search warrants and things like that. Then in the afternoon I'll do the initial appearance and the arraignment and the detention hearings and preliminary hearings and things like this. All criminal stuff, but at the beginning of the criminal case. And the judges have asked me to come down to settle cases, to be a mediator and I've done that.

So for me it's a nice break from the practice. I'm not getting paid that much but I get mileage and now I can stay at any hotel. They'll pay for that and they'll pay for my food. Or I can stay with [Judge John] Jelderks so it's real cheap for them. And I don't eat that much so, you know.

DS: You go into Portland and you can see friends.

SB: Well yes and just take a break from Pendleton. My daughter's now here and I like the people in this court. They're great to me and I have this friend in Corvallis and he'll come up and we'll have dinner. He's divorced, not remarried. So, you know, that kind of stuff.

DS: And are you filling in for Judge Ashmanskas?

SB: Yes. Yes.

DS: So sometimes you fill in for other people, right?

SB: Yes, when I come down to do criminal calendar, I'm filling in. Ashmanskas, and I think all the magistrates, are at a conference in Santa Fe. I didn't want to go. I'm leaving. It would be a waste of time and money to send me to a conference in Santa Fe. I really like Santa Fe but I—and so Ash said, "Hey, I want to take Joyce" [his wife] "to Santa Fe. I have the criminal duty all of April. Would you come down on the week of the eighteenth?"

I said, "Sure."

And last month John [Jelderks] needed to be in Eugene for a conference or to give a little talk and he had March. "Would you come down and handle a couple of days in March?"

I said, "Sure."

DS: And when you first started, I think, I read that the pay was like \$3,000 a year.

SB: Well, I had to pay them \$3,000.

DS: You paid them \$3,000? [*laughs*]

SB: Yes, I think I'm making about \$120,000 a month. My total pay is something like—I don't have a clue what it is.

DS: I think they're advertising the position at \$12,518, or something.

SB: Thirteen, something like that. Yes. What it is, is I get health insurance at a really reduced rate, which is great, and

that's it. And so I never even see the check. I have it deposited. I have a bank account in Walla Walla and it's direct deposited there and then when my kids turn twenty-two they're no longer covered as family but I can convert them from group federal to individual under the same plan. So that costs like a couple of hundred bucks, which I think is still a lot less than what's out on the open market. So I have a direct deposit and a direct deduct back to the insurance company so I never see the money.

DS: So that's one of the benefits for you.

SB: One of the real good benefits. I mean, other than it's interesting work and I get to talk and you know, schmooze with the judges. And they're all nice people and all that, but the biggest benefit is the health insurance. It's really good coverage. It's like a hundred bucks a month or something, or two hundred. I have no idea what it is. I really don't have a clue. Pam at HR downstairs can tell you because I just had to meet with her because my youngest son John will be twenty-two in May and so I need to convert him to individual, whatever you call it. But I have no idea what it costs.

District Court in Eastern Oregon

DS: In terms of the administration and the Eastern Oregon [section] of the district court, is there anything more you can tell me about it than you already have?

SB: [*jokingly*] It works like a well-oiled, very old decrepit—no there is no administration. It's me and my secretary.

DS: Your secretary in your law office?

SB: Yes. There is nobody out there other than me. There is no administration. There's no clerk. There's nobody. If I have a trial everyone comes from Portland. I usually hire local court reporters but my law clerk—if it's Judge King's cases he'll say, "I'll lend you Barbara," or whoever is his law clerk, which is very helpful. And he'll send out either his judicial assistant or his courtroom deputy to handle all the exhibits and the running of, you know, the jury. There's a large responsibility in moving the jury around and making sure they're happy and no one's talking to them. Well that's handled by one of the judge's people. I don't have any "people," so whoever is giving me the case sends me their people. So there is no administration.

The way it works is, you take my secretary's salary and figure out what her hourly rate is and if she spends seven hours this month, actually I think they pay me quarterly so it ends up usually between the phone and the fax and my secretary's salary, it usually runs \$200.00 a quarter. So I'm reimbursed for her time, whatever she does. I mean when I have court, I have regular, what they call CVB, which is Central Violations Bureau, every third Thursday of every month where all the people who get tickets out in the forest for littering and cutting wood and stealing wood and fishing too close here,

they all come into court. My secretary runs the tape recorder and keeps notes and so they reimburse me for that. It probably won't break the budget at \$200.00 dollars a quarter.

DS: And that's what you do regularly for the district court is the CVB calendar? Okay. That was one of my questions. I read something about a CVB calendar and I said, "Well what's that?"

SB: Central Violations Bureau. The Forest Service, the BLM, Fish and Wildlife, they all give tickets for drunk driving, for fishing too close to McNary Dam, for fishing out of season, shooting birds with lead rather than steel, or vice-versa, for stealing wood, which is a big deal. They steal a lot of wood. For camping illegally, for litter, I mean just a bunch— And so these are not major felony tickets and I'll have 130 people and there's a US Attorney and an Assistant US Attorney that's assigned to handle CVB in Pendleton. It used to be Bob Ross, but he just retired. And then Bob has a law clerk, a third year law student from Willamette or Lewis & Clark, and it's usually a woman. It has been recently. They're usually one of the top students.

CVB. So all these tickets come in and the law clerk—and like I said, lately it's been a woman—she basically tries to settle the case. She'll call up, you know, John Jones from Umatilla and say, "John, you've been cited for fishing too close to the dam and you're maximum fine is \$100. If you'll plead guilty, if you'll confess judgment, plead guilty I'll fine you. You'll

pay fifty bucks. That's the deal."

He says, "Sure." So out of 130 maybe ten will show up. They'll have judge trials. That's CVB.

DS: So the things that are related to federal lands?

SB: Totally. Strictly. Nothing state. There's no federal nexus, there's no—

DS: So the federal nexus is why you're in Pendleton; they need somebody out there because there is so much federal land.

SB: There's so much land and if you got a ticket in Burns or Vale or Jordan Valley or wherever, you drive ten hours to Portland or three hours to Pendleton. And the same with the cops.

DS: Well isn't there a question about where your position will be based?

SB: What happened is, Denny Hubel was the part-time magistrate in Bend and he was doing the same thing I was doing, except they don't have a courthouse or a courtroom in Bend. So he's either at the armory or he's borrowing one of the state courtrooms or he's putting a sawhorse and a piece of wood somewhere. And he became full-time and they moved him to Portland where they needed him and there's no courtroom in Bend. But he still goes over for CVB in Bend every month. Well as you can imagine, as time goes on, it gets old. So he says, "Would you mind helping me?"

I said, "I love going to Bend. I have friends in Bend. It's beautiful." So we run a swap, ultimate ones, and then I bailed out and am going to the Peace Corps. And they're much busier in Bend because they have many, many, more people. So if I have 100 tickets, he'll have 500 tickets.

So they're trying to figure out what they're going to do. And the way I understand it is it's not either/or, it's both. So if you get it you're going to be doing Bend and Pendleton or Pendleton and Bend. I think there's six people that applied. So if the person who gets it is in Pendleton, he or she will do everything I do in Pendleton and once a month, once every other month go to Bend. And if the person is in Bend, he or she will do this up in Bend and come over to Pendleton. And if he or she wants to do civil trials he or she will come to Pendleton because there's no courtroom in Bend.

DS: So the civil trials must take place in Pendleton.

SB: That's where the courthouse is.

DS: Okay.

SB: That's where the courtroom is.

DS: So anyone in Eastern Oregon who files a motion for a civil trial is—

SB: It's going to be in Pendleton. There may be an accommodation they can make if everyone agrees to go to Bend and one of the state judges gives up his courtroom

for a week. That's fairly rare, I think. It's possible.

DS: What's the relationship with the US Attorney's Office for the district court out there? Is there one?

SB: Yes. There's always an AUSA assigned to Eastern Oregon and when I first started it the AUSA was Mike Mossman. Mike is now a federal judge. Great guy, very sharp, easy to deal with. And Mike did it for years until he went on the bench. And I don't know why he gave up that cushy job in the US Attorney's Office to get the job as a judge.

But anyway, what happened is he got promoted or hired or appointed by Bush to be the US Attorney and then there's two guys that I deal with, Bob Ross, who just retired, and Neil Evans. So I think Neil's the guy now. They're real easy to deal with and they rarely will ever have a DEA or FBI or anyone present a warrant and an affidavit to me, search arrest or whatever unless they personally, Mike Mossman, or Neil Evans, or Bob Ross reviewed it. So when I look at the eighty-four page affidavit and am wading through all this information, in the back of my mind I know that Mossman has already read it, and he's approved it, and they know what I expect. They know what the judges expect and so that's a good backup. So they're, the AUSAs are good people.

DS: And I would imagine too, again, being in Eastern Oregon you have

personal relationships with people, so that kind of makes a difference I would think, in how you evaluate things.

SB: Yes. Yes, you know, Mossman would call up and say, "We got a situation on the reservation. This thirty-five year old guy's been having an affair with an eleven year old girl. We're going to arrest him for rape and sodomy and child abuse and all that and Scott Jensen, who's the FBI agent will be in your office in a half hour with a warrant and the affidavit."

And I say, "Great."

DS: And so when that happens then is it comes before you and you send it to Portland. Could that be tried in Pendleton if they filed a motion? No criminal cases, right?

SB: No because magistrates can only do misdemeanors, not felonies.

DS: Okay.

Sentencing

SB: And the FBI only gets involved at the felony level. If it's a misdemeanor it's handled by the tribal police and so the only way you could try it in Pendleton would be for the district judge, the Article III judge that it's assigned to, Ancer Haggerty or Owen or whoever, to agree to go to Pendleton and the chances of that happening are not real good. They like to do their criminal stuff down here. And

this is where everybody is. This is where the public defender is, the US Attorney is, the marshals, the jails, everything's here. I never have a public defender out there. They're all in Portland. I may, once in a while, have an Assistant US Attorney who happens to be in town, just coincidentally, but there's no one stationed out there other than the two FBI guys and they're generally enough for transporting prisoners. That's what the marshals do and the marshals swing through.

You know if I put a guy in prison—this happened once. A young twenty-three year-old criminal had stolen \$10,000 worth of timber and he was pleading guilty and his dad was going to pay, reimburse the government. He was going to write the check but the government still wanted him to go to prison for six months. So I'm thinking about this and there's a defense attorney there and the US Attorney there and this is a misdemeanor so I can put someone in prison for six months. And I ask the marshal, "If I put this guy in," and he was there with his wife and the two kids with the runny noses, you know, under-employed, under-educated, just him. I said, "If I put this guy in prison will he go down to Sheridan?" Which is our prison here.

He said, "Not necessarily."

I said, "McNeil Island up in Washington?"

He said, "Not necessarily."

I said, "Where would he go?"

"Wherever there's room. They have an airplane that flies around the

country and picks these guys up.”

I said, “You mean he could be in Alabama tomorrow?”

He said, “You’re darn right.”

So I decided, I’m not doing that. I mean if the federal judges want to put a guy in prison, that’s what they do.

I had one guy, really well represented by the defender’s office. His name was Gary. He was marginally competent, in terms of IQ—he had like a 70 IQ. He was an alcoholic, lived in a one-room, dirt-floor shack, without electricity or running water out in Ukiah. Have you ever been to Ukiah?

DS: No.

SB: It’s fifty miles south of Pendleton. It’s a small town. People looked out for him, you know, getting little jobs cutting wood and made sure he got food and stuff. But he had just marginal existence. And he was always stealing firewood, cutting it up, selling it. That’s what he lived on. This, you know, I mean major crime. And so I would always put him on probation. He didn’t have any income, so he’s not going to pay the fine and I didn’t see any point in putting him in jail. So after about the third time the government says, “We’re going to put this guy in jail.”

And I said, “Well if we’re going to do that we’re going to have a court appointed lawyer.” Even though it’s all misdemeanor stuff you’re not entitled to a court appointed lawyer. “If you’re going to threaten to put him in jail I want him to have a lawyer.”

So I appointed a defender. They took the case and Needham, the public defender, hires a shrink and spending all this money. Needham says, “I want a competency hearing to see if he’s competent.” So the feds have a shrink do an analysis testing and evaluate him, interview him and the defense is all paid by the government. And we have this hearing and the competency is whether he understands the nature of the charges and can assist in his defense. It’s not a real high level of competency. So you got a guy with a 70 IQ who can communicate, which is not good.

I asked Needham, “I’m going to put you on the spot, but I just want you to tell me, does he understand what’s going on?”

“Yes.”

“Can he assist you? Can he talk to you?”

“Yes.”

And this is after listening to three hours worth of psychiatric stuff. I said, “Well I’m going to find him competent.”

I looked at the US Attorney and I said, “But, I’m going to tell you right now, I want you guys—

[End of Tape Three, Side Two]

Sentencing Guidelines

SB: Okay, I say, "Look, I put him in prison, he's abused by the system, people in the system and he's probably going to learn more criminal stuff from his roommates." So, I said, "I'm not going to do that. You guys make a deal." So they made a deal because I didn't put him in prison.

DS: How does that work?

SB: Basically, the government shrink said, "Look, this guy needs job training, he needs alcohol counseling and he needs to do some community service."

So I said, "I want you guys to settle this and mandate that he gets alcohol counseling, job training and whatever you guys agree is appropriate community service." So that's what he's doing.

DS: And that's happening?

SB: As far as I know. It was a couple of months ago and I haven't heard any screams from anybody, so I assume it's happening.

DS: I was curious. I read that in 1990 that there were sentencing rules for misdemeanor cases.

SB: Could be. *[laughs]* Don't confuse me with the law.

DS: *[laughs]* Which came after, I think, the "three strikes you're out" laws.

SB: No that was before.

DS: It was before. But I just wondered if you had anything to say about that. *[SB shakes head in the negative]* Okay.

SB: No.

DS: Okay. *[laughs]* Well that's kind of interesting. Do you think there is more flexibility being in Eastern Oregon, or less, or do judges have that kind of flexibility under misdemeanor cases?

SB: To do what?

DS: To say, "I'm not going to send the guy to prison, so figure it out."

SB: I think so. That's the way it's worked for me. No one's ever said, "You can't do that." So that's what I've done.

DS: Well, and in my experience, which is not sitting in a courtroom but listening to and reading oral history transcripts of other judges, particularly. And in Eastern Oregon, in the past, I know that has been the case. I wonder how much, you know there's sort of a move toward uniformity in all kinds of things.

SB: You do have the sentencing guidelines the Supreme Court has now

said are not mandatory anymore. They're kind of discretionary. But before that Supreme Court case, *Blakeley*⁵ and all that stuff, they were mandatory and there were judges that quit these incredibly good for-life tenure jobs because it just broke their hearts to put twenty-five year old kids in prison for twenty-five years and no discretion to do otherwise. Now I understand that it's a discretionary thing.

DS: Okay. I'm just going to take a look here because you talked about some of the things that I wanted to talk to you about. I know that you're going to get ready to go to lunch pretty soon.

SB: Yes.

DS: So maybe a way to wrap up.

SB: Ten minutes.

Memorable Cases

DS: Ten minutes. Okay, that's good. Maybe what you can tell me—what are the most significant cases that you've ruled on as a magistrate—just a few of the most significant and that will give me some prep for the next time when we sit down. That's what I'll get on video tape.

SB: I had a really interesting case. I cannot remember the name of it. A lady was taking a jet boat ride in Hells Canyon on the Snake River and was severely injured. A year in the hospital, \$400,000 of medical expenses and she sued the jet

boat operator in federal court because the Snake River is a navigable waterway, so we're in federal court. And that went on for a week; two good plaintiff lawyers and a very good defense lawyer. Great experts. They had retired Coast Guard captains and white water experts from around the world. It was an interesting case.

The problem for the plaintiff was she was a really kind of obnoxious lady and she was a school teacher in Los Angeles who was up on vacation. She was about five foot four and was close to 400 pounds. And she—let's just say that jet boat was leaving at nine o'clock. It was all reservations. You call in. And she and her husband arrived a half hour late so everyone was a little bit peeved to be sitting in the jet boat for a half hour waiting for this lady. Didn't know her from a hole-in-the-ground.

She shows up and the jet boat is basically just a boat. The guy sits in the back and talks to you and motors down. I've taken these trips and they're great. And she comes on the boat and she goes to the very, very front where there's a very nice grandma and her granddaughter were there and said, "I want to sit here."

The lady says, "Well we're here first." And, she says, "I want to sit here."

And she wouldn't move until the granddaughter and the grandchild left.

And the jet boat operator says, "Ma'am,"—he didn't say, 'cause you're fat, but basically for your size—"For safety reasons I'd like you to be in the middle of the boat."

"I want to sit in the front so I can take pictures."

So she moves this nice grandma

and grandchild out and she sits there, they're going through and she stands up, and you're not supposed to stand up while they're doing this, to take a picture. She got thrown to the floor and broke her back—badly. And because she was so heavy, they had to Medivac her to Boise and then down to Los Angeles. Because she was so heavy you couldn't do surgery the normal way because by cutting, you know, through two feet of blubber apparently, so a lot of surgeries and a lot expense and a lot of time in the hospital.

So she was telling this story about, you know, everything had gone wrong, all this stuff. Well the defense had gotten hold of all the people on the trip. None of them were related to anybody. They were all tourists. And they were some of the nicest, straightest-shooting people you'd ever want to meet. The grandma comes in from Kansas. The granddaughter comes in from Kansas. There was an auto mechanic from Colorado and they basically said this lady is a pain in the butt. She wouldn't move until the granddaughter and grandma moved and she disobeyed and refused to move to the center of the boat and was standing up when the accident occurred. So the jury [decided], it was a defense ruling, and it should have been.

DS: And where did you try that?

SB: In Pendleton, Oregon because it was an Oregon case and one or the other wanted to try it in Eastern Oregon. That was an interesting one.

I had an interesting one. I can't remember the name of the guy. It was a

Baker City policeman who'd been on the force for a long, long time and he was a sergeant. He was kind of a pain in the neck, and got fired and sued for retaliation. He was a Mormon, so religious discrimination. That went on for a long time. That was a week long trial and a defense verdict because he was kind of a jerk.

And a case that I thought was really interesting. A young La Grande police officer sued the La Grande Police Department, the chief of police and the police department for sex discrimination, I think it was. She had been fired and essentially what happened is she was a brand new cop, or recruit or whatever you call them when you're on some sort of a probationary status. She was about twenty-one or twenty-two. She had just gotten married and apparently slept with all of the men in the police department. The chief of police found out and terminated her, but didn't terminate any of the men. So she sued for wrongful termination or sex discrimination, I'm not sure. I can't remember what it was. And good lawyers on the plaintiff's side, and the good lawyers on the defense couldn't settle.

Well we had to have an evidentiary hearing for hours before the trial on what was going to come in with regard to all of her activities because the policemen didn't want all of this to come out in court because a lot of their wives didn't know that this had happened. And we went through this hearing for a long time. I took the lawyers into chambers and I said, "You have to settle this case. You're going to have an awful lot of very unhappy spouses, her husband, all these policemen's wives. It's

a big deal in the city. The papers are going to be trumpeting it all over the place." And they finally settled that before trial.

The problem the police chief had was that she slept with everybody in the police department, on duty, off duty, everywhere. He thought that this is probably not a good thing, so he fired her.

And she said, "Well that's discrimination against me because you didn't fire all these other guys."

I said, "Gee, that kind of makes sense."

And then you have the fact that she was on probationary status and everybody else was, you know, and she was sleeping with ten guys while ten guys were sleeping with one person. Yes, that kind of a—so now really fascinating stuff.

The plaintiff's lawyers were out of Baker City—this young man and wife who didn't know much—and they brought in a sex discrimination expert. It was a Title VII. I can't remember what the heck it was to tell you the truth, out of Boise. And a real good defense attorney, I think out of Portland. I think it was Jim Martin.

So Martin filed a motion to essentially exclude all this testimony because his pitch was that many of the wives of these cops didn't know it had been happening. And this is a big, big, news item in La Grande. And his pitch was we're going to have a lot of very hysterical wives in the courtroom. So, you know, I was really struggling with this because I, you know, it sounded like she had a case but sounds like there was a lot of mitigation and on and on and

on. There's a lot of law in it and so I was researching the law with the law clerk and we were talking.

And we had this day-long hearing on all this stuff and I basically took the attorneys into the chambers and I said, "I really think it would be in everyone's best interest to settle this case. It's not going to do this young woman any good to have all this information come out about her." I think she's still married. I said, "It's not going to do much for her marriage, surely not going to do much for everybody else's marriage. It's not going to do much for the reputation of the La Grande Police Department, or its officers or the city." Yadda-yah and it settled right before a trial.

DS: So they settled.

SB: Yes. I thought they should. I didn't want to listen to it.

DS: No kidding.

SB: I didn't want to be there.

DS: In a town like La Grande?

SB: Yes, and it was tried again in Pendleton, but it was a big deal. You know, it was a front-page story. See because no one up until then had really publicized everything that had happened.

It was, "I was fired and I shouldn't have been. I was discriminated against. I wasn't treated fairly. I wasn't treated equally. All the guys were doing the same thing I was doing." That kind of stuff, but nothing specific.

DS: What kind of settlement was there?

SB: Money. They weren't going to hire her back. I said, "Look"—she was asking for that. To the lawyers I said, "You know this lady probably should move on, get out of Dodge, but if she wants to stay in La Grande that's her choice. I can't tell her what to do." But I said, "I just can't see her coming back and being an officer in this department. She's aggravated everybody. Everyone's pissed off at her. She's pissed off at everybody." I said, "It's not going to be a good situation," and they agreed, so there's some money involved. But I can't remember if I even knew, I don't know what it is. I can't remember.

DS: That's very interesting.

SB: Yes, interesting. Yes.

DS: Yes. [*laughs*] I know that you have to go.

SB: I have some police brutality cases, but they're all—

DS: Let's talk about that at the final wrap up.

SB: Yes. And the final wrap up is on May 2 at nine o'clock—

[End of Tape Four, Side One]

Memorable Cases

DS: This is Donna Sinclair. Today is May 2, 2005. I am interviewing Judge Steve Bloom in the chambers of Judge Ashmanskas at the US District Courthouse of Oregon. This is our third interview session. This is tape five, side one and I will also be video taping Judge Bloom this morning. So, the tape recorder is now on.

SB: Alright.

DS: I'm going to turn the video recorder on. There we go. You look wonderful—good picture.

SB: Well, yes.

DS: This a great background too.

SB: Yes I wanted this with the river in the back, right.

DS: *[laughs]* I thought we would just start by talking about some of the cases that you've been involved in for the district court.

SB: We talked about the case of the lady on the jet boat, on the Snake River, which was a very interesting case. Do I need to go over that one again.?

DS: No, I don't think so.

SB: Okay. And I think we've talked about some excessive force cases out of Baker and Union counties.

DS: You raised those and we decided we would talk about those today.

SB: Okay, well. There were two of them. One was involving the Baker City police and I think the other was the Baker County sheriff. And they were just, if there's such a word, traditional excess force cases.

Two young men, separate cases, were arrested and they claimed that the police had used excessive force and had hurt them. And they couldn't settle. We tried them and I think both were defense verdicts.

DS: Okay.

SB: Then I had one case, I think it was against the Baker City Police Department again and it was some sort of a discrimination case. Maybe age discrimination. I can't remember. Like a sergeant was claiming that he had done a good job and had been let go and the city's position was he was not a good policeman and we couldn't settle that, or they couldn't settle that. We tried that a week and again it was a defense verdict.

One of the more interesting cases was the sex discrimination case [I mentioned earlier], the young woman at the La Grande Police Department.

And the rest of the cases are mostly what they call diversity cases, car accidents,

people from different states suing each other.

I had one case. It was a diversity case. One of the first ones I had. It was Judge Panner's case and it was scheduled in early December and he had some sort of a conflict and they asked if I could take the case. And I said sure, if he could lend me a law clerk. Up until that time I had been doing all my own jury instructions and research and once I had an opportunity to have a law clerk to help me it was an entirely different world. Much, much easier way to try a case.

This lady was a traveling salesperson. I can't remember what she sold. She was from Vancouver, Washington and she stopped at a motel in La Grande. This motel rented movies for the VCR in the hotel rooms and some of the movies were hard-core porn and they rented it to some guy that had a criminal record or something. Anyway, he was watching this pornography and then ended up raping this woman. That was an interesting case.

DS: That was one of the cases.

SB: Yes. That's about all I can remember. I mean there have been other cases but those are the ones that kind of just, right now, stick out.

DS: Let's go back to the one in Baker City.

SB: Mm-hmm. Which one?

DS: The police brutality cases.

SB: Alleged, alleged.

DS: Alleged.

SB: Excessive force.

DS: Alleged excessive force.

SB: What it was, it was a young couple. I think they were married, getting a divorce. And she had a restraining order against her husband. And she worked like at Burger King or Dairy Queen and he was coming around to the drive-in window where she worked, bugging her. And she called the police to please enforce the restraining order. He didn't take that very well and resisted and they applied force and he was claiming excessive force and the jury, the jury didn't think so. That's sort of the way the excessive force cases out in Eastern Oregon work. Someone's usually confronted by a policeman. Either the policeman says, you know, you've committed a crime or I have a warrant for your arrest and then they resist.

DS: So the police department has not been convicted in any of that.

SB: They have not been found liable. Yes, most of the cases that I've had have ended up—it's a conservative area.

There was one case that John Jelderks had, which is a very interesting case. I watched that, helped him a little bit on that. I can't remember what I did. There was a tavern in Baker City that was kind of a boisterous tavern. And these two

guys were in drinking. It was probably a weekday, late afternoon. They had been drinking and they got into some kind of dispute, a verbal dispute, and one guy, I think he went home, came back with a gun and shot the guy, in the head, didn't kill him. So the guy was suing the tavern and the shooter. And the shooter was in prison in Pendleton doing about ten years. I think what I helped John with was getting the criminal defendant out to testify because I knew the people at the prison and it was easier for me to call up and say, "Hey, we need this guy."

That was a very emotional case because the poor guy that had been shot had suffered brain damage and got nothing. Essentially the jury said, "Yes the shooter's at fault," and they awarded some money against the shooter but the shooter had nothing; but nothing against the tavern.

DS: So the guy lived.

SB: The guy lived with brain damage. It got very emotional at the verdict, with screaming in the courtroom. It was kind of a tough thing.

DS: There are no other cases that you can think of?

SB: I can't remember.

DS: I did have a couple of other questions. Actually, I have a number of them.

SB: Yes, right. Right.

DS: What was the most difficult case that you were engaged in?

SB: As a judge or a lawyer?

DS: First as a judge and then, perhaps, as a lawyer.

SB: As a judge it may have been that sex case out of La Grande, with all the possible problems that were going to come if all this came out at trial. It was really a hard case on an evidentiary standpoint, to say, "Should this come in or should not this come in?" Because it cut both ways. She was doing all these activities, she was on probation so she shouldn't have and so she was terminated, but conversely all these guys were doing the same thing and nothing happened to them. So it cut both ways.

From a personal standpoint, one of the hardest cases I ever had, I was defending a guy that ran Blue Mountain Growers, which is the apple co-op in Northeastern Oregon. That's where all the apples are grown and he was responsible for selling them around the world. And he was very, very successful. All the apple growers loved this guy. He made a great salary and he was kind of a big deal in Milton-Freewater where he lived.

There was a competitor called MF Frozen Foods and they wanted to expand their plant. This man's name was Glenn Gibbons and he went around poisoning the well, saying that these were bad people, you shouldn't let them expand. He would go to all the planning commission

meetings, he'd go to the city council meetings. He wrote letters to the Small Business Administration telling them to foreclose the loans. He wrote to the Economic Development Administration telling them to foreclose the loans. He wrote to the congressmen and the senator, saying, "Don't give this company any more loans for expansion."

So he got sued for a lot of money. Millions. It was a big deal, a lot of newspaper coverage. So the courtroom was packed. A lot of news people were there. The MF Frozen Foods was represented by three very good lawyers. Roy Kilpatrick, who's a very good personal injury lawyer, Milo Pope, who's now a Baker County judge and he was a very good personal injury lawyer, and Bill Galbraith, who's a personal injury lawyer in Portland. And I was defending by myself and I was a young, young lawyer.

And this guy had done everything they said. He'd gone to all the planning commission meetings. "Don't let these guys expand, they're bad, they don't pay their debts, they have all these Small Business Administration loans, they haven't paid the loans and the Economic Development," and he went to the SBA and the EDA and said, "Foreclose. They have an obligation to pay their loans. They haven't. Foreclose them and get them out of business."

And so the position, or the strategy I took is that he had a free speech right to say this, a First Amendment right to say this. Fortunately—and I went and I interviewed and deposed the Small Business Administration people, the

Economic Development people and no matter what he said, no matter what letters he wrote, no matter what statements he made at the time—everyone ignored him. So even though he had done all these things, I just said to the jury, "Hey, he has a First Amendment right to do this and there was no harm done because nothing happened adverse to MF Frozen Foods." And they agreed with me. It went on for like seven days. So that was interesting.

I've had a couple of big construction cases that were very difficult.

DS: What kind of construction?

SB: The first one was the city of Walla Walla, Washington's water transmission pipeline, which originates in Umatilla County. The contractor that built the pipeline had a cost over-run. I can't remember the amount of money, but let's just say a million dollars. And he was claiming that the over-run was because the city engineers and the city when they told him what to expect hadn't analyzed the terrain correctly. There was a lot more rock, a lot more bedrock than they had led him to believe. So it cost him a lot more money to move rock and lay the pipe.

So I represented the contractor along with a big firm in Seattle and there was the city, the city engineer, and I think there was one other defendant. Maybe an outside engineer. And we tried that for thirty days. It was thousands of pages of contract documents and engineering documents. We got about half the money we asked for, which was good. And we got attorney's fees, which kind of helped the client.

The next one I had was in Klamath Falls, and I represent Sykes Enterprises. Have you ever heard of Sykes?

DS: Mm-hmm.

SB: They're a computer service center. So if you buy software from Microsoft say, and it's not working or you don't know how to work it and you turn the box over and it says call this 800 number, all the calls are answered by Sykes. So Sykes has these service centers all over the world.

All the buildings look exactly the same. One of the first ones they ever built was in Klamath Falls. They're 50,000 square foot brick buildings and 700 employees and millions of dollars worth of cable for the computers. And they thought they would use a local contractor because they were building in Klamath Falls, and that would be good PR.

So they hired a guy a named Robert Bogatay. Very nice guy, local, home-grown contractor, and one of his good friends was a kind of a soils engineer. Well the contract required them to test the soil and compact the soil to a certain standard and they figured they had grown up in Klamath Falls and they knew the soil. They didn't have to go to that expense so they could save that \$20,000 dollars or whatever it was. So they didn't test the soil. They didn't compact the soil and after they put the 50,000 square foot brick building on the soil it started sinking and sliding with 700 people inside.

Well I had nothing to do with Klamath Falls but I had everything to do with Milton-Freewater. They put a center

in Milton-Freewater and there were a lot of land use issues and contract issues and water issues and my practice is mostly water law. So everything went really well. They built this entire building and the city paid for the whole thing.

It was a really good deal for Sykes. And by then they were using one company around the world to build their buildings out of Oklahoma City because they knew the plans, they knew the contractors had done really good projects.

Well so, Milton-Freewater went very well and I knew nothing about Klamath Falls when I got a call. The guy I work with is a general manager of Sykes and he called me up and he said, "We have a big problem in Klamath Falls. The attorney we have down there is not getting the job done."

And I said, "What's the problem?" And he explained the problem and I said, "I don't do that kind of stuff. That's geotechnical engineering. I don't understand it." And their regular attorneys are Foley and Lardner, which is like a 1,600 person law firm. And in that 1,600 person law firm they had a construction division or department. The head of that was a guy out of West Palm Beach Florida and so he and I tried the case. It was very interesting. A lot of engineering plans and contracts and we won that one too.

DS: I wonder how often, how different law might be in Eastern Oregon where people make sort of ad hoc decisions in a way that they wouldn't in the city.

SB: Yes. I think it's a lot better place

to practice law. I like the people. All the lawyers know each other, so you don't get any of this obnoxious behavior in the big cities because if you're in Portland or Seattle you may never see the lawyer again so you can be obnoxious and aggressive and whatever. In Eastern Oregon we know everybody and what goes around comes around. If you're rude and obnoxious to me it will get around and no one likes rude and obnoxious people so I think it's a better place to practice.

Becoming a Judge

DS: How has it been since you've become a magistrate, in terms of getting to know the judges?

SB: It's been a really good experience. Really, before you become a judge these guys are a big deal and they're very imposing and they're scary. They're very nice, very warm, very collegial, very helpful. Owen Panner was the chief judge—he was the one who encouraged me to start trying cases. I said, "I'd be happy to do so." He brought me down to Portland on many occasions for on-the-job training and he would assign me to Judge Juba or Judge Dale, who were the magistrates at the time, or Jim Redden. I'd sit with Redden or I'd sit with Owen Panner and I'd sit with the judges for a day and watch what they did. So it was very helpful, very nice. The judges have been very, very good, decent, warm people to work with, as has the staff in the courthouse. Great staff.

DS: So part of the process of becoming a magistrate was like an apprenticeship?

SB: Oh, absolutely. Because there's a lot of stuff that judges do that as lawyers you don't have a clue, and you just don't sit on the bench and say, "I know how to do it." You have to watch other judges or go to a school. And like with full-time magistrates and the Article III judges go to a judge's school. Well they don't do that for part-time. So I had mine through Judge Panner bringing me out to Portland.

DS: What kind of things do they do that's different, that the attorneys don't know anything about?

SB: Well, there's just, I mean, whether it's an arraignment or an initial appearance or taking a guilty plea or setting up a trial, it's just—a lawyer is representing his client and is only worried about his client and trying to work with the other side. The judge has to watch the whole picture. And has to make, you know, evidentiary rulings and decide what jury instructions are going to be given and make rulings on the law that's going to be applied in the case. So you don't, it's a very rare person, I would assume, that could just go onto the bench and start doing that, rather than watching it be done. And then there's a learning curve. Even the Article III judges that have gone to the judges' school in DC, I'm assuming that after a few months they start getting into the swing of things but starting out I'm sure it's not that simple.

DS: Did you have any, sort of difficult moments on the bench?

SB: No. No. It's not like I took to it like water but the first jury trial I had they brought out one of the courtroom deputies. I can't remember who it was actually, a very nice woman. Right at the end she said, "God, you know, you did really well. It's like you've been doing this for years."

I didn't say anything but it was the first one I had. It just, you know, if you've been in court a lot, which I had been before I became a judge, you have a feel for it.

DS: What do you think makes someone suited to be a judge?

SB: I have no idea. I have no idea.

DS: Not even in your observing? Not necessarily yourself.

SB: Obviously you have to be fair and you have to be impartial and, I think you need a lot of experience before you become a judge, a lot of experience trying cases or being in court. Judge Ashmanskas and Judge Jelderks had a lot of experience in state court before they went on the bench. Denny Hubel and Jan Stewart are the other two magistrates. They had a tremendous amount of trial experience before they went on the bench. Oh, and Panner was a very active trial judge. So was Jim Redden, so was Mike King. So they're all, you know—Anna Brown was a trial judge then she was a state judge and now she's a federal judge. Mike Mossman

was an assistant US Attorney then he was the US Attorney now he's a judge. I think you just need that experience.

DS: Having that experience is important.

SB: It's very, very important. I think it's probably the most important.

DS: In terms of some of the things that happened in Eastern Oregon, there were a few things that I noted and one was the suspension of Judge Currin.

SB: Oh yes. We represented him.

DS: Can you talk about that? Oh you represented him.

SB: Yes. How did you know about that?

DS: I did research before I met with you.

SB: Yes. Yes our firm represented Ralph.

DS: I don't know if it's something you wanted to talk too much about.

SB: Ralph's a great guy and really—he comes from Heppner, old sheep ranching family. After the war he went to law school, practiced in Pendleton, just kind of a real down to earth, basic, practical guy. Real friendly guy. His wife's name was Madeline, no kids. He just kind of got a wild hair. He was going to run for judge. In the

state level you have to run for election. He ran for—back then it was the district court judge, which are the judges that handle the misdemeanors and small claims and small civil actions like for less than \$5,000, or whatever the limit was back then—and he ran and he beat John Smallmon, who was the incumbent, which was fine.

Ralph was a great guy. I remember I had a trial in front of Ralph. I was defending a young man that had rear-ended somebody else. And George Anderson, who was a good attorney in Hermiston, represented the plaintiff then. We tried it to Ralph. We didn't have a jury because it wasn't that big. It was a fender bender. It wasn't that big of a case. Mostly property damage and some whiplash stuff. And Ralph listened to us very intently and took a break and went out with the police officer to look at the scene, which you shouldn't do. But, what are you going to say to the judge, "You can't do that." He'd already done it.

Then we argued our case and he took it under advisement, didn't want to rule from the bench. And he probably could have because my client rear-ended the other guy. I mean I was saying the other guy was at fault, but you always say that.

So about three months later George Anderson called me and said the judge hasn't rendered his decision.

I said, "Yes, I know that."

"I think we ought to write a letter to the judge and tell him we want a decision."

Well I said, "No, I don't think so." I said, "I'm perfectly happy to let the judge take his time." Because it was my client's

money. We didn't have to pay until the judge made his decision.

So about two months later George calls. He's really getting frustrated and PO'ed. "Steve we got to write—"

I said, "George, if you want to write the judge you go ahead but I have no—" You know, so I mean, George didn't want to write the judge and say, "Judge you're an idiot. You need to give us a decision."

So a couple months went by and George is really getting—so George finally bit the bullet and wrote a letter. So Ralph issued his decision and he gave my guy like thirty percent off or something. With Ralph you can never tell.

DS: So what was at stake? My understanding was that, well it sounds like this is an example [*laughs*] of what was happening, is that he was a sort of arbitrary decision-maker.

SB: Yes. What happened in the actual case that brought Ralph to his knees, it was a—it was either a speeding case or a stop sign case. It wasn't major litigation. When you have a ticket like that there are no attorneys. The cop comes in and says—I think it was a speeding case because it was a state cop. You know, "I saw Donna. She was going ninety-two in a fifty-five."

Donna says, "No, I was going thirty-five."

And the judge makes a decision. So it's he-said-she-said and the judge has to make a decision. They're not easy cases. They're really not. If you have two people that appear to be forthright and honest telling opposite stories. So Ralph—

rather than going into his chambers and throwing a dart at a board, or flipping a coin, or whatever you need to do to make a decision—took a coin out in the courtroom and flipped it. And I am convinced if the state policeman had won it wouldn't had gone any further but the state policeman lost. So he turned Ralph into the Judicial Fitness Commission and we defended it.

DS: And he lost didn't he?

SB: What happened is he stepped down. There was no punishment, there was no reprimand. There was just, he resigned and that was the end of it.

Qualities of a Good Judge

DS: So is that how it happens sometimes? You go into your chambers and [*laughs*] flip a coin?

SB: No. No, no, no. You analyze the facts and you look at the law but part [of it was], well Madeline had breast cancer at the time and so he wasn't real interested in it. So we went to the Judicial Fitness Commission and said, "Look, he's seventy-five years old, he's not going to run anymore, his wife's dying of breast cancer." So they let him resign.

DS: No reason for punishment.

SB: No reason for punishment. It was a lapse in judgment. He's still kicking. Madeline died and he lives in McKay Creek Estates I believe. He gets mad at them every

once in a while and moves out to someplace else. And he has diabetes and he lost a leg to diabetes and he has a walker. And he'll come by and see me about every three or four months, touch base, what's happening?

DS: Sounds like he had a rough time.

SB: Yes. Very nice guy, though. Very trusting, very nice guy, likes to drink. Good guy.

DS: So in terms of making decisions, obviously you weigh the facts and—

SB: Right. And apply the law to the facts.

DS: Right. Apply the law to the facts. It seems like there must be—there's got to be times where it's just really difficult.

SB: It's very difficult. It's not an easy job. People think, boy being a judge is cool. You put on the black robe, you sit on the bench, you hit the gavel and everyone stands up and sits down but you have to make very hard decisions and you just have to make the decision the best way you can.

DS: So what kind of responsibility comes along with it?

SB: A lot. You know, it's very serious stuff. Either life and death or a lot of money, or—in federal court we don't do child custody but yes, it's a serious challenge.

DS: Because you know you'll impact their lives.

SB: Big time. Big time. In the state court, mostly the state judges do criminal stuff where the guys are going to prison, and divorces where you're deciding custody, which is a very serious decision. You bet. You just do the best you can. That's all you can do.

DS: What are the other things that, in terms of what was going on in Eastern Oregon around, you know, through the '90s? Was the Umatilla River Hydro Project and I'm wondering with irrigators putting screens on—

SB: Fish screens.

DS: Fish screens. Yes.

SB: Fish screens are not hydro.

DS: Okay.

SB: Hydro is hydroelectric and there's not a lot of that going on anymore because of the fish and the environment. Everything has to be screened. A lot of money has been spent on fish screens.

DS: Well I read something else, somebody named James Boyd being cited in Hermiston in the district court.

SB: James Boyd?

DS: James Boyd.

SB: No, there was a guy. I don't remember Boyd but the manager of the West Extension Irrigation District, whose

name I cannot remember right now. We used to represent West Extension. Did something one day with a fish screen. It was stuck or something and he killed some baby smolts and he was cited—I'm trying to remember. He was cited criminally and they said each smolt was worth a thousand dollars or something and they got him off. It was some felony or something.

DS: I had come across that.

SB: I don't remember the name James Boyd.

[End of Tape Five, Side One]

Eastern Oregon Cases

DS: Okay. What about the person, and I think you were directly involved in this, the gun running case. The guy who was selling guns. I have it here in my notes. Gun trafficking. A Jerry Gordon Brown in 2001, he was convicted of illegally selling arms.

SB: Was this guy out of Enterprise?

DS: I think so.

SB: I had one search warrant, arrest warrant. This unemployed, I think he was an under-employed, or an unemployed, logger. He had an incredible number of automatic weapons that he was selling out of Enterprise, out of the back of his bait shop or something. I can't remember. It's a long time ago. But it was just amazing

how many automatic weapons he had. I mean, and that's Enterprise Oregon, which is like 2,000 people and if they're doing that in Enterprise, God knows what they're doing in Los Angeles and Chicago and Detroit and Philly, D.C. and New York. I mean it's scary stuff. There were a lot of automatic weapons.

DS: Well he called himself a collector. That was how he identified himself.

SB: Of course he did. Of course he did.

DS: And then I think he sold some guns in the state of Washington, which is how the FBI got involved.

SB: Yes. I just can't remember.

DS: Okay.

SB: I did have an interesting case. Did the search warrants and the arrest warrants. There were two kidnapping cases. The first kidnapping case was a very successful farmer out of Umatilla. Brock Tucker, I think his name was. He had a farm in the Tri-Cities and a farm in Umatilla. And he had some Mexican farmworkers working for him and three of them kidnapped him at night, you know, knocked on the door saying, "We need gas." Took him out with a gun, bound and gagged him and took him out to a field, I think in Boardman. Put a gun to his head and pulled the trigger and it was either a misfire or they knew it was unloaded. I was never sure. And collected

the ransom and then were arrested in a tavern in Umatilla. And they, I think they took him back to Washington because I think he was kidnapped in Washington, and brought over to Umatilla. Took him out to Boardman with a gun and they took the money from the Tri-Cities down to Umatilla. I think they each got ten years.

DS: You were involved in that?

SB: Well yes because I was doing the search warrants. I think this was the one. I was at like a band concert for my youngest son. He played in a jazz band or something in high school and the FBI came and dragged me out and said, "We need this search warrant."

And I said, "What's happening?"

They said, "Well this guy's been kidnapped and we need to search," this and this and this with warrants and stuff like that. I think they each got ten years.

There was another one out of Milton-Freewater. In Milton-Freewater there was, if my memory serves right, a company that made taco chips. Tortilla chips. And they had sold their business on a contract to somebody and the person didn't pay. So, rather than going through the legal process of foreclosing, they kidnapped him with automatic weapons and took him up to Yakima to extort money out of him or [laughs] that's all I got. Again because it was Umatilla to Washington I got involved in that.

DS: Sounds like the Wild West.

SB: It definitely is, yes. But you know,

I mean kidnapping, guns, shooting, extortion, that's very, very serious bad stuff.

DS: And it's one of the reasons to have a magistrate in Eastern Oregon—

SB: Yes. Right.

DS: So that they can quickly.

SB: Quickly. Because it's a long distance from Pendleton or Burns or Ontario, to Portland.

DS: Can you issue a warrant electronically these days?

SB: Yes, you could. You can do it over the phone but they don't usually like to do that. They like to see the guy, look at the affidavit, have him sign the affidavit.

DS: Right, because you don't want to just send out approval without having face-to-face contact.

SB: Right. Mm-hmm, mm-hmm.

DS: Are there any others?

SB: Can't remember, but as we talk if I think of them I'll let you know.

DS: Okay.

SB: Brock Tucker to this day is still traumatized by that. I mean this is a sixty-year-old, very successful farmer that still has problems. Apparently it was very traumatic.

DS: Sounds like an awful experience.

SB: Very awful. Very awful. Yes.

DS: Scary.

SB: He thought he was dead. They took him out into the field. He was bound, he was gagged. I don't know about covering his eyes. Put him in the field, put him on the ground, put a gun to his head and pulled the trigger.

DS: Were they angry at him, or did they just want the money?

SB: They thought he had a lot of money. And all these farmers that I represent are very, very rich on paper. They're very land rich but all their money goes back into the farm. I mean it's not like they're carrying bundles of cash around with them, or putting it in their mattress, or at the bank.

DS: Well there's a certain level of social esteem that you have when you're the owner.

SB: Oh sure. Well you own all this land, you have some status in the community. People know who you are. You're growing a lot of potatoes or peas or wheat or whatever. Yes. Sure. So these Mexicans, in that one instance, thought that this guy was rich, and probably is. But, that's probably not the best way to get the money. And then the contract thing is just crazy. Rather than go to a lawyer, foreclose, take the business back. Trying to get it with a gun is not the best way to do it.

Senator Smith

DS: Do you know anything about the food processing plant, Gordon Smith and—

SB: Yes.

DS: What do you know about that?

SB: Are you talking about the leak into the creek or just?

DS: Yes the Umatilla Water Quality Protective Association sued and filed a lawsuit.

SB: Yes. Yes. Yes. Gordon is our US Senator and he's a Pendleton guy and my youngest son, John, was on the same Little League team that his son, Garrett— who just committed suicide—was on. And John, my son, was a very good athlete and Garrett wasn't and so there was always that problem. And Gordon would sit with me, and then his wife Susan would sit with my wife, Bec, and we'd watch the games and talk, and so I knew Gordon a little bit.

And then when he became the state senator, water's a big deal. He took me out to lunch and asked me to tell him a little bit about water. I did that. He has a very successful business called Smith Frozen Foods in Weston, Oregon and they process mostly peas but also corn. And it's a big deal. I mean it employs a lot of people. Certainly the largest employer in Weston

because Weston's only about a thousand people. And very, very successful business. Gordon and his second in command— whose last name is Brown and I can't remember his first name, he and I swim a lot together—I'm terrible on names— would travel around the world selling peas. They'd go over to Japan, they'd go to Singapore, they'd go to Australia and they have this plant near the creek.

And of course the plant, when you process food there's effluent that comes out, the junk, the water and the shuckings from the corn, whatever. And there was a leak or something. I can't remember what it was that got into some, probably Dry Creek, I think is what it's called. That was it.

So this Water Protective Association sued because he was a target defendant. He's a conservative Republican, you know. And it wasn't that big a deal. And the DEQ said it's not that big a deal and that was the end of it. He may have paid a fine. I mean Smith Frozen Foods may have paid a fine.

DS: Fixed the leak.

SB: Fixed the leak; we won't do it again. But it was blown way out of proportion. If it had been Bloom's Frozen Foods and I wasn't in politics—nothing— the DEQ would have come out and said, "Don't do it again," and "we're going to fine you a thousand bucks. Fix the leak." That would have been it, but because it was Gordon they did the whole nine yards with the lawsuit and tried to embarrass him.

Water Rights and Water Issues

DS: You said when he became a state senator he took you out to lunch and talked to you about water. Do you remember what you talked to him about?

SB: Water. You know, the water.

DS: Well, what about the water?

SB: [*jokingly*] The one on the right's cold and the one on the left's hot. What else do you need to know about water? No.

DS: What do you need to know about water if you're a senator from Eastern Oregon?

SB: Water rights; prior appropriation; circle irrigations. All that stuff. It's a big deal. If the economy, of certainly Umatilla and Morrow counties, you have a section of land, 640 acres, and you're raising dryland wheat and you get thirty bushels of wheat and you don't do anything. You go out and throw some wheat and it grows and you harvest it and that's all you do. You put in a circle, 125-acre circle. It cost a hundred thousand per circle, a lot of electricity to run the circle but you get 150 bushels an acre, or 120, whatever, depending on the land and things like that. So it's big money. It's big business. It is the difference between subsistence farming and a very successful cash productive farm.

And I represent Hermiston Irrigation Districts, Stanfield Irrigation and Westland District. A lot of these irrigation districts, Columbia Improvement District

that deliver water to farmers. And up until the late '80's and through the '90's it was an interesting intellectual challenge to do the priorities and things like that. But about '88 the Indians started saying, "We want water for fish."

The environmentalists started saying, "Leave the water in the stream. Return it back to the nineteenth century." So we were a lot busier in water law. I'm pretty much the only guy that does water law [in Eastern Oregon]. And not only do I think I'm the only one that does it, but I'm also one of the best.

DS: Got that on camera. [*laughs*]

SB: Well, since I'm the only one, I better be one of the best.

DS: What are most of the water rights out there like? Are they prior appropriation?

SB: Yes, prior appropriation means "first in time, first in right." So if I have an 1898 right and you have a 1909 right and I call for the water, and there's not enough water—I get, you don't. That's important. Water rights essentially are appurtenant to the land, so it doesn't matter if John Jones applied for the right and then he sells the land to you and then you sell it to me. Doesn't matter whose name is on the certificate because it will be John Jones' name. I may own the land. It's the land that has the water right. The water right is appurtenant or attached to the land.

So you need to know the purpose for the water right irrigation—municipal, industrial—things like that, the rate of flow

that the water flows at and then the duty of water. How much water can stack up one acre-foot, two acre-feet. An acre-foot is enough water to cover an acre one-foot deep. And then the rate of flow is usually, in Baker they usually talk about miner's inches because it was mining originally but most of the West talks about CFS, cubic feet per second. One cubic foot per second is 448 gallons a minute but I always round it up to 500 if I'm figuring.

So I represent the Port of Umatilla. It has 150 CFS or 75,000 gallons a minute. That's a very, very valuable water right. The Port of Umatilla could transfer that water right to the city of Portland and make a fortune. Or, they can use the water for which it was originally granted to them, to develop the port and port properties and fruit processing and city of Umatilla and city of Hermiston and Co-Gen plants.

DS: So if they were to transfer the water right to the city of Portland, they could transfer water that far downstream?

SB: Well, the most important—not the most important, but obviously one of the critical elements of a water right is the source of the water, surface water or ground water. If it's surface water, what's the source? Well in this case it's all Columbia River water. So the Port of Umatilla is going to draw 150 CFS out of the Columbia. Well they can let that water flow to Portland and they can take it out in Portland so then you have to look in between, at who's going to be hurt. There's 1001 issues with regard to harm to other

people, injury, things like that, that you have to worry about on transfer, but we don't really want to get into that.

DS: And how about the irrigation districts?

SB: How about the irrigation districts?

DS: How does that work?

SB: How does that work? Well let me tell you. The Hermiston Irrigation District is a Bureau of Reclamation project—who's constructed all the canals. Cold Springs Dam, Cold Springs Reservoir, were all constructed by the Bureau of Reclamation when they were reclaiming the desert. They transferred by contract all the responsibilities for running the district to the district. So the district is basically running the water project for the Bureau and so all the easements are in the name of the Bureau but the district's running it. The district has all of these water rights that are essentially held in trust for the owners of the land. But, in order to make the district viable you have to assess them for O & M, operation and maintenance and that's basically how the district works. The district has the water rights, they have the delivery capacity. You're a land owner within the district, you're a member of the district, you have a hundred acres you're irrigating, they assess you ten bucks an acre. You pay a thousand dollars; you get your water.

DS: So are all the irrigations districts out there BOR?

Columbian Improvement District

SB: No. Stanfield and Westfield aren't. Columbian Improvement District—have you ever been out to Boardman, Oregon?

DS: Mm-hmm.

SB: Have you ever seen all the poplar trees on the freeway. It's like thirty-five miles of poplar trees. You can't miss it. These are huge poplar trees in the middle of the desert. That's the Columbian Improvement District.

We set up the Columbian Improvement District. We formed it, we passed the \$7 million bond to put the pump station in the Columbia and build the seven-mile canal to irrigate 25,000 acres of land. The CID is kind of an unusual—it's the only one in Oregon that's very successful. It's the only one that I know of that has no water rights. All it has is a pump station and the canal.

So I have developed water delivery contracts. All the members in the district have to have their own water rights out of the Columbia. If they do then we have a water delivery contract and we deliver water to them. They pay O & M, and the power cost because the power pulling it out of the Columbia is very expensive.

Then we have booster stations along the canal to boost the water along. Then they have to take it out of the canal. And we have Boise Cascade and Potlatch are two of the bigger members and they grow all those poplars. And it's kind of an experimental poplar farm to see if you can grow poplars

commercially through irrigation to make cardboard or particle board or whatever the heck they're using it for.

DS: When was that formed?

SB: In 1978. My partner, Bob O'Rourke formed it, did the articles of incorporation. Everything was in the land. Passed the bond, represented the district, developed the excess contracts, the water delivery contracts and then he handed it off to me because he was tired of all the aggravation.

Before we bought Potlatch, and Boise bought in, we had a series of farmers, all good guys, all trying to irrigate to grow corn or onions or potatoes, and always in financial straits. And always it was a pain in the neck to get them to pay the O & M and power because it's hundreds of thousands of dollars. I mean it's a very expensive district to run. And so I was always right on the verge of foreclosing.

There's a statute for improvement districts. They give the improvement district the highest priority lien for its unpaid O & M and power, so if you are a member of the district, and you have a loan with the Bank of America to grow your crop, the district's in front of the bank. Even though the bank has a mortgage, we have a priority by statute.

So I was always struggling with these poor farmers who couldn't pay and their lenders were getting stressed because I was going to foreclose and the lender would be out.

Then Boise and Potlatch came in and bought out—one was SK Corporation,

Sukyung Corporation, which is the eighth largest corporation in the world. It's out of South Korea. They had a farming division, SK Farms. And SK Farms was always, you know, having a tough time making its payments and they sold out to Boise or Potlatch and another farm sold out to Boise or Potlatch and all of a sudden we have two very, very strong viable companies that never have any problems paying, which is great. And I have a CID meeting tomorrow.

DS: Oh is that right?

SB: Yes.

DS: The CID has developed since then.

SB: Yes. Very much. Yes.

DS: How long do the poplars have to grow?

SB: Well it's really interesting. It's thirty-five square miles. It's very scientific. The guy that runs it for Boise Cascade is Allen Kotwoods and the guy that runs it for Potlatch is Luke Maynard and they basically did seven years worth first of all, so the first one, seven years and you see what that looks like. The next one six years, you see. And they're basically experimenting, you know, about, at this age do you prune or all that. I talk to them about it but it doesn't stick in my brain. They're all forestry people and they're trying to figure out the best—poplars grow very quickly and they're very big and they'll harvest the seventh year. And

they have six more sections to go and when they harvest that they replant. I mean it goes on. It's a never-ending story.

DS: Right. Well, what I'm wondering is how financially efficient it is if it—

SB: I have no idea.

DS: Because the cost of pumping is—

SB: Yes. I don't know. It's nothing that I'm concerned with. I've not asked them. It's not my business. All I care about is that they have to pay the operation and maintenance and power. And when you're, like the irrigation districts are a quasi-municipality so all of our records are public records so we have to make reports to the state you know. So the minutes that I make tomorrow or the minutes I make or the audit reports that we get from our CPA are all public record so I haven't told anything out of turn.

DS: I trust that you won't. [*laughs*]

SB: No, I mean, you know I can't. Nothing I'm telling you is confidential. It's all part of the public record.

Magistrates and Rulings

DS: Which of your opinions do you think might have the most impact over the years?

SB: You mean like I think the Republicans are jerks?

DS: [laughs] I meant judicial opinions.

SB: Oh. I'm sorry. I must have misunderstood that. I don't have that many judicial opinions. Magistrates don't write that many opinions. I haven't written that many opinions because I'm a part-time magistrate. I wouldn't have a clue. I can't think of any opinions I've written that would have any impact.

DS: What about cases that you've been involved in.

SB: I told you the ones I remember.

DS: Right. But I mean that would have long-term impact in terms of water law, or really important cases.

SB: You mean not as a judge, you mean as a lawyer.

DS: First, as a judge, but either one.

SB: As a judge my cases have all been trials and that's the end of it. There's no what they call "precedent." It's not like they've been appealed. Well a couple of them were appealed but they didn't go anywhere. I mean the Ninth Circuit affirmed the case and that was it.

I had a couple of very big water cases. The biggest one was Orchards Water Company that was my client out of Vale. And they were sued by the Maag family. M-A-A-G. That was a huge lawsuit. It had every water right issue ever known to man.

DS: That's the one that you described to me I think before.

SB: Did I?

DS: Yes. In terms of its lasting impact.

SB: Well it went to the [Oregon] Supreme Court and there was a decision and we won and that's all I know. And there's another one, Dorothy Norden, and I think I told you about that one. And those are the two I think. The only two I think I've appealed, that are on the appellate record. Because as long as they are in the state court they don't have any precedent value. I have some stuff with the Water Resources Department, but again, there's no precedent. It's not like people are going to look back and say, "Ah look what happened in that case", to let you know what's going to happen in the future.

DS: I remember you said something about the Dorothy Norden case, about not being an appellate lawyer and the importance of someone who is involved in the appellate court.

SB: Right. Right. Right. Yes. In the Orchards case I felt very strongly about the case and appealed it and that worked out. In the Dorothy Norden case I tried that for a week and we won and my partner, John Kottkamp said, "Hey you've been involved with Dorothy and her significant other, Lou Wells, for a couple of years and there's been a lot of

emotion, a lot of money,” and the state was appealing: “Why don’t you get an appellate lawyer to do it?” And I did.

DS: What would be the difference between trying a case or going before the Ninth Circuit Court and say going before the US District Court from your standpoint?

SB: Well, the Ninth Circuit is just an appellate court. The federal district court is just a trial court. So in the district court you try a case. It’s like you see on TV. The appellate court, it’s just all on paper and you just argue to the judges from the paper because you filed briefs. You say the trial judge made a mistake here. Here’s my legal reasoning, and that’s a brief. The other side says, no the trial judge did great and that’s their reasoning. You argue before three judges and they make a decision. There are no witnesses, there’s no exhibits, there’s no jury. It’s just an appeal. And I’ve never appealed to the Ninth Circuit.

DS: In terms of jury trials, have you been involved in choosing a jury?

SB: As a lawyer? Or a judge?

DS: Well, in any capacity.

SB: Oh sure. Of course.

DS: What is that like?

SB: It’s miserable, as a lawyer. These *voir dire*, what they call *voir dire*, is extremely

important. And you have twelve people who don’t have a clue what you’re doing. You’re asking them personal questions. You’re trying to figure out if they’re going to be fairly impartial, are they going to be on your side or the other—it’s very, very difficult. In state court the lawyers do all the *voir dire*. They ask all the questions. In federal court the *voir dire* is done by the judge. The lawyers submit questions they want to have the judge ask and that’s how it’s done.

When I do *voir dire* in federal court I always let the lawyers ask a few questions. Most judges don’t do that. Most judges just say we’re going to do *voir dire*, we’re going to get it done, and we’re going to move onto the trial. But from the state court I know that all these lawyers like to ask their own little questions and interject their personality. That’s why I let them ask a few questions. And so in federal court I allow them to do *voir dire* personally, in federal court.

DS: Were you involved in any of the—there was a murder case in 2002 with some, that went to district court. I wasn’t sure if you were—I think you did it. It was Robert Leroy McKinley, Toni Gilbert Junior, Angelo Fuentes. [SB shakes head] No?

SB: It went through the federal court?

DS: Yes, I think so. That’s the research that I did.

SB: The only murder stuff from where

I am that ends up in federal court are murders that occur on the reservation, which is federal land. Or you could have a murder in the national forest but to my knowledge we've never had one of those. We have had occasional murders on the reservation. The FBI investigates, brings them before me. I do the initial appearance and send them down to Portland. Most murder cases are in state court.

DS: I think this was on the reservation.

SB: Yes. And so other than the initial appearance, other than being involved in the search warrant or an arrest warrant, I don't have much to do with it.

DS: Well let me ask you this, or—it's getting close to the end of the videotape actually.

SB: Good.

DS: *[laughs]* We'll turn that off and just wrap up.

SB: Right and finish this ordeal.

DS: Right.

SB: And I send you my bill, right?

DS: *[laughs]* No that goes to Steve Brischetto at the District Court Historical Society.

SB: Two hundred dollars an hour. Okay.

DS: What do you think you've learned from being a judge? That's a really big question, but I'll ask it.

SB: Could I just short circuit and just say nothing?

DS: I don't think I'm going to let you off the hook like that.

SB: I've learned a lot about the law. I've learned a lot about trying cases. I've learned a lot about how lawyers prepare and try cases. I've learned a lot—

[End of Tape Five, Side Two]

of that in Eastern Oregon for awhile and I enjoyed those, very interesting.

DS: Well it seems like you've been on a number of ethics kinds of committees—

Civic Involvement

DS: Okay, we're back on. And this would be tape six, side one. You've been involved in a number of civic activities.

SB: Yes. I'm very civic minded.

DS: You're very civic minded. I got the sense that you were and I have a list here of things.

SB: Oh good. Refresh my memory. Right.

DS: Well the first one was the Oregon State Bar Disciplinary Board.

SB: I was first on the local Professional Responsibility Committee, and I was the chairman of that. And that's the committee in each judicial district that basically investigates ethical complaints brought against lawyers.

After I did that for, I don't know, say four years, the Supreme Court invited me to be on the State Disciplinary Board. And I did that for four or eight years. I think it was eight years, I'm not sure. I can't remember. And basically that board is a three person hearing tribunal that actually hears the cases that are brought by the bar against a lawyer for disciplinary ethics problems. And I was the chairman

SB: Yes, right.

DS: St. Anthony Hospital.

SB: I've been on the St. Anthony Ethics Committee for years and that's obviously a lot different. There we're talking about life and death, pulling the plug, that kind of stuff. Those are the ethics issues. The ethics issues with lawyers are, you know, someone says they're unethical, they've stolen money or whatever, they're not doing the work they said they would do, or whatever it is. So, different ethics.

DS: What kind of ethics guide lawyers generally?

SB: There are an incredible number of what they call ethics considerations, disciplinary rules, and you take a course in that in law school. It's called the DR's and then from there, EC's or vice-versa. It's a whole body of rules that we have to follow.

DS: And are there rules that are established by the state bar?

SB: Yes.

DS: In addition to—?

SB: No, it's all state. Because each state's

separate. Each state's laws are different. So if I'm a member of the Oregon Bar, pass the Oregon bar exam, I can't go practice in South Carolina without passing the South Carolina bar exam because their laws are different than Oregon's laws. Their ethic rules are set. All the ethic rules are essentially the same. They're fairly uniform. There are model rules that the American Bar Association sets out and each state tweaks them a little bit. So Oregon's are different than South Carolina's and Guam's. I don't know what South Carolina or Guam's are like but I assume they're fairly—basically they're not hard, you know work hard, don't cheat, don't steal. I mean this is not rocket science, but lawyers seem to screw things up.

DS: Are there any sort of different guidelines in the federal judiciary versus the state judiciary?

Professional Ethics

SB: Well, no the ethic rules are state, state bar. Now there are two bars. I am a member of the Oregon State Bar and I'm a member of the District Court State Bar, the District Court Bar for Oregon, not Washington, not California, but Oregon. But basically what the feds say is that if you're a member in good standing in the state bar and you meet a minimum number of trials and whatever the criteria is to be a member of the District Court Bar you're in. If you're disciplined by the state you're going to get complementary disciplining by the

feds, but they don't have separate rules. There are professionalism guidelines that both the state and the feds are trying to establish like being polite and courteous and that kind of stuff. You might get yelled at by a judge for not following the professionalism rules, and that could end up being an ethics complaint. They could actually turn you into the bar for doing that, but it's rare.

DS: Well are those professionalism rules—I've heard lots of stories about different judges.

SB: Right. Right.

DS: So how do lawyers learn what those rules are?

SB: Well, professionalism rules are basically set by the state bar, and we do have guidelines or rules. I can't remember what they're called. But this district court has done a great service for the lawyers. They have published a three ring binder that basically tells a lawyer what each judge's practice is. There's a bunch of rules that the judges follow, in terms of trial procedures and things like that but certain judges want things done a certain way and this document, this three-ring binder tells you that. So if you're going before Judge King, you know what his little likes and dislikes are. If you're going before Judge Panner, same thing. So it's good. That's a good service.

I think the District Court Association, the Federal Bar Association, is what they call it. The FBA, the Federal Bar,

they just had a dinner for me a couple weeks ago. I should be more polite than that. The FBA put it together and they're all very, very good, hardworking lawyers who practice in federal court and they all got together and said, "Judges fill out these questionnaires," and from that they compiled what each judge likes to do.

Like on *voir dire*. Some judges, only do *voir dire*, other judges all share *voir dire* with the lawyers and if you're going to try a case before Judge X you want to know that before you start the trial.

DS: So, if you were filling out that questionnaire you would have to say you share *voir dire*?

SB: If I was filling it out I'd say, "Yes."

DS: Are there any other kind of things like that that you would?

SB: A whole mess of stuff that I'm way too tired to get into. [laughs]

DS: Okay. Okay. Okay.

SB: I was at a dinner last night that the professional liability fund threw. I'm the chairman of the board of the PLF, that's the insurance company that insures all the lawyers for malpractice in Oregon, and so—

DS: You were out late last night.

SB: No I wasn't really but I had very spicy food—didn't sleep well.

DS: Oh. I'm sorry to hear that.

SB: Yes, me too. [laughs] But I'll probably survive.

Legal Aid Work (LASO)

DS: What about, let's see, the Legal Aid Services of Oregon. That's the one I was most curious to hear about your involvement in.

SB: Yes. I volunteer.

DS: Can you tell me about the organization?

SB: I volunteer.

DS: You volunteer.

SB: You know what legal aid is?

DS: Mm-hmm.

SB: It provides legal representation for basically any—

DS: So *pro bono* work.

SB: *Pro bono* work. Indigent people that don't—okay. And there are legal aid offices within Oregon and in those offices are attorneys and we have a couple of really good, hardworking lawyers in Pendleton. The head guy, the one that runs the Pendleton office is named Aaron Guevara, a very nice guy. Aaron said, "Hey" to

all of us, but [to me]: “Bloom could you come one or two days a month and talk to people and help them?” Basically what I do with Aaron is I meet with the people, figure out what the problem is, write them a letter saying this is the way I see the problem and then give the letter to Aaron so he can implement it. And it’s *pro bono*. I’ve done that for a long time.

DS: Do a lot of lawyers in Eastern Oregon do that or is it just sort of a personal thing?

SB: It’s a personal thing. I think we have a fairly good participation in Pendleton. I think we do. My sense is we do.

DS: Do you ever deal with anything like the legal migration, immigration?

SB: Immigration is something that’s really big for legal aid. I don’t do immigration law.

DS: Okay.

SB: It’s a very specialized area. I represent a lot of doctors, and one of our good doctors in Pendleton—I represent all of the internists—and one of them is Mohammad Tahir, who’s from Bangladesh. Bangladesh, by way of medical school in London, very nice guy, very good doctor. He’s fine in the country, but somehow when he and his wife—and I think they have two boys—came in. And Dr. Tahir’s papers were perfect. They didn’t screw them up. The mom, Pia, very nice lady, and another son, they screwed them up.

So we’ve been futzing around with that for a long time. But I don’t do that. When Mohammad came in, there’s a group of immigration lawyers, I think, in Memphis that basically represent a lot of docs coming in. And I worked with them and did the contracts with my doctors in the hospital and got everything cool. And that was fine and then this problem came up with his wife and son.

So they can’t leave the country because if they go back to Bangladesh they’ll never come back in because somebody at immigration when they came in checked the wrong box or something. It’s something that I haven’t really understood, other than that’s what happened. And so I went back to the Memphis guys and they said, “Oh man, we don’t do that. We just get doctors in.” And so I put him in touch with some immigration lawyer in Portland that that’s all they do. And he obviously can afford lawyers so he’s not going to legal aid. But I don’t do immigration. It’s technical.

DS: What kind of work do you typically do for legal aid?

SB: I do what they call intake. People come in and I listen to their story and I say, “Well that’s a contract problem, that’s a landlord/tenant problem,” and, “You got a problem that we’re not going to help you with. This is a dead collection problem. This is the way I see it,” and each person I see, I write a memo to Aaron, usually two, three pages. This is what they told me. This is the way I see

it, this is probably what you should do.

DS: Okay.

SB: That's what I do, the general stuff.

DS: Well before I asked you about going into the Peace Corps—

SB: Yes.

DS: Is there anything that you want to add?

SB: No. No. No.

DS: *[laughs]* Other civic activities that you're involved in that are important to record for posterity?

SB: Yes, right.

DS: And for your family.

SB: Right. They know all this stuff. I'm in the Rotary. I was on the Rotary board and I was the Rotary president and there's like 150 Rotarians in Pendleton. We've done the bar, the disciplinary board, the LPRC, the PLF.

DS: LPRC?

SB: Local Professional Responsibility Committee, which I told you about. St. Anthony Hospital. I've done some stuff for the city of Pendleton, just be on committees and stuff. I'm on the board of the Oregon East Symphony. I was on the board of the ESD, the Education Service,

I did that for eight years. That's about it. There are a lot of city judges, Pilot Rock, the tribes, Milton-Freewater, and Pendleton, and I've substituted for those judges when they've needed help.

DS: Have you done any kind of mentoring with lawyers in the Pendleton area?

SB: Yes, a little bit. I've tried to help them.

DS: And did you have any mentoring?

SB: Yes. I was very lucky. I worked for, literally, two of the best lawyers in Oregon. John Kottkamp was one of the premiere trial lawyers in Oregon, certainly the best in Eastern Oregon, by far. And I worked with him and for him, with him, under him, for him, interned him, whatever, for twenty years before he died.

My partner Bob O'Rourke was the water lawyer. We represented irrigation districts in Bend. He represented irrigation districts all over. We've had people ask us to go to—I've had invitations to go to Klamath Falls and I've always turned them down. Nevada, turned them down. Life's too short and I'd get too tired traveling. And Bob is a tremendous mentor on water law. He's a great business lawyer, a great probate lawyer. I've been very, very lucky to work with those guys.

DS: So let's go ahead and move forward.

Peace Corps

SB: I'm going into the Peace Corps. I'm going to Armenia to do economic development. I leave on June 3rd.

DS: June 3rd, okay. And what made you decide on Armenia?

SB: That's not the way the Peace Corps works. Peace Corps assigns you.

DS: Okay.

SB: I made an application a year ago, March. So, March of 2004, and in the application I said I did not want to go to Africa because of the health issues. It's not so much the Aids stuff that you can control, but right now in Angola people are dying of hemorrhagic fever. They didn't do anything. They just got bit by the bug or got the virus, whatever it is and you're dead. I didn't want to deal with that.

I used to be fluent in Spanish and I checked on South America. My friends that have traveled in South America said it's very dangerous. A lot of people are kidnapped. One of their daughters did a semester in, I think in Lima, Peru. All the windows and doors have bars on them. All the children, not just the upper class, are escorted to school with armed guards because of kidnapping. I didn't want to deal with that. My first interview with the Peace Corps, a guy out of Seattle, he said, "Oh we have a great program in Mexico City. You're really into business and law and all that stuff."

I said, "I don't want to go to Mexico City. It's 20 million people. It's grossly polluted. It's very dangerous. I mean you can't get into a taxicab and guarantee you'll get to your destination without being robbed or killed. And they kidnap people.

This guy had just come back from Slovakia and I called him up. They got the application. Everything looked keen. I had been interviewed. I called him up to set up an appointment. He's in Seattle, I'm in Pendleton.

He says, "Aw you're in Pendleton, I'm in Seattle, let's just talk."

So we talked for an hour-and-a-half, and I'm assuming during that he was interviewing me, but I was just talking.

He said, "I'm going to recommend you for Eastern Europe.

I said, "Cool."

Had another interview. Same thing, Eastern Europe. Then I passed the physical and the dental and all that and that was in September of 2004 and everything was cool. And, I can't remember his name right now, Bruce—I have it written down somewhere, said, "You won't hear until March or April because it's a bureaucracy and it just takes time."

I said, "Cool. Whatever."

And right after Thanksgiving I got a call, "You're going to Armenia," and so I called my kids. They were all very enthusiastic and they said, "Dad you've got to do your due diligence. You've got to get on the Internet and check this out."

I said, "I don't do the Internet. *You* do the Internet." I went to the library and

got four books and read four books in a weekend. And I have a couple of friends that are lawyers in Portland and Seattle that have traveled a lot all around the world, taken their families around the world for a year, and so I asked them to check and one of them, the son had been in Georgia, Ukraine, Kiev, and they said, "Yes, Armenia is great."

I work with a guy out in Hermiston who's an irrigation engineer, Fred Ziari. He's Iranian, very bright guy. He designs a lot of irrigation projects. So I work with him a lot. He's from Iran, which is a border of Armenia. So we're having a meeting on something and I said, "Hey I'm going into the Peace Corps in Armenia."

He said, "Armenian people are great people."

They were part of the Soviet Republic, Soviet system and every two or three years Stalin would have a purge and kill people. The Armenians would run to Iran so there were a lot of Armenians in Northern Iran where Fred's family was. So he worked with and worked for, and they worked for his family, Armenians. He says they are great people.

My kids came back said, "It sounds great." Everything I read sounded great.

DS: It sounds like it will be more of a mixture culturally. Are you going to be in Southern Armenia, or?

SB: Armenia is the smallest of the former Soviet Republics.

DS: Okay.

SB: It's as big as Maryland, very small country, only 3 million people, half of whom live in the capital of Yerevan. So it's not like southern, northern. It's very small. It's very homogenous. It's like ninety-six percent Armenian, two percent Russian and two percent Greek. So they don't have all that tribal insanity that you have all around them. You go to Georgia, just to the north, there's the Georgians. The north is Ossetians, the south is Ossetians. The Ingush. They all want their little tribes to be independent. Maybe a thousand people but they want their own country. So they're shooting each other saying, "We want independence." You go north of Georgia into southern Russia, that's where Chechnya is and they're having problems because the Chechens want to be independent of the Russians. Well, Armenia doesn't have that, which is good, because it's just Armenian people.

DS: Where will you be located, do you know?

SB: No. I will get there on June 5th. June 3rd we go to some eastern city, do an orientation for a couple of days, then fly to the capitol. Then we go north of the capitol to the second largest city called Vanadzor, it's like eighty miles north of the capital. It's about 150,000 people. It's in the Caucasus mountains about 6,000 feet and I'll be there for three months learning Armenian. Six people in a class, intensive Armenian language, put you with a family, full immersion, you learn Armenian. Then I get a job assignment for

two years. I have no idea, other than it's going to be economic development. I have no idea what it will be.

DS: What made you decide on Peace Corps?

SB: I wanted a change. The ABA has some programs in that area, what they call the Central and East European Law Initiative, in Armenia, in Bulgaria, in Romania, in Uzbekistan, all those countries. They used to be part of the Soviet Union, and need to get their law systems up to speed. So I could have gone to one of those and I had talked to them, applied to them. They wrote back, this looks cool. But they don't give you the language so I could be in Bulgaria, futzing around with interpreters. The Peace Corps—

DS: An American in Bulgaria.

SB: Exactly. And in Peace Corps you learn the language and you're living with the Armenians and it just sounded like a good deal. And it sounded like something good for the country.

DS: Well is there anything that you want to add?

SB: Nope.

DS: No. *[laughs]*

SB: I hate talking about myself.

DS: You hate talking about yourself?

SB: Yes.

DS: Well one of the things I wanted to ask you—we didn't talk about this earlier—is if there was anything you wanted say about Becky?

SB: No.

DS: Okay. I just wanted to give you the opportunity if you did.

SB: I appreciate that. No, I appreciate that, but no.

DS: And if you don't, that's fine too.

SB: Yes, I couldn't do it. That would be very hard so let's not go there.

DS: Okay. Well, I wish you the best.

SB: Thank you. I appreciate it. So now what happens?

DS: I'll go ahead and turn this off.

[Tape turns off and comes back on]

SB: I really like Ash. Well I like all the judges. I really do. The ones that are, you know, I really like Redden, very warm engaging guy, as is Panner. I know them better than—Mike King is a very warm, nice person, and they're all good people. There's really not a jerk among them, seriously. I can say that. I'm leaving, I don't care. I'm not trying to butter anybody up. They're all good guys, and

women. Anna Brown is just a delightful person.

DS: I met her too.

SB: She's just a sweetheart. She is kind of a sweetheart.

DS: Plus energy too.

SB: Lots of energy, just a great person in all respects. Okay?

DS: Okay. I'll turn this back off.

[End of Interview]

Endnotes

1. The Umatilla Basin Project originally provided for irrigation of lands in the lower Umatilla River Valley and along the south side of the Columbia River west of Umatilla, Oregon, with water from the Umatilla River. The project resulted in a diversion of Columbia River water at McNary Dam, which enhanced the Umatilla fishery, nearly defunct since the 1920s.

2. Students for a Democratic Society was part of the New Left, the student movement that protested the Vietnam War in the United States.

3. *Maag v. Orchards Water Company*, Resources Dept. [319 OR. 80, 876 P.2d783 (OR. May 10, 1994) (Table, No. A74127, S41016)]

4. Case history: *Norden v. State*, 158 OR. App. 127, 973 P. 2d 910 (OR. App. Jan. 20, 1999) (No. CA A93331). Review allowed by; *Norden v. Water Resources Dept.*, 328 OR. 594, 987 P. 2d 514 (OR. May 25, 1999) (Table, No. A93331, S46182). And affirmed by; *Norden v. State ex. rel. Water Resources Dept.*, 329 OR. 641, 996 P. 2d 958 (OR. Feb. 17, 200) (No. SC S4 6182).

5. *Blakeley v. Washington*, 542 U.S. 296 (2004).

