

Interview with John J. Todd  
Minnesota Supreme Court Historical Society  
Oral History Project  
Minnesota State Law Library

September 26, 1995

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**Interview with John J. Todd**  
**Associate Justice, Minnesota Supreme Court, 1972-1985**  
**The Minnesota Supreme Court Historical Society**  
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**September 26, 1995**

John J. Todd: JJT

John Brian: JB

**[Track 1]**

0:00 JB: It's September 26, 1995. We're at the Minnesota Judicial Center to interview former Minnesota Supreme Court Justice John Todd. Good afternoon.

JJT: Good afternoon, John. Good to see you again.

JB: And it's good to see you, too. At the outset of our interview, perhaps you could provide us with a little bit of background information. For example, when and where were you born?

JJT: I was born in St. Paul, Minnesota, and raised in South St. Paul, Minnesota, in 1927. I attended St. Augustine's Grade School in South St. Paul and lived right across the street from the South St. Paul High School. Friends of our family were Doctor Louie Flynn, the well-known psychiatrist in St. Paul, and his brother, Bob. [They] were going to Cretin High School, so they said that that's where I belonged. So I went to Cretin High School in St. Paul and benefitted from that by catching the street car at six-thirty in the morning down at Grand and Concord and [it would] go up to Seventh and Robert in St. Paul and Mahtomedi-Randolph North St. Paul car, so it was a long ride. It was an hour street car ride until—I think it was between the junior and senior year I worked at Swifts in the summer because the war was on and you could get a job and I ended up buying a four-door Model A, so I could drive to school the last year.

Also, all my friends were going to South St. Paul High School and I still maintained a lot of close contacts there. My father was in the livestock business in the stockyards.

JB: Let me interrupt a second. I didn't realize that you were an early expert on light rail transportation.

JJT: Oh, yes.

JB: Have you had any opportunity to put some input in some of the debate now as I anticipate the commute home, here?

JJT: No, I don't think so, John. Part of it was that we had a place out at White Bear in Birchwood and my grandmother lived there. On Friday nights, I'd catch the Randolph-Mahtomedi street car and ride it out to old Wildwood Park there and then walk the mile and a half down the old street car line and spend the weekend at my grandmother's. So I spent a lot of time on the streetcars—on the old yellow jobbies.

JB: When I think of South St. Paul, I tend to think of the stockyards. You mentioned that your father worked in the stockyards and my father-in-law worked in the stockyards. I also think of ice hockey and high school hockey in South St. Paul. What do you remember most about growing up in South St. Paul besides the street car trips over to Cretin?

JJT: Well, South St. Paul was a small town, ten thousand people. Everybody knew everybody. Everybody was into Swiss Armour's packing plant in the stockyards. The hill area, where everybody lived—in the morning, everybody walked down to work and at three-thirty when the whistle blew, they all walked home. My dad, of course, he drove. He was in the sheep business down in the stockyards. I remember a huge fire in the stockyards when we were kids, in '38. It burned the sheep farm down. I remember that. It had to be rebuilt. Mostly, growing up, though, it was just a great place to grow up. Everybody was friendly—unique community in that there were ten thousand people and we had a Polish hall, a Galician hall and a Serbian hall. And we still have—they all

are there, yet, but the biggest survivor is the Galician hall—the Crow Bar, as it's called.

JB: I'm familiar with the Crow Bar.

JJT: Very mixed community. We had a Romanian Orthodox church just a block from where I lived. So, quite a mix of community. I think the packing plants brought in a lot. So we all spent our time there. I can remember that my dad was in the horse patrol. When the carnival started here in '37, he kept a horse down in the stockyards and I used to go down and ride the horse once in a while out in back, which is now a big industrial area. It was kind of a swamp area then. I rode this horse, Big Red, he was called. He was big.

5:00 The community was oriented around the livestock business. When the war started, things changed dramatically, as I mentioned. I could work at Swifts during the summer. You could get a job, but my dad didn't have any help then, so I used to have to come from Cretin on the rattler street car<sup>1</sup> on Mondays, change clothes and go down to the stockyards and work until ten o'clock at night because in the fall of the year, my father alone would get about ten thousand head of sheep to sell every weekend and we—my brother and I—had to sort them all on Saturday and Sunday—the lambs from the ewes and then you had to mouth all the ewes. You'd jump them from behind and grab their mouths and you counted their teeth. If they had two teeth, they were one year old. If they had four teeth, they were two years old, and six they were three and otherwise they were full mouth. The younger ones were worth more money. So then you sorted them by age. So, it was from Labor Day to the first week in December, it was quite busy and then we'd weigh the sheep when I got home from school and at six o'clock we'd feed them. Lots of tricks in every trade. Those we didn't sell for the day, we'd feed them alfalfa in the bottom of the bunk and cover it with hay and then shut the water off and they'd eat that alfalfa all night and then in the morning when my dad got there and they'd turn the water on and those sheep would weigh a few pounds more when they went over

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<sup>1</sup> Rattler is another name for Twin Cities streetcars.

to the scale.

JB: I suppose.

JJT: But, it was an interesting, fun place and I still have a lot of friends from the stockyards—my father-in-law, for instance, who I grew up with. He was a cattle man. My brother is still a cattle man down there. One uncle was a cattle man, one was a hog man and my dad was a sheep man. So they covered the waterfront.

JB: Your wife is from South St. Paul.

JJT: Yes. She is three years younger than me and graduated from South St. Paul High School with my younger brother. Her father was a livestock person—a cattle speculator—so we all have connections to the stockyards. In fact, as you know, now there's a farm of a hundred and sixty acres that he had just outside of town where he fed cattle and that's where we live, on part of that old farm.

JB: A lot of the people I've met over the years that were raised in South St. Paul either remain there or find their way back there. Did you raise your family in South St. Paul, as well?

JJT: We did until 1968, when we built a rather large home out on the farm out there. At that time, my little son, Dick, was a junior in high school and had been on the hockey team for two years and the quarterback for the football team. So, the school wanted to be sure that he stayed around and we had an office in South St. Paul and we used my brother's address and he finished his senior year at South St. Paul High School. It was his third year on the hockey team. In fact, they were in the state tournament in both his junior and senior years. So he played in two state hockey tournaments. But I told them if they dealt for one, they got all of them. Well, my daughter, Jane, didn't want to go there. She went to Rosemount, but my younger son, John, graduated from South St. Paul High School, also.

JB: I know that you had a lot of community involvement over your years of living in South St. Paul. Are there some particular things that come to mind that would be interesting?

JJT: Well, yes. I was always involved in the hockey program from day one when Charles Smith and George Carne started Kids, Incorporated, and we used to put the hockey thing together and Charlie Smith was the high school hockey coach and then he ended up coaching at Notre Dame. George Carne is still a commercial artist in the Twin Cities area. But I organized that for them and we were very active in that. The South St. Paul High School team was very successful in the tournaments—got in a lot of times. People didn't do much for them so Tom Metzen, Joe Bartel, Bob Carter, and myself—after every hockey tournament, we'd kind of organize a dinner for them out at Southview and sell the tickets and do everything. And we'd done this for, I suppose, five, six, seven years.

10:00 It was in about 1959—we had just finished the dinner and we were having a lunch to see how it all came out and congratulating ourselves on how well we did and the conversation got around and some way, I think I said, “Gee, it's too bad they don't have an indoor hockey rink to play in.” Out of that was born Wakota Arena. We put it all together, got some people [to help us] like Bob Ritter from the St. Paul paper, who lived in Mendota Heights and was active in the Mendota Heights program. Bob had been very active with Olympic hockey through the years. We got Walter Bush, who subsequently was president of the North Stars. We had several other people and put it together as a private corporation. In fact, I went on my own expense to Washington, D.C. and lined up the SBA loan to build the arena, so that's how the Wakota Arena got built. Eventually it was sold to the city and the city now runs it. So that was one thing that came out of doing some community things.

JB: Sure.

JJT: There's another one I want to mention, too. South St. Paul had always wanted a hospital. They had had the land and they had had a municipal election and it was defeated. The land was still sitting there at 19<sup>th</sup> and Thompson when Herb Swanson from the Builder's Bank and Andy Reed, the old Postmaster, was there. The three of us were about all that was left and active in the hospital. Finally—I forget how it came about—Father Whittet from St. John's Church knew of some nuns out in South Dakota that had some money. Out of that, we put together Divine Redeemer Hospital and got it started and got it going again. We hired a professional fundraiser and from that, [we] raised money. I remember we had a big dinner at Somerset Golf Course and Mr. Dick Lilly lived on the corner of 110 and Delaware—former Chairman of the Board of First National Bank of St. Paul. He was there. And he made it possible. He donated \$50,000 at that dinner and we sold the stock and we got it built for about \$900,000. It just closed last year. I felt kind of bad about that.<sup>2</sup>

JB: What made you choose the law as a career?

JJT: Well, that's an interesting question, John. I graduated high school in June of '44. I just had turned seventeen in March and, of course, at that time, I wanted to join the Navy and see the world and get in the war and do all those good things. My father said, "No, you're too young, you're going to go at least one semester to school." So I worked that summer at Swifts and then I went to St. Thomas in the fall and then joined the Navy air crew for twenty months. When I came back in the summer of '46, I enrolled in St. Thomas again. I had taken pre-med the first semester and I went back in pre-med. During that semester, I became good friends with Judge Bill Fleming. He was in pre-med. Neither one of us were doing particularly good in the chemistry lab. We figured out—we went and had a beer one day and decided there ought to be something else because it looks like a lot of lab work ahead of us and we're not doing well. So Bill and I switched to pre-law at the same time.

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<sup>2</sup> It became Cerenity Bethesda care facility.

Now, at that time, the University of Minnesota had what they called the Minnesota Plan. You could have two years of pre-law and then you went to four years of law school. That six years looked better than, maybe, ten in the medical field. That was another thing that Bill and I had decided.

15:00 What else had happened was that with returning GIs, you could take the GED—General Education Development Test. I got enough credits in one semester so at the end of two semesters at St. Thomas in June of '47, I had two years' credit so I was accepted at the Minnesota Law School in the spring of '47. I always said it really was a vo-tech. Dean Fraser was so proud of it but you had no good education before you got there. Good law education but no general education. So I went the first year, '47 through the summer of '48 and worked. And thereafter, I went two summers.

The law school was on quarters. In the fall of 1950, the law school decided to change to semesters. The university never did—in fact they are talking about doing it now. The law school changed and there were eleven of us that were in the same boat. We had one quarter to go. Maynard Pirsig was the dean, so we went to see Dean Pirsig and we said, “What do we do?” “Oh,” he said. “Why don't you just go to SLA and get fifteen credits.” So we went over and signed up for fifteen credits in SLA and then the eleven of us were sitting around talking, and we said, “Well, we're really out of law school.” And at that time, they gave the bar exam three times a year and one was in October. So, we went back to see Dean Pirsig. The atmosphere was GIs and all that. We said, “Dean, why don't you certify us for the bar exam. We're not taking any law courses.” He said, “I'll do that.” And he did.

Well, the first next stop was over to SLA to those classes. I says, “I'll see you the last week in October but I'm not coming anymore.” And the way the GI thing worked, you didn't have to show up. So I took the bar exam in October of 1950, got finished with the SLA and then we graduated in Northrup Auditorium on, like, December 20<sup>th</sup>. Got the

results of the bar exam on December 27<sup>th</sup> and was sworn in January 5<sup>th</sup>, two weeks after I'd graduated. So not many people do that.

JB: No. I know that I sometimes ask the question about why someone went into law and the assumption is their father was a lawyer or somebody in the family was a lawyer. Did you know lawyers growing up?

JJT: No. Not really. Harold Stasson lived across the alley and down the block from us. That's the closest lawyer I knew and I only saw him because he got elected governor and we always used to see the cars pull up and down the block and stuff like that. But no, I had no contact with lawyers at all. Actually, when I started law school in the fall of '49, I got a call from Paul Toohey. Paul had been a lawyer and graduated with Judge Rogosheske in 1939. His father was from the stockyards. He was a cattle man in the stockyards. So the old stockyards connection. He knew my family from the stockyards. He was a partner in Bodeman and Toohey. He wanted to know if I'd come down and talk to him.

Well, you've been in South St. Paul—this building has been torn down now, but it was a little flat iron building. It was at Pipp [??] and Grand across the street from the old Shultz [??] building—that big old building.

JB: Yes.

JJT: And they had an office upstairs and Audrey St. Peter was working there, who ended up my secretary in the Court, here, who just retired from the Court about a year ago. She was working there because Bodeman was her uncle. Shirleen Hendricks Albrecht was there, too, and she still works for the old firm. I went to work for them as a law clerk for ten dollars a week. It was a triangular-shaped building and I got to sit down at Bodeman and Toohey when one of them was out. There was just enough room for another desk there. So we just had a grand time there and then we moved about a year later across the street to the Shultz building and I got a desk to sit at. When I graduated

in fifty and was admitted, then I got raised from ten dollars a week to thirty-five dollars a week because I had a law degree. I could have went to work at Swifts for more than that! That was the way it worked at that time. The lawyers didn't make as much money and the firms thought they were doing you a favor if you could clerk for them.

20:00 I also remember that I had been helping Bodeman on a case that he had gotten. The superintendent of schools of Farmington, Minnesota, was charged with seven counts of sodomy. I had been doing a lot of investigative work on it. So I was sworn in on Friday and Monday morning I was second chairing a sodomy case in district court in Hastings. We tried it for about two weeks and he was found not guilty. And we tried him on the second count and he was found not guilty and so it was dismissed. So that was my quick entrance into the field of law and trial work.

JB: Baptism by fire.

JJT: I never did a lot of criminal work after that. But it was interesting.

JB: So you went away to the war and finished law school and came back to South St. Paul like so many of the people that I know.

JJT: All that was done and when I was admitted to practice, I was twenty-three years old. I guess I was always in a hurry.

JB: What was it like practicing in your home town?

JJT: It was good because I had a lot of friends and got some business. At that time, in South St. Paul, Kelley, LeVander, Gillen and Miller—the old Stasson law firm and Governor LeVander's firm—was one of the big firms. Grannis and Grannis was a big firm. The smaller firms were just—Judge Leonards had a sole practice and Judge Shepley had a sole practice. So, the business was there and I had a lot of friends and I did a lot of work. I was there four months with Bodeman and Toohey and Toohey took a job—the Korean War had started so he took a job as Director of the Office of Price

Stabilization. So he left and he left me all his files. I had an immense amount of work that wasn't all mine that he had built up.

Bodeman was the elected municipal judge. At that time, it was a part-time position. So I was appointed special municipal judge at the mature age of twenty-four. It was interesting to do that. It was my first touch of the judicial cloth and I always remember the story about how I hadn't been there too long and there was a criminal arraignment at nine in the morning. This guy came up and he was charged with assault. I said, "You plead guilty or not guilty?" Well, he says, "Judge, I want to explain it to you." I said, "I can't. If you plead guilty, we can listen to your explanation. If you're innocent, don't." Finally, he says, "Okay. I'll plead guilty. Can I tell you what happened now?" I said, "Sure." He says, "Well, my wife and I were having this argument. And she got worse and I got the gun. I said, 'Wait. See that line there? You step across that line and I'll shoot.' She stepped and I shot her in the leg." So how do you deal with that at twenty-four? [Laughs] I used all my imagination, I guess, to get rid of that one. I forget what we did with him. But I'll never forget that line. "She stepped and I shot."

JB: Your first case out of law school was a trial. Did you do a lot of trial work in private practice?

JJT: Yes, I ended up, John, developing interesting P.I. [personal injury] work. One, it was a pretty good field. We did general practice in South St. Paul. You couldn't specialize, but I tended to do more and more of it and by the end, by the time I went on to the Court in 1972, the last four or five years, I was, I think, the only lawyer in Dakota County that had a full time investigator working for him. I was doing a lot of P.I. work. I had two paraplegic cases which, you know—in those days, that was something to land onto. Verdicts of three, four hundred thousand dollars don't sound like much now, but they were very notable at that time. Did a lot of that. We'd get everything. It was great experience.

Even as a law clerk, I was given a lot of responsibility. I was examining all of the

abstracts in the office before I got out of law school and doing real estate work and then I got—I don't know how I got into it but I got into bank charters. Bank charters were hard to get at that time. I fought all the way to the Supreme Court and back and got the bank charter for the Southeast State Bank, which still exists in South St. Paul. I was the first president. No salary. I got a box of apples. But it was fun. And I did a lot of bank charter work. It was general practice but trial work—I did most all of the trial work. 25:00 Toohey did some. Bodeman didn't do much then. Originally, he did but not near the end. It was just a real broad training. Family law, everything. So, it was interesting, good work. I enjoyed it.

JB: You talked about your involvement with Wakota Arena and Divine Redeemer and now, the Southview Bank. I think you were involved in the initiation or the founding of the Pool and Yacht Club, if I remember correctly.

JJT: Oh! That was another thing I got quite young in life. When I graduated—it was about a year later, because we were over in the Shultz building and down the hall from the Grannis firm. Dave Grannis came down the hall one day and said, “John, I want you to do something for me. I represent Mendota Township and Sheely wants to put a pit out there and they won't let him. And he wants to know if you can do something for him. So I went out and saw Al Sheely. I said, “We could form a village.” It was very easy to form a village then. You just had to file a petition. He said, “Well, I'll pay for it.”

So I went out and drew some lines and there were some people that lived down below that wanted to get out of Mendota Township anyhow. So I meandered and drew the line so that anybody that was against it up on Highway 13, I drew around them and left them in the township. And John Thompson lived on the river in a home where the Pool and Yacht [Club] is now. And he was against it. But anyway, the election won by one vote. So Lilydale was organized and I became the first village attorney and then John became the councilman and he actually became a very good friend and client and he became a supporter of the village.

His house was flooded in '52 and he rebuilt and it was flooded again in '53 and he tore it down and built a home up on top of the hill. So in '54, he came to me and he said, "I want to start a club down there. I've still got my pool down there and everything. But I want a club license." Well, I said, "You got to be in existence twenty years, John, to get a club license." Well, he said, "Find me one!" So I went to go find Dave Grannis down the hall and sure enough he came back with the South St. Paul Stampede Club. He used to put on rodeos twenty years ago. So Dave and I became the only active members of the South St. Paul Stampede Club. We had a meeting at my office. John Thompson and several of his friends, Burt Smith, Lee Lau, and Lou Larson all came and we formed the Pool and Yacht Club and it's still there. The license is still the old, original Stampede Club license. So John gave Dave Grannis and I a life membership in the Pool and Yacht Club and Dave since died so I am the only surviving life member of the Pool and Yacht Club.

JB: That's great.

JJT: It's a nice place to go and eat.

JB: I take it from your comments that Paul Toohey came back to the practice in South St. Paul.

JJT: About a year. Paul is just a great lawyer. He had been with Fire and Marine and managed different claims offices and then started back to practice in '47 and then he got elected to the state senate and it's interesting with Governor Perpich's death here, this week. Paul was minority leader of the senate when Don Fraser was in there—Nick Coleman, Rudy Perpich and a couple others—he was their mentor. They had nineteen liberals and forty-eight conservatives and Gordon Rosenmeier, who was probably the most powerful politician that ever existed in the state of Minnesota—greater than the governor, he had more power than anybody. He and Toohey became the best of friends. I remember the last year Toohey was there, Rosenmeier—the conservative guys would come to Paul and say, "Would you talk to Rosenmeier for me?" because Toohey knew

how to run it and when Gordy needed nineteen votes, Paul would deliver nineteen votes.

JB: Was Rosenmeier from Little Falls?

JJT: Little Falls. John Simonett's partner and mentor.

**[Track 2]**

00:00 JB: Was Paul Toohey active in the practice during his years on the legislature?

JJT: Yes. He was. Of course, the legislature consumed a lot of time and being minority leader took more time and Judge Bodeman was municipal judge so it got to be a hectic pace at the office. I was, from the beginning, kind of the office administrator because Judge Bodeman never liked that work and Paul was gone so I, early on, became an office administrator and operator of the office. I remember one of the interesting things that happened when Paul was on the legislature is he—it was right near the end of the session or right afterwards, he came to me and he said, “You know, at this session, there was just a real nice, young senator up there that opposed a parking bill that was being pushed by the president of the First National Bank. He had been working for Doherty Rumble in St. Paul and they fired him. And he needs a job.” He says, “Look, you’re sitting here and you’re doing all this now. You go talk to him and see if you want to hire him and then it’ll be okay with me whatever you say.”

So I went and set it up and that’s the first time I met Wendell Anderson. Wendy was out of a job and looking for work.<sup>3</sup> Well, needless to say, I thought he was pretty darn smooth and good and so I hired him.

What we did then was we opened an office in St. Paul and Wendy was going to be in the St. Paul office and he says, “I got another guy I work with in bankruptcy.” He was doing a little refereeing in bankruptcy at the time. He says, “Tom Brennan is a good friend and he’ll work reasonably and we got enough work.”

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<sup>3</sup> Governor Anderson was known by his nickname – Wendy.

So we hired Tom Brennan, too. So we had the St. Paul office and we kept it open for about, oh, a year or so and then Oppenheimer was expanding—the Oppenheimer law firm in St. Paul—and they took our space and so we moved everybody back to South St. Paul. At that time, Wendy came and Tom Brennan came into the office and we had Frank Barcelette was working for us, also, in South St. Paul at that time. It was Bodeman, Toohey and I, Wendy and Tom and Frank Barcelette—the six of us.

JB: Todd became a district court judge for Ramsey County.

JJT: Yeah, it's all part of the history of this thing. Paul was defeated in about '65 or something. I was think it was the end of the '69 session. Wendy came back and said, "I want to run for governor." So we had a meeting. I said, "Okay. We won't see much of you." And so, really, he started out and we didn't see much of him. That was the end of him really practicing law because he was off and running. And it was a long, hectic campaign and when it was all over, he was elected and sworn in, I remember going to the governor's office and giving him his last check. We paid him every payday from the day he ran until the day he took office. So he thanked me.

Wendy appointed Frank Barcelette as probate judge in Dakota County, Tom Brennan as district judge in Ramsey County and myself to the Supreme Court later on. But we were all together in the practice of law. Ray Pavlak was just up the street from us. He had been formally with the firm. Ray was a nephew of Judge Bodeman's. He was with—it was Bodeman, Toohey, Todd and Pavlak from '56 to '60. And then Judge Bodeman and Ray went to Bodeman and Pavlak and Paul and I stayed as Toohey and Todd. All in South St. Paul, all good friends. Ray was appointed by Wendy to the bench and Ray just died last year. So a lot of judges came out of that.

5:00 JB: Jack Mitchell.

JJT: He was an employee of ours, too, that later ended up on the bench. So all of that came about. I had been with the tax court since 1965 to 1972. Karl Rolvaag appointed

me to the tax court. I served there. It was a part job at that time. It was interesting—John Knapp had been there for a long time from Albany, Minnesota. Bill Essling served with me, I remember. It was a three-man court. Again, it was one of those courts—I got there and I couldn't believe how they were operating. They were so far behind. There were two hundred and some cases behind. And they were letting the attorney general set the calendar. John Knapp was chairman. I said, "John, you know, this is no way to run a railroad." He said, "What can we do?" I said, "We take charge." So we had a calendar call. All two hundred cases were called on the calendar. Lots of mad lawyers. Lots of mad attorney general people. I said, "You're coming in here; we're setting dates; you're going to either settle them or try them."

I'll bet out of that whole two hundred cases, we didn't try fifteen of them and we got current. And John Knapp couldn't believe it. I said, "Well, you just have to do things like that." I had seen old Judge Shultz in Hastings call his calendars like that. You show up and settle or try and you get rid of many, many cases. But tax court was a good experience. It wasn't very demanding until the sales tax went and got passed and then there were a lot more cases and it really was a burden at the end because I had so much other trial work and I had to squeeze it in. I enjoyed it. Good people to work with.

JB: You mentioned that Wendy Anderson appointed you to the Supreme Court in 1972.

JJT: January of 1972. I replaced Martin Nelson. I can remember the day it happened. I was trying a bank charter case—the Maplewood Bank—for Don Reagan and the sod people out there, what was their name? They were the applicants. The opponents were interesting. Peter Popovich and Joe Shalom, both of whom were appointed to the Court later on. I know Joe was appointed by Wendy and Pete was appointed Chief of the new

Appeals Court.<sup>4</sup>

JB: Appointed by Governor Perpich.

JJT: I believe that's right. But they were the opponents at that time. I remember Pete saying, "The governor wants to see you." And I remember Pete Popovich looking at me and saying, "Take it." He had been an applicant too for the vacancy. Martin Nelson was retiring. And at that time under the plan that was in existence, there was no mandatory retirement and Martin was eighty-three. I think Oscar Knutson kind of muscled him off the Court a little bit because Martin was having trouble. Sometimes he'd fall asleep on the bench. Jim Otis informed me of that later. So I went up there very quickly. I walked away from the middle of that case and turned that over to Jack Mitchell or somebody because I was only given about ten days. Oscar Knutson was tough: "Mr. Heavy here. Can you be at work Monday?" [Laughter] Oscar was just a fine, fine person and the whole Court was so much fun.

JB: I want to talk about Oscar and some of the other people on the Court. Just one thing that's curious to me, this appointment coming as quickly as it did. Is this something you'd aspired to in your practice?

JJT: I had always enjoyed my peripheral work with the bench. Municipal judgeship, trying a few cases there, the tax court, and I was not interested in being a district judge. But I told Wendy, "If you ever get an opening on the Supreme Court, give me a call."

JB: And he did.

10:00 JJT: And he did. Interestingly, I found out afterwards, Harry MacLaughlin, who later was appointed for Bill Murphy's seat about four months later, was really pushing to get that seat because he had been active in this campaign, too, so Harry and I used to laugh

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<sup>4</sup> Justices appointed to the Minnesota Supreme Court during the years that Wendell Anderson was governor (1971-1976) are: Harry H. MacLaughlin, John J. Todd, George M. Scott, and Lawrence R. Yetka. Robert Sheran was re-appointed.

about how I aced him out of his seat on the Court. But yes, it happened very fast.

JB: What were your expectations when you left in the middle of a trial in a busy and active practice?

JJT: I don't know what I thought. I never had much time to think about it. It took me a few years to find out the consequences of it. I was forty-four, I think, at the time. Almost going to be forty-five in March.

JB: That was pretty young for an appointment to the Supreme Court, wasn't it?

JJT: Yeah, in retrospect, I wish I could have practiced ten more years and put that money in the bank, plus the experience, because it was a rather rude awakening. I mean, I knew what the salary was, but I didn't pay much attention to it. It was like \$36,000 or something like that. It was less than half of what I was making and with no write-offs and no perks. I guess I didn't fully analyze the financial impact because I remember that when I went on the Court, I had just built that big house out there and it cost me a hundred and twenty-five thousand in '68, which was a pretty good chunk of dough. And the taxes were there, but everything was paid for. The house was paid for, the car was paid for. Dick was almost through college at Stanford and I was paying for that. Jane was supposed to go to college and she never did—thankfully—because all of a sudden, the walls came crashing down and I'll never forget, I always say, I went on the Court in '72 with everything paid for and when I left in '85 I had a mortgage on the house, a mortgage on the car, and no money in the bank.

JB: I was going to ask you if you experienced surprises on the Court. I assume that that was one of them—the financial side of it.

JJT: Yes.

JB: Were there other things that surprised you in terms of what your expectations

were and what reality was on the Court?

JJT: Well, there were seven people when I went on. They've later expanded to nine because everybody was complaining how hard they worked. And there were a lot of cases. Coming from a small town practice where you did everything—you ran the office and you tried cases—in all honesty, what surprised me the most is on the worst, busiest day up there, it wouldn't match a relatively slow day in the office in South St. Paul because I was putting in twelve-hour days most of the time and nights if you weren't in the office you were going to a meeting or you were going to a wake or you were going to the Lion's Club or you were entertaining clients. It just was much more pressure. I guess that surprised me. Some of the other judges had been there a long time and had seen the workload increase on the Court and they felt very stressed out with the work. Yet, to me, I went in there and found it relatively easy to handle. I guess that was a surprise.

JB: That would have maybe been a pleasant surprise.

JJT: Yeah.

JB: In your private practice, you did a lot of litigation in the role of an advocate for the most part. Did you find that transition difficult to go from advocate to decision-maker?

JJT: Not really because I'd been writing opinions on the tax court all along. I think the thing that hits you quickest, particularly with the Supreme Court or the Appellate Court, is that it's a lonely place. At least as a district judge, you're dealing with the lawyers. You have to enjoy the people you are with and we were very fortunate that we had a marvelous Court and we got along so good and collegially. It was just a great experience. But it's a lonesome place. You sit in that office up there and you've got you, the law clerk and the secretary and your fellow judges. And you're not going to talk to the lawyers except for a few innovations that we put in. They're out on the other side of that

15:00

thing watching the clock and trying to talk as fast as they can in their thirty minutes or whatever they've got.

Another thing I had a hand in was the prehearing conferences. That was fun because you got to talk to lawyers again.

JB: Yeah, I want to talk about some of those in a minute. But you mentioned the word collegiality. One impression that I took away from my clerkship at the Court—and I think that the other law clerks shared that—was that there seemed to be a great deal of collegiality among the justices of the Supreme Court. Was that an accurate impression on our part?

JJT: Yes. It was just like a family and everybody cared about everybody. Like Oscar used to say, "We can disagree but we're not disagreeable." That was true. There were just so many fine, good friends there and everybody got along. I didn't see in thirteen years there one incident at all of any animosity between anybody. Great support for each other.

JB: My memory of Oscar Knutson is that he appeared to be a man that was very soft spoken and one of few words but the morning that we had my private swearing in with you and I and John McCarthy and Oscar all in our shirtsleeves up in his office, that's the one memento I wish I had a picture of to share with this tape.

JJT: Oscar had a hard exterior and a soft heart. He was just one of the brightest guys you could ever imagine.

JB: Was he a leader of that Court when you came on?

JJT: Yes, very much so. He liked being a leader and doing the administrating and they didn't have a lot of Court personnel at the time. They were just getting in—I think Dick

Klein had been Court administrator for about a year when I came on and he succeeded somebody else who had only been there a short time. They had just ventured into administration and Oscar had done it for many years by himself, I think. So he was used to running the Court and did a real good, fair job of it.

JB: Was there any particular justice when you came on to the Court that you would have considered a mentor or someone that you looked up to?

JJT: Well, I think mostly Judge Otis and Judge Rogosheske are the two that I would rely on. See, I got there and Bill Murphy left in four months and so I never got close to him. But Walter and Jim, I really liked visiting with them and when George Scott came on—we were roommates and George and I were very close friends. And when John Simonett came on, he came from kind of the same practice that I did, and so we had a lot to visit about and talk about. The two brightest, most able people that I served with, above all the rest, would have been Bob Sheran and John Simonett. Everybody was great, but they stood out.

JB: Can you explain that? Can you put some flesh on that? I understand what you're saying and certainly from my impression of reading decisions that either Justice Simonett or Justice Sheran wrote, I share and appreciation of their scholarly skills.

20:00 JJT: They were not only intellectually so great, they had a real practicality about them, a down-to-earthness about them that I thought was important—that a decision just isn't some words on a piece of paper. It's going to affect some people's lives and it's important what you do and what you say and they were just very thoughtful, caring people but bright, so bright. Everybody on the Court was very bright, intellectually. I just say they stood out above the rest of us.

JB: I know you had been on the Court about a year when I came to St. Paul to clerk for you and my first experience, of course, was moving from the state capitol up to the Eighth Circuit Law Library. Seems like there was a lot of transition like that—

remodeling of the Supreme Court and you mentioned going from seven to nine justices and back to seven with the Court of Appeals. Were you involved in those transitions?

JJT: Yeah, John, when I came to the Court in '72 and then you came there in '73 –it's hard to describe how abominable the corridors and the facility—I couldn't believe it.

JB: Go ahead and try.

JJT: This beautiful new building—people should have seen what was over there. The judges' chambers—the paint was half off the walls, the desks were old and lousy, the equipment was terrible. There were no modern typewriters to speak of, no word processing even thought of. The third floor was where the state law library was. That was a real collection of dust.

JB: That was my office when I started.

JJT: And the law clerks were in that little room at the end of the law library, there—all of them piled in the same room throwing paper airplanes over the little divider in the middle. Ruth Harrison used to edit all the reports and our office—but the courtroom itself was kind of dingy and dirty and acoustical tile plastered all over it for sound control and dirty old drapes hanging behind the bench. We were going to go to nine and then the question came where were we going to seat nine at that little old bench. I just went to Oscar Knutson, and I said, "Gee, why don't we get some money?" He said, "They won't give us anything!" All Oscar was ever mad about was that they never built that justice building—he brought that statute out that authorized it but they never funded it.

JB: This building? The one we're in?

JJT: Yes! [Laughs] Anytime you talk to Oscar about it, he'd grab that statute and show you they never funded it. It was like, I forget—1930's, or something. I said, "Well, why don't we at least see what we can do about remodeling this place?" So, he said, "Well, if you can get it done, go ahead." I said, "Fine." I went and met with

legislators and everything and conducted them up there and said, "This is a disgrace." Long and short of it, we got the money and remodeled and moved the law library across the street to the Ford Building and got that space.

I remember Judge Fallon Kelly always saying that he negotiated that lease with Ed Devitt for a buck a year. Devitt always used to tell him, "Well, you never gave me the buck."  
[Laughter]

We were in the Court of Appeals chambers down there in the federal building. But everything was torn out of that place. I remember—I was very active in going over it with the contractors and the contractor was from West St. Paul so I knew of his family and he called me one day and said, "You got to come over here." So I get over in the courtroom and they had scaffolding built all the way to the ceiling. He says, "Come on with me." We started and he and I crawled to the top of the chambers of the courtroom. He says, "Look at this." Up at the top of the chamber, they were starting to remove the acoustical tile and it was gold leaf underneath. They had covered the gold leaf with acoustical tile. He said, "You better get some money. We're going to have to patch up that gold leaf." So I had to go find some more extra money to get a gold leaf painter in there. That was how bad that building was. We did get it fixed up. It was a very nice courtroom. We had the little lights that come on for the lawyers for when their time was running out and we had microphones on the bench and a little modernization took place so it was kind of fun. But I just could not believe it existed in those kind of quarters for all those years.

25:00

I always dabbled at things that I thought should be moving along at a better pace. I remember getting the first word processors in there and some of the secretaries didn't want them.

JB: As I recall, some of the secretaries had been there since the building was built.

JJT: Some of them were pretty old. But they didn't want word processors. So I said,

“Fine, you don’t want them, you don’t have to take them.” I think five out of the nine secretaries took them. They had memos about how it affected your eyesight and everything. I don’t think my secretary wanted it but I said, “You’ve got no choice.” Remember they had those big things that were noisy, the printers and all stuff and they were huge, but I always laughed because we got the money and they came in and we didn’t have them six months, and the secretary [that] had led a charge against it, said, “Could you see if we could get some money? The four of us would like to get word processors, too.” So it was another change that took place. There were a lot of things that went on. Judge Sheran did not like administrative work.

JB: When did he come on the Court?

JJT: I think it was when we were down at the federal courts building.

JB: I couldn’t remember.

JJT: ‘73, I think, or ‘74. That’s my recollection, John. Oscar retired when we were down in the federal courts building. And Bob came on and I got to be good friends with him and he started delegating a few administrative tasks to me because I liked to do them and I could get my work done. So I remember starting with Dick Klein and just changing the way the cases were assigned.

Every three months, Oscar would have a Court calendar and he’d start at the beginning by seniority and he’d go through Otis then Rogosheske, Peterson and he’d assign the cases around like that. Well—it was every month, I think. Then at the end of the next month, he’d start with Otis again. Poor Jim was sitting there saying, “I’m getting all the work! And you get nothing! You’re sixth. You don’t get any work. I’m getting twice as many cases.” So Klein and I started scheduling the calendars and we got rid of monthly calendars. I think we went to three calendars a year or something. And then we assigned them on a rotation basis. That was one of Judge Otis’s gripes, that Oscar always gave him more work than everybody else.

JB: Earlier you were starting to talk about the pre-hearing conferences. I take it from your comment and also from my recollection that was something that you had initiated with the Court.

JJT: Yeah, I went to a seminar out east and I know Judge Scott was there, too. I got into this thing and they explained what they were doing. And we were having a problem. I mean, the volume was really going up and I came back [and] talked to Judge Sheran and talked to the Court and out of that we put in the prehearing conferences, which meant the minute you file an appeal, before you file a brief, we pick the brief summation of the cases and the judgment and had the lawyers in and tried to narrow the issues or say, “You better settle this, you haven’t got a good deal.” And the one problem that we had with it was we put the rule that if you had the prehearing conference, you couldn’t sit on that case. And that developed a few problems down the line. But at one time, Judge Otis just took a year, I think, and took all the prehearing conferences and didn’t sit on any cases. He wanted to catch up on his writing of cases. He’d gotten behind. So that worked okay. It helped. But we did a lot of innovating and we went to non-oral panels. We went to commissioner cases. As you know from working at the commissioner’s office, more and more of the cases end up in those non-oral panels that were prepared by the commissioner’s office and assigned to a judge who reviewed them.

**[Track 3]**

0:00 JB: You had mentioned a couple of changes or administrative innovations that you were involved with that seemed to be designed to help the Court manage an increasing caseload. Were there other changes or innovations of that type that occurred during your tenure?

JJT: Yes, John. One of the biggest was—I don’t know how I got interested in it. We had a guy at the Court when we were starting to do some more work with computers. And it occurred to me that we ought to start moving into the twenty-first century and one of the things that bothered me was that we had no inventory of our business. We didn’t

have the foggiest idea what cases were filed out there and where they were and what was going on with them. So at one meeting, it was mentioned that we had some LEAA<sup>5</sup> money—that was President Johnson’s federal funds that were given to the states and we had been granted \$500,000 for some Court project that we weren’t going to do. It wasn’t getting off the ground. So I talked to Judge Sheran. I said, “Why don’t we use that for—let’s get a program started to computerize the Court.” He said, “I’m all for it but I don’t think we can do that unless we get approval from the legislature. If you can get the legislature to approve the transfer of those funds, go ahead.”

So I got the legislature to okay the funds so we had \$500,000 in the kitty and we started then putting together what became known as Trial Court Information System (TCIS) and Supreme Court Information System (SCIS). The first thing we did was SCIS because it was simpler. And we started working on that. We went back to the legislature and got some more money. We met for two years throughout the state. We had all these meetings with different input from the different clerks and everything. I can remember that I ended up being a very unpopular person in the state because none of the clerks of court wanted to change. Any time you change something, they thought—I don’t know what they thought. They just didn’t like me for promoting this change. And the court administrators didn’t like me either. I didn’t know it at the time. I found out later that I was very unpopular with all these people.

Anyway, we got the money and proceeded to work on things. We put out for bids for the computerization of the courts. And it was designed that there would be ten regional centers eventually and all district court computers would go to ten regional centers and they, in turn, would then go to the state main center and the Supreme Court information would go, also, to the center and then we would have an inventory of every case and Honeywell got the contract. We worked on it for nine months trying to get all the things set up and organized and started.

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<sup>5</sup> Law Enforcement Alliance of America

I can remember a Honeywell engineer coming over after about eight months and saying they had blown the whole thing. They had to start from scratch. So we had a setback. But Honeywell ate all the costs of that.

I'll always remember my little input into the thing was we had a numbering system in the Supreme Court. It was a five digit numbering system. And I said, "Really, that's a lousy system. We should start each year, like 80-100, etc. so you always knew what year, at least, the file was opened. Let's put the year there and then start with one hundred." And that's what almost all the districts today are using. Some don't, like Hennepin County, but that's where that numbering system came from. I said if you want to get really sophisticated, you can put the month in there, too, but that's another number or two, so we didn't. That's where you see all the file numbers? That was my contribution to SCIS.

5:00

JB: So initially it was a tracking system for the Supreme Courts appeals and then it expanded.

JJT: It was parallel but SCIS was set up first because there was less resistance and it was easier to show somebody something that was functioning. Once it got in, of course, they loved it. And the bookkeeping system and all that went in. Some of the judges were against it in the beginning and it's built into the system because you now have an inventory of every case. They have to report everything that's going on. There's a statute on the books that says if you don't have your work done in ninety days, you don't get your check. And I only know of one occasion that a lawyer did that to Judge Leonards. The computer automatically notifies a judges if there's a submission on a motion—I think about the seventy-fifth day or so the computer spits out a notice to the judge that your report or your opinion is due or something like that on such and such a date. It really is kind of helpful to busy judges. And they can get extensions—some judges have long trials. He didn't have time to sit down and research and write an opinion. It's easy to get an extension.

I think one of the nice things that happened—it was about three, four years ago, Sue Dosal called me, the state court administrator, and says she thought I'd be interested to know that the State of Ohio bought our system lock, stock and barrel for a million bucks which was more than we paid for it originally. She says, "There, that justifies what you did."

JB: They finally came around.

JJT: It came around where other people are buying it. So that was very nice of Sue to call and I appreciated it.

JB: You talked a little bit about these treks to the legislature when you needed money and I can remember, one memory I have is during the biennium when Dick Klein had to go the legislature to get his budget approved for the Supreme Court for the coming year. I don't think he ate or slept for days before that. Did you have harrowing experiences having to go to the legislature?

JJT: No. I didn't mind the legislature because I had been associated with some of them through Toohey when he was minority leader and I knew a lot of those people. Nick Coleman was majority leader of the Senate when some of the stuff we were getting done had to be done. Nick was one of Toohey's early [unclear].

I do remember helping Dick because he—Dick was a very nice man but he wasn't a strong person. Little things drove him up the wall. I said, "I'll take care of it for you." I'd get his budget handled and the biggest thing I had to try was in '77—the judges hadn't had a raise in six or seven years. It was really bad. That was quite a session. I spent a lot of my free time over there and we ended up with a new salary bill and a new judges' pension program that they wanted and got a lot done in that '77 session. I remember that. But finally got the salary thing moving and then eventually moved it to where were getting those automatics for a few years based on cost of living because that was what was so bad and I just told the legislators, "You can't complain about decisions

and expect people of character to stay here.”

I forget the name of the lawyer down in New Ulm. Oh, he was a good lawyer and they appointed him to the district and he took it and quit in one year. He says, “I can’t do this to my family!” That was some good ammunition. But we did get the judicial salary moving in the right direction.

10:00 JB: Looking back on your years on the Court, how would you describe your judicial philosophy?

JJT: Well, I’d say I’m pragmatic and direct. I thought you should write opinions that people could read and understand. I was not a great believer in big, lengthy footnotes. I’d rather say it up in the main body. Why draft an opinion and then come back with pages and pages of footnotes? I’d throw them all out and take what I thought should be the opinion. I just came from a background of representing plaintiffs, no question about it. If I had any tendencies, I was sure that people got a fair shake and a recovery. I had no problems in doing what I felt the law dictated. I lot of my friends in the personal injury business were really mad at me on that fire case in West St. Paul. That’s where you were living at the time—grew up right across the street from there.

JB: I remember that well.

JJT: Because I held the firemen’s rule applied and denied a big recovery but I thought that was right and I wasn’t going to be swayed by any personal feelings. I tried to write what I thought was right and tried to write it in simple, direct language that people could understand.

JB: Do you feel that philosophy was consistent with the general philosophy of the members of the Court while you served?

JJT: Everybody had their own philosophies and it reflected their backgrounds and it ranged all over the lot. Everybody had different writing styles that ranged all over the

lot. No, there would be a consensus which meant that somebody might have conceded something to get the consensus but that was done by all of us all the time to get mostly unanimous opinions, but dissents are very valuable. Dissents point out a way for lawyers to look at what may happen or may change and I dissented considerably when I started going through all those volumes that I collected. I didn't realize I have fourteen or fifteen volumes there of opinions that I wrote in those thirteen years and there's a lot of dissents there. I didn't realize I was that disagreeable. [Laughs] But the dissents were written a lot of times just to point out that there are avenues to be explored and there are people here willing to listen to those arguments. That's what a lot of dissents are written for.

JB: My recollection, going back as a law clerk, it seemed to me that the Court was not what I would call proactive. I think that they tried to be consistent with prior decisions that remained consistent with the times and weren't swayed by the fervor of the moment.

JJT: The times I served there, I remember using the statement in a couple of opinions: "The jury decided [a certain fact]. We may have decided it differently, but that's not our function." And that rule—I can only remember one case and maybe two in thirteen years that was reversed for factual determination and that was because there was so much evidence contrary to what had been sustained. That's the only time that I remember that happening. The Court felt that the jury had a function and it was a fact finder. And a trial judge in a court case was a fact finder. Facts weren't the function of an Appellate Court. Law was the function of an Appellate Court. And you always had problems with trial judges who had this concern that they were going to get reversed. I thought that was the worst thing you should ever worry about.

15:00 I remember going to judges meetings—county judges meetings and district judges meetings—and I had one thing that I said every year. I said, "To me, a trial judge is like the old western gun slinger. Pull that six-shooter out and shoot. You aren't going to hit the target all the time. But just pull the trigger. Don't philosophize everything."

Whereas an Appellate Court to me is like the national rifle team. I mean, you're down there with the scope and the sights and you got seventeen deep breaths and everything. You should never miss the target. But a lot of trial judges won't do that. They worry that if they call a shot, it's going to get reversed. So what? Call it. To me, a good trial judge is the one that does that.

JB: Your comments about the district court judges reminded me of something. We had visiting judges. I don't think that was any particular innovation at any given time but the judges that visited and sat on the Supreme Court for a few months later, when I got into private practice, seemed to share a reputation for being good trial judges. Do you think that's a reflection of having experienced the appellate process and some of the things you're talking about? Don't be afraid to make decisions.

JJT: I think it's kind of the reverse of it. The ones that we look to call up were the ones that were the good ones.

JB: Okay.

JJT: Yeah. And they enjoyed their experience and it was interesting how many times they would reverse a trial judge. That was one of the original [unclear] that I heard. Because they had been using this as a means of helping the Court when I came on there because the workload was starting to pile up and this added an eighth judges and there were very few in bank panels. You had to decide ahead whether a case was going to be in bank or panel or non-oral because it got so you couldn't hear oral arguments on all of them. They would classify it. I'd sit on those committees every month. And we did the classification and somebody could ask for a reclassification but up front, we'd try to classify them one or two or three in banks, mostly panels of three. So if you had eight people there, you could use them in panel cases. And in the non-oral cases, they were assigned some. But the non-oral cases, as you know from your experience, went to the Commissioner's office where a report was prepared and then the judge reviewed it.

JB: You talked about reviewing some of the compilation of decisions that you'd written. Did that bring back memories of any particular decisions that you felt were noteworthy that you either wrote or participated in?

20:00 JJT: The very first case that was assigned to me when I got on the Court was a case where somebody had a claim against a municipality and given a notice that they intend to make a claim but didn't strictly conform to all the statutory requirements and the Court, based on prior decisions, the trial court correctly said, "You're not precise and therefore you're out of Court." And I wrote an opinion and I said, "They had notice and respectively, we hereby reverse that and you don't have to be precise as long as there is sufficiency there to make the claim clear, that's all we're going to require." And I think that was the forerunner of what we now have is what, a hundred-and-eighty day statute and you don't have to be formal.

It was unfair. People didn't even know that they had to do that and they had legitimate claims against the city and I saw a lot of them go down the tube in practice.

JB: I was going to say, was this a little bit of revenge for experience in private practice?

JJT: Well, revenge and trying to see the people that I saw being unfairly treated weren't going to suffer like that in the future so that was one of the earliest cases. The first couple of years were pretty active. I was quite surprised when I looked back. One of the first things that happened when you got on the Court—that first summer, they sent me to Washington, D.C. for two weeks and Professor Robert Leflar, who had been on the Arkansas Supreme Court, and was on the faculty of the University of Arkansas ran this school for appellate judges. And it was really good. It got you started on what you should do as an appellate judge. But he was an advocate of the Leflar system of resolving conflicts and had written on it and a couple states had adopted it—conflicts of law between two states if you had a question of whose law should apply: Minnesota's or Wisconsin's or somebody and he had written what they called "Choice Influence and

Considerations.” So I got back and on *Milkovich v. Saari* [1973] came up. It was a case where some Canadian people were injured in an accident in Minnesota and for some reason the question came up whether it was Ontario law or Minnesota law and I wrote the decision that we adopted Choice Influence and Consideration and I still think it’s the law today. Judge Peterson didn’t like it and he dissented and that was fine, but seven or eight years later there was a case that came up and in that case, it was a procedure question and he got the majority. It was five to four, I remember, because I dissented on the grounds that there is no real difference between procedure and substance and it was artificial creation but it’s the law today. It’s the way it is.

Then, in about ‘76, I think it was, a case came to the court where a guy had been convicted in Ramsey County of killing his child. The trial court called this doctor from Ramsey Hospital, who was an expert in this thing, and allowed in evidence of what they called the battered child syndrome and it got up to us and I wrote the opinion and I researched and read the articles by this doctor and we ended up convincing the Court that that’s what we should do and we did adopt that battered child syndrome because it’s very difficult to convict somebody who batters a child. This is really a pretty sound psychological test. Generally, some of the basics were that they tended to be people who had been battered themselves. We got into the battered parenting syndrome, too, which is a take-off on that. We didn’t fully adopt that and never did. I think we rejected it later on, but the battered child syndrome is still good law today.

JB: Do you recall any particularly difficult opinions to reach? Issues that you found personal difficulty with?

JJT: Not personal difficulty. Some of them were harder and took a lot more work. I remember *Gryc v. Dayton-Hudson* [1980]. That was a final nightgown case.<sup>6</sup> That was a lot of work. Took a lot of hard work on that case. It was charting some new territory in Minnesota. I enjoyed working on that case. Taconite cases – my God, they drove up to

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<sup>6</sup> Reference to person burned while wearing pajamas made of flammable material.

the Court with truckloads of boxes and stuff. It wasn't as complex as you might think, but there were just mass materials that descended on the Court, here. It was interesting. I'm trying to think of any more. We had one case—Wild. John Wild was the case.

JB: Wild v. Rarig [1973].

JJT: He sued Jim Otis or something. And so we had to all recuse ourselves from the case and call in district judges to hear the appeal because none of us wanted to decide the case that Jim—there was no case there, but if you wrote it yourself, it wouldn't have looked very good.

JB: Well, you'd probably be the next one sued.

JJT: Yeah!

JB: When we were talking before and I asked you about collegiality and it sounded like early on and over the years, you had very positive relationships with the other justices on the Court. Were there ever decisions that created divisiveness on the Court, that couldn't be left behind in the conference room?

25:00 JJT: None that I can recall, John. Honestly, in thirteen years, I don't know of anybody that carried any personal feelings about—they may have felt strongly that their view was right, but it never interfered with sociality, congeniality, just good friendship, collegiality. I never saw any incident of that at all in thirteen years there. It was just totally enjoyable and everybody left their feelings in the conference room regarding their strong feelings about a case. That was really nice. Because you could express yourself there. You know—"I don't agree with you. I think you're really out in left field. You're really hurting this person" or "You don't know what you're talking about"—but it was all gone when you walked out of that conference room.

JB: The intermediate Court of Appeals came into existence, I think, in--

JJT: '84.

JB: That was close to the end of your tenure.

JJT: Yes.

JB: Did you see the impact of that?

JJT: Only to the extent that we should have shipped them over 1,800 cases that we had in the non-oral department. Because they would have started out with a big caseload because we knew they were going to get, eventually, to where they are today. They started out with zero cases and we used to laugh because they were taking pro se appeals and stuff that they wouldn't let through the gate today. No, we cleaned up everything we had. I remember that. We cleaned up that whole backload of non-oral and everything. So they started with zero cases in the Court of Appeals. But it was a necessity. I mean, the quality—it's very difficult. We were up around 2,000 cases a year when I left the Court before the Court of Appeals came in. We were up over two hundred oral arguments and just the time of preparation and time to write and it always bothered me that we would get to your home state, Michigan, where the reputation was that the judges didn't write anything. It was all staff people that ground out everything in Michigan from the Court of Appeals to the Supreme Court and the judges denied that but that was always the reputation and I thought we didn't want to get that reputation. We had pretty well controlled what went on. Even with the Commissioner's cases, there was always a judge on it and a judge had to review it and a judge had to recommend in conference. They'd have a conference on commissioner's cases. So they were rubber stamped out without somebody knowing what was going on. I read every one of those reports that came out. There were a number of them.

JB: We were always right, right?

JJT: [Laughs] Well, mostly. It was lucky – you always had people who had varying backgrounds, like George Scott, with his background as county attorney. When it came

to adopting the Rules of Criminal Procedure, him and Cindy Johnson almost singlehandedly did that. I relied on them. I had no real great background in criminal law and I relied on George basically all the time on a criminal case. I'd do my research but George, he had it at his fingertips. He was a great help to the Court with the adoption of the criminal rules that were necessary.

JB: One of the justices that I recall hasn't come up in our conversation is Justice Yetka. What's your recollection of your time with Justice Yetka?

JJT: We ended up being good family friends. We used to go up to his cabin up there. Larry was the ultimate politician. I mean, he never got over being a politician. It sometimes used to make we wonder but he was a hard worker. He always got his work done. But I never felt that Larry ever quite left the politician's role at home. He was always worried about political aspects of things, which didn't concern me one bit where the chips fell. But Larry was one of the harder workers on the Court and this building was his project. He fought it through and got the money and got it done.

**[Track 4]**

0:00 JB: I'd like to talk to you for a couple of minutes about the circumstances of your leaving the Court. It was my feeling at the time that what appeared to me to be a relatively minor but unfortunate incident was made to be much greater than that by the media. I'm not sure that your views were ever really aired. Do you want to take a few minutes to maybe add your thoughts to the record?

JJT: Sure, John. It was a devastating time. It was my own fault because I was always curious and some of the young lawyers were complaining about the fact that we had put in that multiple choice bar exam.

JB: The multi-state.

JJT: Yes. I was a great advocate of it. So I talked to Dick Klein, and I said, "I'd like

to just try it. Just see what the problem is.” So I took it one year and I didn’t pass it. It was shocking. I couldn’t figure that out, which led me to believe maybe we got a problem here. Well, subsequently, I found out that you really have to take a course to teach you how to answer multiple choice questions. If it had been essay questions, I would have had no trouble with it. So, I wasn’t planning on doing it again. I was supposed to go out East and it got canceled and I called Dick Klein and I said, “I’d like to try that again.” I remember the conversation. I said, “What difference would it make if people brought materials in there? I don’t get this thing. Why don’t we let them bring whatever they want? They got so much time. When you do legal research, you look in the books—it’s not the answer you’re looking for. It’s the question. Do you know what the question is?”

My distinct impression was maybe it wouldn’t hurt to try it. So I brought some books with me that morning and I walked in. And you got to remember a couple things that at the time didn’t dawn on me. George Kurvers was head of the Judicial Standards Board. I had been trying to get him fired for about a year because he had just done a horrible job. He ran his office in the newspapers. He started having an affair with his court reporter and was going to marry her and went to bars interviewing. I just thought he didn’t understand the job.

He officed in the same office with Dick Klein where I was going to take the exam. The second thing I didn’t know is that his daughter was Dick Klein’s secretary. A lot of combination of things came together. So she said, “Why do you have the books?” I said, “Well, Mr. Klein said it was all right.” She never said another word to me all day. They called Dick Klein at the auditorium apparently about five after nine. Nobody—why didn’t they come and tell me, “Dick says no”? Dick, being weak, thought he was going to get himself in trouble and Kurvers saw the opportunity to get even. It was my fault. I should have known better than to not pin Dick Klein down a little better. But I didn’t think much of it. Amdahl came in, “You take the exam?” I said, “Yeah. I tried it again. Dick said I could [take the books in].” [Amdahl said], “Well, that isn’t his story.” And

from there it went and then Kurvers made sure—he had Judge Siegel on there, Hyman [sic] Siegel from the district court. Hyman [sic] didn't dislike me. He hated the Supreme Court because we had reversed him on that iron ore trust case<sup>7</sup> and he was just rabid about that. So he saw a way to get even with the Supreme Court and embarrass them, I think. That's my opinion. [Unclear] [Hy] Applebaum [unclear]. And a county judge on there who didn't like the judges that I associated with. It was a funny combination of circumstances.

Well, then the Minneapolis paper smelled blood. They copyrighted the story. It was devastating to my family. It was totally unfair. In the long run, it got so bad that I just resigned. They were having hearings and recommendations coming forth and they recommended that I be removed and I thought, "Oh, baloney." My family couldn't take it. We went to Florida to the Tropic Ranch where I met your parents and that's how you ended up as my law clerk and that's how we introduced it to your wife.

5:00 JB: That's another story.

JJT: But anyway, we went down to the Ranch and I resigned while we were down there in '85. So we're driving home in '85 after a couple [of] weeks [of] vacation and I had no job, mortgage on the house, mortgage on the car, no money in the bank. Tried a few law firms and nobody wanted me. I was bad news, I guess. So a friend of mine, Harry [unclear], a lawyer in St. Paul who officed with Jim Bettenburg, had a friend who had an office building in West St. Paul and his son was a lawyer, Paul Taylor. So I went down there and I rented space in their building, borrowed money from the old Southview Bank. Didn't have any money. I think I borrowed eight thousand dollars to buy all the equipment and stuff to open the office—desks and stuff.

JB: Did you have to give him the apples back?

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<sup>7</sup> Matter of Great Northern Iron Ore Properties, 1981.

JJT: [Laughs] Probably! And we used one of their secretaries. From the old experiences when I was running the office in South St. Paul, when we needed secretaries, I'd go the typing teacher at South St. Paul and we got more good secretaries that were graduating in typing. So I went to Humboldt High School up there and met the typing teacher and she said, "I have nobody this year that I'd recommend."

So, then I went over to Sibley [High School] and I got a call from this guy, who said, "The best student I ever had graduated a year ago and she's going to quit her job because the guy didn't give her a twenty-five cent raise." So, I hired this gal. Well, her and I fit together and she was superb. I had computerized the whole thing and she was just a marvel and a big help to me.

So one of things I noticed—I was very old school and you didn't advertise. When I came back, everybody was starting to advertise. These young lawyers were getting all kinds of calls because they had an ad in the yellow pages. I thought I might as well not be an old fool so I bought an ad in the yellow pages and from then on, I was so doggone busy. I ran a storefront operation in West St. Paul, except in the spring of '86, I went down to the Parker House for dinner. I ran into an old friend of mine, Jim Olson, who had played golf at Mendakota when I used to play there and had been with Braniff Airlines and was out of job. Braniff had shut down. He had gotten the idea and started Sun Country Airlines. He had hired all these unemployed pilots and they, in turn, kicked him out as the president and put in one of their buddies and they were going to sell to Northwest Airlines and he wanted to know if they could do it. I took the case. Well, the long and short of it, about a year and half later, we had a different buyer for, like, eighty or ninety million dollars and I got paid a nice middle-six figure fee that was easy to divide by one. I always said it rescued me from the ranks of the poverty stricken. So at that time, I was back to where I was in '72. My house was paid for; my car was paid for and I had money in the bank and I was real well. I kept that office open until December of 1992. Lisa, the secretary, was getting married and moving to Wisconsin and so Lou Brenner,

who was a friend of mine—I closed the office and went Of Counsel with Lou.

10:00 It was just a great thing. I work theoretically four mornings a week from about eight thirty to eleven thirty or twelve and take a couple months [of] vacation every winter and it's been very nice. I'm enjoying it and still active. But I take a lot of time off. I just don't have enough time anymore. I'm building things, still. I build radio controlled airplanes and boats. I'm remodeling my pool deck. I'm doing carpenter things. I wish I had more time. It's been good for me.

If I had one thing to say about that whole incident, I'd just say I was devastated at the time. I thought I was doing an excellent job. My record speaks for itself. I think the Minneapolis paper in its failure to be truthful—like they had me owning a hotel in Florida. They went down and took pictures of Tropic Ranch. They never published the fact that it was a two-story building that your dad and myself and eleven other people owned. It's not a big place. They never put the picture in, just that I owned a hotel down there. They didn't put in that I got paid a little for it but I reported it every year. It said I got paid but not that I reported it every year. They hit me on using the long distance lines. I got permission from Judy and then I paid for it every month. So they just distorted. I think, in my own mind, they cheated the taxpayers of Minnesota out of a pretty good public servant. They did me a great favor in the long run, what I thought was so devastating turned out to be financially very rewarding. But I still would have liked to have fulfilled the term. I think I could have contributed a lot.

JB: You talked about your return to private practice and what you've been doing. I was interested in your perspective of how things have changed in the thirteen years you were on the Court. You talked about the prevalence and necessity of advertising. Were there other changes that you saw in private practice when you came back to it?

JJT: I've been asked that a couple times, John, and I summed it up this way: When I left private practice in '72 to go on the Court, I left a profession. When I came back and went into practice in '85, I came back to a business. And the saddest part of that

statement is, a young lawyer will never know the difference. There was a comradeship between lawyers. You trusted one another. Their word was good. You could fight all day in the courtroom but you remained friends. It wasn't, "Oh, did I stick it to him!" I mean, you protected your client's interest but you weren't dishonest about it. I wouldn't want to be a young lawyer today, the way it is out there today. It's not fun anymore. I don't see anybody I know of the young lawyers that look to me like they are having fun practicing law. I had fun practicing law. I enjoyed it. It was a place I loved to go to. I think that's sad.

JB: Do you see any hope to recapture that?

JJT: No. I mean, with the structures today, John, the big firms—you're in a big firm. You know what the overhead is. I mean, I think big firms today hire bright, young guys and they ask them almost immediately to become dishonest because you can't bill two thousand hours a year and that's what I understand is required in some of the firms. That's dishonest! You'd just spend seven days a week there and wouldn't sleep. If you really worked your tail off, maybe 1,600, 1,700 hours. Fourteen hundred is a money-making billing schedule. But that's not what exists out there anymore.

To me—in the big firms—because I never was there, I call it the thumbprint rule. If you can get your thumbprint on the file, you can write a chit and you can protect your job because you can bill enough time. But that poor file may have seven or eight thumbprints on it for every hour instead of paying somebody like you two hundred fifty bucks an hour, you might be paying eight hundred bucks an hour because everybody's got their finger on the file and there's seven or eight chits being written for that file. The costs have gotten so high, it's just out of control. And you got all these young lawyers coming—what are they going to do? They go open shops by themselves and if they're lucky, they don't get in trouble because they're in way over their head. They've got nobody to talk to and some of them manage to get by but I think every good lawyer's learning was built on the bones of some poor client that he probably goofed up.

15:00 But when we were young, the trial lawyers would try—there was no no-fault. The insurance companies would send all the young lawyers into court to try all the property damage claims and that's where they got their trial experience. There was five hundred bucks at risk! But they learned. The only place that lawyers really learn anything is with a government agency or county attorney's office or something, where you've got people supervising them and you don't get in trouble. You learn how to do things. I am concerned that clients aren't getting their value. I see it in my office—we have meetings and they talk about billing and there is pressure on them, even the lawyers in our small firm. But I say, "I don't care how much time they got in it. The product has to be worth what the final bill is." And I think that concept is totally gone. That's why I think there are going to be some potential changes. Arbitration is going to take over. Contract is going to be done, where the firms are no longer going to get a blank check to defend a case. They are going to contract—we'll give you \$300,000 to defend this case. You work it out.

JB: In the private firm setting, we're seeing a lot of that now, where the clients are starting to really treat it as a business relationship and dictate the terms of representation.

JJT: John, in closing I want to thank you for taking the time to come down here and I want to thank the Court. It's been a nice opportunity for me to be here. I try to maintain my contacts with the Court and the Court will always be dear and close to me. So I want to thank everybody.

JB: One of things in the Minneapolis paper that you were talking about mentioned at the time was some speculation that you were, number one, registered to take the bar exam and number two, planning to use that somehow to become admitted in the State of Florida, that you were going to move there. Any truth to that?

JJT: No, John. That was a very big thing. In fact, Dick Klein started it, I think, by saying that I had mentioned that I could talk to Chief Justice [unclear]. I never talked to him about anything! What happened—this Florida thing started out of that conversation.

It became a big thing in the Minneapolis paper. People I haven't seen for a time will say, "Oh, aren't you living in Florida?" That's how well they published it! John, anybody with an IQ of twelve or better would figure if you wanted to go in the practice of law, you would stay where your contacts were. And I stayed in Minnesota where my contacts were. I had no intention of moving to some other state to practice law. If I wanted to live in Florida, I could have retired as a judge—they had a program down there where they are using retired judges to do mock trials. You had all the work in the world that you wanted if that's what you wanted to do. It got out of control, this thing that I was moving to Florida and that was the big program of the Minneapolis paper. What could I do to counteract it? I had nothing I could say. I just—I was devastated. I thought simplistically if you just tell the truth, everything would be alright. Well, it wasn't. I was naïve. I paid the price. It was my own fault in the beginning for not being more precise with Dick Klein because in retrospect, Dick was such a weak character that I know he was scared to death when they got that phone call and just didn't do the right thing. He just got scared to cover his own fanny. That's all he did from that day on. And that's too bad. But I have no regrets. Poor Dick, he just died recently. No, me in Florida, that's something I couldn't overcome. To this day, people say, "Oh, you're back from Florida?" "Yeah, I got back from my vacation there as I do every year for three, four weeks." "Oh. I thought you moved there."

Well, that's how that all developed and I was unsuccessful in meeting the thing head on. The Board of Judicial Standards where Judge Seigel was and Mr. Applebaum and Judge Kurvers was the Head of Judicial Standards Board—he really controlled that board and pushed the whole thing through. Got even. That happens. People get even with you. As I mentioned earlier, a lot of the clerks of courts and stuff from that computerization—I didn't know until I got into this that I had so many enemies from pushing that computerization through. I didn't realize it at the time! But some of them got even. That's life. I survived.

20:00

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