

Henry Hess: An Oral History

Henry Hess

An Oral History



FOREWORD BY JUDGE OWEN PANNER

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

Copyright © 2011 United States District Court of Oregon Historical Society
Printed in the United States of America

PROJECT STAFF

Janice Dilg, Oral History Liaison & Editor

Adair Law, Page layout

Sara Paulson, Transcriber

Emily Stuckman, Auditor

CONTENTS

Foreword.....	vi
Introduction.....	viii
Recording One, May 1, 2008.....	1
<i>Family Background; Growing Up; Early Schooling; High School Band; Father as State Politician; Military Service; Law School; Marriage; Early Law Career; Pendleton Social Life; Starting a Family</i>	
Recording Two, February 24, 2009.....	27
<i>Part-time Bankruptcy Referee; Presidential Powers; William O. Douglas; Bankruptcy Referee; Bankruptcy Court-Pioneer Courthouse; Ninth Circuit Conference; Gus Solomon; Chapter 13 Reforms; Uniform Rules; Judges as Interested Parties; Legislating From the Bench; Bankruptcy Appellate Panel; Fellow Bankruptcy Judges; Owen Panner</i>	
Recording Three, August 5, 2009 (video).....	53
<i>Law Clerk's Award; Fellow Bankruptcy Judges; Uniform Rules; Retirement; Hobbies; Radio-controlled Planes; U.S. Supreme Court Politics; Woodworking</i>	

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

Henry Hess, Jr. was born in La Grande, Oregon on March 29, 1924. His mother Estrid Johanson immigrated from Sweden as a child in 1902, and after marriage became a homemaker. She died when Henry was but 10 years old. His father Henry Hess, Sr. was a La Grande lawyer and politician. He was elected state senator in 1931 and ran for governor in 1937, capturing the Democratic nomination, but losing in the general election to Charles Sprague. One memory Hess has from that race is that he and his brother accompanied his father to campaign appearances to counter rumors that they were both in prison. Hess's father was appointed U.S. Attorney for Oregon in 1945.

Growing up in La Grande, Henry enjoyed the outdoors. He hiked the Wallowa Mountains in summer, skied in the winter, hunted and fished. He was a good student, and his favorite classes were math and music. Henry played clarinet for four years in the La Grande High School band. It was very exciting, in 1940, when the band won a national competition that included a tour to Los Angeles to perform several concerts, including a national radio broadcast on NBC. Music became a lifelong interest, and Hess later performed on clarinet and saxophone in several dance bands.

Hess was driving back from a ski trip in December 1941 when he heard a radio report about the Japanese bombing of Pearl Harbor. He enlisted in the Navy in the fall of 1942 shortly after he began classes at Eastern Oregon College. A year later he was called to active duty and entered the Navy's V-12 College Training Program for commissioned officers. He studied for a year at the University of Idaho, Pocatello before moving on to midshipman's school in New York City, and later to diesel engineering classes in South Carolina. Hess was then assigned as engineering officer on a ship based on the American-occupied island of Palau. Hess never saw combat, but nearby islands were occupied by the Japanese who occasionally fired artillery rounds at their base and damaged one ship with a bomb delivered by a suicide swimmer.

Henry Hess was discharged from the Navy in May 1946. That fall he enrolled in the University of Oregon Law School. He enjoyed law school and graduated three years later, fourth in an original class of 100. In 1949, he entered into a partnership with Gene Conklin and they opened an office in Pendleton. Their first year they each earned about

\$1,000. They dissolved the partnership after three years, and thereafter Hess practiced solo as a “jack of all trades” with a specialty in worker’s compensation cases.

Hess’s father was a close friend of U.S. Supreme Court Justice William O. Douglas. Douglas had a vacation cabin on the Lostine River. Henry also knew Justice Douglas, and acted as his chauffeur when he came to town. He recalls a camping and fishing trip at Minam Lake with his father, Douglas, and others when the Justice, frustrated by their slow pace, ran ahead. When the party caught up with him, Douglas had inflated their rubber raft with lung power rather than the pump Henry was carrying. Hess admired Justice Douglas: “He was a real he-man.” And, “I agreed with almost all of his opinions.”

In 1958, Henry Hess was appointed by the U.S. District Court as a part-time referee to the Bankruptcy Court. He continued in that capacity, and maintained his Pendleton law practice, until 1973 when he was appointed as a full-time Bankruptcy Court judge and moved to Portland. An early accomplishment was standardizing the forms and procedures used by him and the two other judges on the court. This streamlining saved time for both lawyers and judges. From his first days as a part-time referee, Hess took a special interest in Chapter 13 bankruptcy cases and became a nationwide expert on the subject. He has written several articles on Chapter 13 and promoted its application as “a good thing to do” in many cases. In Oregon, Judge Hess handled all of the Chapter 13 filings and increased its use from only five percent of cases in 1967 to one-third of cases in when he retired in 1993.

In retirement, Henry Hess has found more time to read, follow politics, remodel his home, and pursue his hobby of building and flying radio-controlled model airplanes. This hobby draws upon his technical expertise acquired in the Navy, and his basement sports a complete woodworking shop and an array of sophisticated electronics.

Henry Hess’ oral history was recorded in 2008 and 2009. His stories range from life in the pristine landscape of Eastern Oregon in the 1930s to the complexities and evolution of bankruptcy law, and reveal a notably successful life and career.

Michael O’Rourke
September 5, 2010

Family Background

MO: The date is May 1, 2008 and we are starting an oral history today with Henry Hess. The interview today is taking place at Henry's home in Washington County, between Beaverton and Portland.

Okay, Henry, I guess you were born in 1924 in La Grande?

HH: Yes.

MO: Where did your family live at that time?

HH: My dad and mother were living in La Grande on Washington Street, I think, it was.

MO: From the earliest you can remember of La Grande at that young age, what sorts of things might you have done as a child to amuse yourself?

HH: I understand that we lived in a house on Washington Street until I was about two years of age. Then my dad bought a home on Oak Street in La Grande, which happened to be rather close to the mountains. I lived there until I went in the service.

MO: What kinds of things could you find to do in La Grande as a young boy?

HH: Everything you could do in the city and a whole lot more that you can't do in the city. Because the gangs that we ran around with, we'd almost spend all of our time in the summer time, when we were not in school, up in the mountains above La Grande. We had regular friends that went with us, my brother, and I. We were quite close.

MO: I guess this would be the Wallowas?

HH: No, this was the Blue Mountains.

MO: The Blue Mountains.

HH: Right. La Grande is right on the foothills of the Blue Mountains and overlooks the Grand Ronde Valley.

MO: You said you were very close to your brother, Raymond?

HH: Yes.

MO: You were the eldest, was that right?

HH: Yes. He was two-and-a-half years younger.

MO: What would you do in the mountains? Would you just take off for the day?

HH: I would hike, and there was a lake above there, Meacham Lake. It was about three or four miles from home. We'd go fish for perch. Then we'd also build dams

in the creek and build lean-tos, trap chipmunks, shoot things with our BB guns, just a lot of hiking.

MO: What were your parents up to in La Grande when you were young?

HH: My dad was practicing law. His routine was to go to the law office at about ten or eleven in the morning. He would come home for evening dinner, and then he'd go back to work. He said that is when he really got his work done, was after seven o'clock, when the telephone stopped ringing. That is where he did most of his law work.

We didn't see him a great deal, but whenever he did anything recreational, he always took us along. So we knew he was always there when we wanted him and needed him.

Growing Up

MO: What kind of outings would the family take together?

HH: I can't remember much about that. My mother died when I was ten years old. That would have been in 1934. Then from that time on, my dad hired live-in housekeepers. We had two or three of those before I went into the service. They were quite close and lived there. Dad had lots of friends in the house, politicians, and others.

MO: Tell me a little bit about your mother, before she died.

HH: I can't tell you much about her because I don't know what a ten year-old would know about his mother. She took care of us, cooked our meals. We did not play together, as a boy, ten years old. She was there for me, but we did not do much together.

MO: For the record, what was her maiden name?

HH: Estrid. She was born in Sweden and came to the United States when she was two years old. The family first went to Mexico, but they found out once they had been there for a while that Pancho Villa was on the rampage, and they decided they had better leave Mexico. They wound up in a little town called Perry, Oregon—just west of La Grande about two miles—that was a sawmill town. Her name was Johansen, and she had five brothers and four sisters. The brothers, most of them, worked in the sawmill early on, and then later did other things. That was the first thing they did in moving to Oregon was work in the sawmill.

MO: Do you know how your mother and father got together?

HH: No, I don't know that.

MO: Your mother was a homemaker in your house?

HH: Yes.

MO: You mentioned that she died when you were ten years old.

HH: Yes, she died of cancer. I can't tell you what kind of cancer, but it was when she was only thirty-four, something like that, when she died.

MO: Was she ill for some time then?

HH: Yes, but not a great, long time. I would say only more like, three or four months. But I wasn't keeping track of that, but that is what it seemed to me.

MO: So, it was fairly sudden, it sounds like?

HH: Mm-hmm. Right.

MO: That must have been difficult on the whole family.

HH: Oh, I suppose, but on the other hand, kids adjust very quickly. Then we were unique among the other young kids our age because when we wanted to go on an adventure, and we'd invite one of the other fellows or girls to go with us, they'd have to go check with their mother first [*chuckles*] and find out if they had to take their galoshes, or

whatever. Raymond and I could just do what we wanted.

Early Schooling

MO: Your dad was at work so you didn't have to ask him either. Then, where did you go to grade school?

HH: I forget what they called the grade school. Anyway, it was a La Grande grade school. It was quite close to our house, within ten blocks, I suppose, eight or ten blocks.

MO: Was it just one school, for all of La Grande?

HH: No, there were a couple of schools besides that.

MO: What was school like for you as a young boy?

HH: I don't remember the earlier grades, but I really enjoyed school. I enjoyed the studies and the friendships that developed in school. When I would go to school in the morning, I would stop at a friend's house and pick him up, and we'd walk together. I had lots of friends in high school. In my senior year, I was the vice president of my class.

MO: You were the vice president of your class?

HH: Yes.

MO: What subjects were good ones for you?

HH: I was very much interested in the sciences, math, and physics. I took all kinds of courses. One of the courses I took, I don't think they give anymore, was called Civics.

We learned about government, but also that teacher was interested in speech. He knew a lot about dialects. He said he could tell you within fifty or one hundred miles of where you lived just by talking with you. He taught us how to use the Webster's Intercollegiate Dictionary. You could give me a word, and I could write it out in that format, or in that system of pronunciation, and that was very helpful.

MO: Sure. Was this particular teacher one of your more influential teachers?

HH: Gee, I seemed to like all of them. I liked him very much. No, I can't say that I had favorites, because I seemed to like all of the courses I took.

MO: You were a pretty good student?

HH: Yes. But, I didn't get on the honor roll. In my first year of college I took Math and Physics and English and Speaking. At the end of the term, when I got the first report card it was all A's, except one B in a course called

Orientation—"How to Get Along in College." [*chuckles*]

But that was surprising to me because I had not done that well in grade school.

MO: I see, so grade school wasn't as good for you as high school?

HH: I think it was more political. I didn't polish enough apples [*chuckles*]

MO: Do you remember visiting your dad's office at all as a child?

HH: Yes. I would do that every once in a while. After school, go down and get a dime from him and go down to Woolworth's and buy some chocolate or something. But I didn't take much interest in what he was doing when I was in high school.

High School Band

MO: I guess music was significant for you in high school?

HH: Yes. Very much so. I started taking piano lessons at age three. Then when I had gone into high school I dropped that and went into the clarinet at my dad's insistence. I had been suffering from asthma that had been brought on sometimes by pollen, but sometimes just by exertion. So he

decided it would be good for me to play a wind instrument that might help build my lungs. He arranged that I should go see the band director. He sent me down to the superintendent's office with a little note, and I came back with a great big case. It turns out that it was a bassoon.

MO: A bassoon!

HH: I didn't think I wanted to play the bassoon; he wanted me to because I was one of the few who had had some musical training. The bassoon is a solo instrument, not very many in a band or orchestra, so he thought that would be a chance of having somebody who already knew something about music to play the bassoon. But I insisted and played the clarinet. [*chuckles*]

That band had a fabulous director in high school. Rew Loney was his name. When I was a junior in high school, we were invited to attend a national music educator's conference that was being held in Los Angeles. The conference had invited two bands to come and play; La Grande, Oregon would represent the West and Joliet, Illinois would represent the East. La Grande was a community of about eight thousand people—this was also still during the Depression. Here is a community of eight thousand, which dug up enough money to take a one hundred-piece band and all its instruments down

to Los Angeles for a week. To pay our train fares, our hotel, whatever. Nowadays I am very disappointed that people in some communities can't raise enough money to even have a band, let alone do that. [*chuckles*]

I think that was very good for me and almost everybody that had acquaintance with it. Maybe they didn't turn out to be professional musicians, although some of them did, nonetheless they learned about music, they really appreciated it and enjoyed it. Music is something that the more you know about it the more you enjoy it.

MO: Now, you said you had started playing the piano at age three?

HH: No, when I was in the third grade. I was never an accomplished pianist. I could play well enough to entertain myself.

MO: [*chuckles*] Was it your idea to start playing the piano or was that also—

HH: That was my mother, undoubtedly.

MO: Was music something that your parents enjoyed?

HH: Not my dad. I think my mother did; her brothers were musical. My dad was not much into music. He didn't really appreciate music, or like it. I think that was

true of most of his brothers and sisters. So any musical talent I had came from my mother's side.

MO: You said that you had some training in music also before you got to high school, is that right?

HH: No, just the piano lessons.

MO: But you took piano lessons from a teacher in town?

HH: Yes.

MO: What kinds of pieces did you play?

HH: Classical. But I can't tell you what. It was so long ago.

MO: In the high school band, was it still mostly classical or marching music?

HH: Classical and marching. We marched and played lots of marches, but we also played classical music. There was a time when there was a music contest going on with bands representing northeastern Oregon. They were B bands. We were an A band. So, at the end of the contest we played a number or two. One of the judges stood up and said that he wanted us to know that that we were the best band he had ever heard. Not just high school band, but best band he'd ever heard. [*chuckles*]

MO: That must have been satisfying.

HH: It was exciting. Yes, when we were on that trip to Los Angeles the band performed a concert on NBC.

MO: Oh yes? It went out nationwide?

HH: Nationwide, yes.

MO: How was that trip for you? Was that the first time away from Eastern Oregon?

HH: Oh, yes, I think, pretty much. I traveled some in skiing. One of my favorite activities in high school was skiing.

MO: So where would you ski?

HH: First there were small places that had a rope tow and the hills were not very long, but we did learn how to ski.

MO: I guess the equipment in those days was—

HH: We had what we call now bear trap bindings. Whatever a ski did, your foot and leg did. If you twisted, so did your foot. [*chuckles*]

MO: No release.

HH: One time I sprained an ankle. During the week it would recover. Then the next week I'd go out and sprain it again; it went on for quite a while. One time I was skiing straight down a hill, and I saw a bump, and I thought that would

make a good jump. So I pushed hard and the skis went right into the snow and stopped, and my back goes, "boing!" [chuckles] I walked around with crutches for a while after that.

MO: Sort of bent over until your back recovered, right?

HH: Yes.

MO: Was this something your father did too?

HH: No, no.

MO: You just picked it up in high school?

HH: My brother skied also. I liked speed, when I was on my skis; I enjoyed that. [chuckles] In one of the races there were skiers from Baker, La Grande, Pendleton, and Walla Walla. I had a friend that I skied with, Jim Bohnenkamp was his name. On that race he took first in the downhill, and second in the slalom. I took the first in the slalom and the third in the downhill. La Grande just walked away with the trophy. [chuckles]

MO: You mentioned that you traveled sometimes to ski?

HH: There were other areas. We skied Anthony Lakes and also skied in what we called Spout Springs, near Elgin.

MO: You would travel a little bit around the Northwest?

HH: Mm-hmm. Yes. Later on we went quite a few different places to ski.

MO: On that trip to Los Angeles, did you travel by bus, or how did you get there?

HH: We went by train to Los Angeles, but we took buses for some side trips. One of the trips was to visit Hoover Dam. [now known as Boulder Dam]

MO: So it wasn't all music then, you had a little bit of sightseeing?

HH: We had lots of fun. We went to Knott's Berry Farm, which I don't remember much about, but I remember that is one of the things that we did.

MO: It was the band from the high school plus your band teacher and someone else?

HH: Yes, I don't remember who else. There were probably one or two other assistants to the band director to take care of that many kids. It is one thing just to have them for an hour a day, you know, to play in the rehearsals and also marching and whatever, but to take care of them for twenty-four hours, I am sure there must have been others around also.

MO: Yes, That is probably right. [chuckles] Did you know your grandparents on either side at all?

HH: My mothers' parents, I didn't know my grandfather at all. He worked in the sawmill out of Union, Oregon—in Pondosa they called it. My grandmother ran a boarding house there. This was during the Depression, she would feed men that worked in the sawmill. There was a company store; she would buy the stuff with chits rather than money. That was part of the Depression.

Then on my dad's side, I knew them better. My grandfather was an interesting man. He seemed gruff, but he wasn't. He was a great reader. He told me a story about traveling by buckboard someplace with another man. They had been traveling for quite a long ways, a long time, and they stopped at a farmhouse and were invited in for dinner. After dinner that they got on the buckboard. This fellow, his companion said, "Where do you find the time to read?"

He said, "Remember when we went into that house to eat? Afterward you took a nap. I was reading." [chuckles]

My grandfather was at our house when Raymond, my brother, and I were still in grade school. We were going to go see a movie and he said, "What are you going to see?"

I said, "It is a story about the Crusades."

He said, "They will have the wrong people as the villains. The real villains were the Christians, not the Muslims."

MO: [chuckles] You just mentioned the Depression. Did you have much awareness of it when you were growing up?

HH: Some of my friends' clothes were not what they would like to have, and I'm not sure how they ate. We were modest; I was never hungry, but money was not easy. I remember when I first got into the model airplanes, powered airplanes, I wanted a gasoline engine that would cost six dollars. I asked my dad if he would give me the six dollars, and he said, "If you paint the kitchen cabinets I will give it to you." But he never refused Raymond or me when we requested anything. But for some reason, somehow, without saying so, we didn't ask for a lot of things.

MO: What was your house like at that time?

HH: Oh, a very small home. Just a two bedroom, a living, dining room, kitchen, very small home.

MO: Did you heat it with wood heat?

HH: Started out with wood from the sawmill that my dad owned a part

interest in. His father and two brothers and he owned a sawmill in Union, and we would use the slab wood from the sawmill for a while for heating the house. Then later we switched to coal.

Father as State Politician

MO: You mentioned that your father knew a lot of politicians in town, as a lawyer.

HH: Oh yes. All over the state.

MO: What were his politics?

HH: He was a Democrat and he was elected as the senator for Union and Wallowa counties in the '30s.

MO: In the Oregon Legislature?

HH: Early '30s; his first session was in 1933. He told me he had written back to his partner apologizing for being there so long and leaving all of the work for his partner to take care of. His partner, R.J. Green wrote back and said, "Stay as long as you want. There is not enough business here to keep me busy." [chuckles]

The Depression affected attorneys and doctors, probably, as well. It wasn't just the working man who was in bad shape during the Depression. He did a lot of work in the legislature. In fact, some of the good things that he worked on, I saw in my own practice. For example, I had a client tell me he would have lost his farm

had it not been for my dad's act that gave a moratorium on foreclosures for taxes. The bill said that if you'll pay the interest on the tax you don't have to pay the principal, or at least not right away. So I have had people say that saved their farm for them.

MO: This is something that he got through the legislature?

HH: Yes. This was a bill he authored. He authored several amendments to the Worker's Compensation Act. It turns out later, in my practice, I did a lot of workers' compensation work.

MO: What was his practice like in La Grande?

HH: "Jack of all trades": divorces, personal injury cases, and criminal cases. He defended several murder cases. I would have to say Jack of all trades. He said that his partner, R.J. Greene, would do much of the research, and R.J. would load the gun and he'd shoot it by going in the courtroom and making those arguments.

MO: He appeared in court often?

HH: Yes.

MO: You said that you were not too aware of his career when you were younger?

HH: No. I guess I can remember one or two times when I was in high school going to a courtroom to listen to an argument he

was making in a case, but that is about all. That's as close as I came to it.

MO: How would you describe him?

HH: He was a very warm person, and for that reason he made friends easily. *He remembered them.* One time, we were pheasant hunting, and he and I went into a tavern in Union, Oregon, just a little, teeny town, and the bartender said, "Oh, Henry, it's you!"

My dad apologized after we left and said, "Son, I would have introduced you, but I forget his name." [*chuckles*]

But wherever we went there was somebody that knew him.

MO: Do you remember anything about any of his campaigns for the senate?

HH: No. I was too young then. But in his campaign for the governorship during the summer, when my brother and I were out of school, he took us along when he went around the state in the campaigns. One of the reasons he took us along was there was a rumor circulating at that time that both of us were in prison.

MO: [*chuckles*] Both of his kids in prison?

HH: Yes, that my brother and I were in prison. But, that wasn't the only thing that was dirty about that campaign.

MO: Would this be the campaign that he made for governor?

HH: Yes, and that would have been in '38. He had defeated the incumbent, a Democrat, General Martin. Then in the general election he was running against Charles Sprague, editor of the newspaper in Eugene. My dad took the second highest votes ever made for governor. But the trouble is that Sprague took more than that. [*chuckles*] Hard fought campaign.

MO: Oh, yes. Was that the only time he ran for governor?

HH: Yes. Just that one time.

MO: We may be getting a little ahead here, but he became a U.S. Attorney?

HH: Yes. That would have been when I was still in the service. He was appointed in, I believe, in '46, and he stayed there until '53. He stayed there a year and a half after Eisenhower had taken office. In that day and age it was customary for U.S. Attorneys to submit their resignation as soon as a new president was elected. Then the president would decide how many of them to accept and how many not. Anyway, the Republicans couldn't agree on the person to appoint. My dad wrote to the then-Republican Attorney General saying, "You have got to let me appoint deputies to this office. We are running out of lawyers. All of the Democrats are resigning because they know they are going to lose the job."

The Attorney General wrote back and said, "You just appoint anybody you

want. You don't have to check with the Republicans." [chuckles]

MO: Who appointed him originally?

HH: That would have been Harry Truman.

MO: Actually, I didn't mean to phrase the question in that way. Who was it that recommended him to the Truman Administration? Did he have some votes in the state?

HH: I don't know, but he was prominent in Democratic politics, having run for governor and keeping an oar in the political scene with friends in the Democratic Party.

MO: Any other politicking that you were involved in on behalf of your dad in those days, besides the trip around the state?

HH: No, I worked some later when he was seeking an appointment as a U.S. District judge. I helped him write some letters. I was going to law school at the time and this would have been in the summer recess.

MO: After you graduated from high school you went to business school?

HH: Yes, I did. That was at my dad's suggestion. He said, "Don't be in a big rush getting through school. I would suggest that you go to business school for a while and learn some of those skills before you go into

college." There was a private business school in La Grande. I took typing, shorthand, accounting, and business English, things of that nature.

That also gave me a chance to go back to high school and pick up a couple of courses I wanted to take but I didn't have time to when I was in high school. I took mechanical drawing and chemistry. Both the teachers let me go as quickly as I wanted to, instead of doing the same kind of exercise two, three, or four times, he'd see what I'd done and say, "You don't have to do any more with that. Just go to the next chapter." Within that one year I got two years of mechanical drawing, same with chemistry.

MO: Wow. Did you enjoy those subjects?

HH: I wasn't as thrilled about the business school, but I am glad that I did that. Just knowing how to type was helpful later.

I am sure I picked up other things besides. Accounting was important, very helpful. I don't remember what I did about English, but that was very important.

Military Service

MO: We talked a little bit already about the Depression in La Grande, but of course, the war was already raging in Europe. Was that something that you were very conscious of at that time?

HH: Not when we first got into it. I was

coming back from a ski trip, and I heard on the car radio that Pearl Harbor had been attacked by the Japanese. It was during my first year of college. I was only eighteen. I decided I wanted to enlist rather than wait to be drafted. This way maybe I would have a chance to pick something that I wanted.

I enlisted in the Navy in the fall of '42, but I was not called for active duty until July of '43. I was sent to the University of Idaho, southern branch at Pocatello, Idaho and was going to school, in uniform, with a lot of other sailors, same as me, who were going to classes with civilians. The program was such that since I had one year of college before going into active duty they let me choose my own curriculum. I had to take one hour of Naval Organization each term, but the rest was up to me. Most civilians took twelve, thirteen hours a term, but we would take, oh, sixteen, seventeen, eighteen hours. The reason we could do that was we weren't free to go out and play after we had our evening meal. We had to stay in the barracks, and we were there studying. We could do a lot of studying that the civilians were not doing and that allowed us to carry larger loads. [*rustling*]

MO: Prior to your getting into the service did you have any feeling about the war at that time?

HH: Not as I do now. I didn't have any idea about the background. I had not

known really about the Nazis, but I knew we were engaged in a war.

MO: What about the Roosevelt administration? Were you tracking that at all?

HH: Oh yes. Again, because my dad was a strong Democrat, and I inherited that from him. I thought he was doing a great job for the country. It is interesting, I saw an article—[*referring to something in the room*] let me get that article. [*rustling with microphone*]

A Letter to the Editor that appeared in *The Oregonian* on March 30 of this year. says, "As a result of the Iraq disaster, I recommend that Congress enact a law by which it would be illegal for the president to launch a military operation overseas without the following in place: One, universal selective service to provide military personnel. No exceptions made, male or female, except for those with severe disabilities. Two, wages and salaries frozen for all, including government officials. Three, laws taxing excess profits of companies providing services or supplies to the government. Four, all operations within combat zones handled by the military. If these recommendations seem overly demanding, just stop and realize that similar edicts were enforced during World War II. They were quite effective in helping to bring the war to a close. The lives of our young military personnel and material treasures of this country should never again be expended on a military

excursion unless the whole country is mobilized to support it.”

We are doing the *exact opposite*. Like, for instance, wages, and salaries, even of government agents being frozen—no way! No compulsory military service. This wouldn’t go over at all with present administration. Laws taxing excess profits. [chuckles] They’re just for cutting taxes.

All operations with combat zones are handled by the military. Now we have private companies cooking the food for the troops.

MO: Even doing some of the fighting.

HH: Ripping us off and charging us for meals that were never served. It just makes you wonder what Halliburton [a contractor in Iraq] is going to do when, if we finally do get out of—how are they going to make a living? [chuckles]

These no bid contracts? Don’t you think [inaudible] profits? It makes me sick.

MO: Somehow I don’t feel too sorry for Halliburton if they fall on hard times. Anyway, so you did enter college, after business school, but before you enlisted?

HH: Yes, right after that business school I went into college. It was during that first year of college that I enlisted.

MO: What college was that then?

HH: Eastern Oregon College, in La Grande.

MO: Had you any idea when you started at Eastern Oregon what you wanted to do with your life?

HH: No, I really hadn’t until I got out of the service. I had not given it much thought. I was just taking the things that I liked, and it turned out to be the sciences. If I hadn’t been a lawyer I would have been an engineer of some kind.

MO: What kind of courses did you take that first year? Sciences, mostly?

HH: Yes.

MO: You mentioned the decision to enlist in the Navy. Was that because of the V-12 program?

HH: Yes it was. Mm-hmm. It gave me a chance to get some more schooling.

MO: You already mentioned a little bit about the school in Idaho. How long were you there?

HH: For twelve months. By the time I got through it was the equivalent of at least two years.

MO: Two years of study?

HH: I can say that by the time I got out of military and decided to go to law school they gave me a bachelors degree after the first year because I had accumulated enough time in that

one year of college in La Grande and the one year in the V-12 program to be the equivalent of three years. With one year of law they gave me a Bachelor of Science degree.

MO: After Idaho, you went to the University of North Carolina?

HH: No, first was to midshipman school in New York City—

MO: Okay, that's right.

HH: —and then I went to Columbia.

MO: Oh yes.

HH: That was four months at Columbia. There, I received my commission as an officer in the navy, an ensign. Then they sent me to a diesel engineering school in Raleigh, North Carolina for five months.

MO: I image that they sent you there because of your already—?

HH: Not necessarily. That is just the way the military works. Some of the other people that went with me were, like, music majors. [*chuckles*] You never can quite figure out how the navy, or, the military does things. It turned out alright for me.

MO: Did you do anything with your music in the navy?

HH: Yes. First of all I should say that we

had that high school band, and after I got out of high school I played with a little six-piece band. We played the Saturday night dances in the Zuber Hall in La Grande.

MO: Playing dance music, I guess.

HH: Yes. When I went to the University of Idaho, a military marching band formed, which I became a member of. Also a big dance band, like, eighteen pieces. I played with them; played dance jobs for the sailors and so forth.

MO: You were probably playing the music of the era? The popular songs of the time?

HH: Yes, all that stuff that Tommy Dorsey and Glenn Miller and others that were playing at the time.

MO: You were playing the sax?

HH: Mm-hmm. Saxophone, yes.

MO: You said you went to midshipman school in New York?

HH: Yes.

MO: Was that the first time East for you?

HH: Yes.

MO: Was that New York City?

HH: Mm-hmm. Columbia University.

MO: Columbia University. So that must have been quite an experience for you?

HH: I think that it is 48th Street. Anyway, one time I was downtown in New York doing something in the evening, and we got on the wrong subway and wound up in Harlem. [*chuckles*] I had to cross town and go back and then come up to get into Columbia. I think that was the street, 112th.

MO: Right. I thought it was higher up than—

HH: Yes, yes.

MO: You had to get yourself familiar with the subway system?

HH: We could attend, if we wanted to—and I and another fellow certainly did—concerts of the New York Philharmonic on the Standard Hour. There was a radio program at that time called the Standard Hour, so he and I would go down to 42nd Street and have something to eat and then go to the concert with the New York Philharmonic. That was great.

MO: It sounds like it would be fun.

HH: Yes, I'm sure they let us in for free. I don't think they charged us anything.

MO: What sort of things did you learn in midshipman school?

HH: Oh, some about naval things. Mostly

it was just a continuation of college, except it was strict discipline. You marched between classes, and you looked at the neck that was ahead of you. You don't look off to the side because there would be an officer in the brush fields that would jump out and nab you and give you some demerits. So, strict discipline. It was interesting, though.

MO: In uniform, too, I suppose?

HH: Yes. Mm-hmm. I did well there. In my class there were twelve hundred students, and I graduated thirty-fourth.

MO: That is pretty good! So then you went to North Carolina?

HH: Yes, that was diesel engineering. We studied diesel engines of all kinds. Even German submarine diesels. That was fun for me. When I got out of there and they sent me to a ship, I guess I was supposed to be the engineering officer for a while, but everything was under control. I didn't have to use much of the knowledge that I gained there.

MO: You were on active duty in the Pacific?

HH: Yes. They sent me to the Palau Islands where I joined a ship that had been there for a while—an LCI, a Landing Craft Infantry. It was a ship that could take two hundred troops aboard and then run the ship right up on the beach

and let the troops run off the ship onto the beach. By that time, the Palaus had been secured before I got there. Mostly we stayed inside the reef, so it was like we were putting around a lake the whole time because we would never see a wave more than a foot high. The Americans had taken Angaur and Peleliu, the two most southern islands, but they didn't bother the Japanese on all the rest. It was a chain of islands about seventy miles long, but they just took those two and used them as air bases. But they kept a couple destroyer escorts going around that chain of islands all the time to keep the Japanese from being supplied.

Every once in a while they would take a shot at us, but they would usually only shoot just once, didn't want to give anyone their positions. Later in my service as a bankruptcy judge, I was sent to Palau. There was a recession going on. This time my wife and I did a lot of scuba diving, and I saw more of the islands than I had when I was in the navy.

MO: Oh yes. You didn't have too much time, just hanging out on the beach?

HH: Yes, right.

MO: Apart from the occasional volley from the Japanese on the islands, were you in any combat?

HH: No. There were plenty of people

who were awfully nervous, but I was young enough I didn't think anything would happen to me. [*chuckles*]

MO: You thought you were invincible, huh?

HH: Yes, well, most young people are of that nature.

MO: Sure. Any real friendships that you developed during your time in the service?

HH: Yes, but they don't last when the service is over. It didn't with me. I corresponded with another officer when he left our ship to go to another ship. I corresponded with him a little while and then that dropped off, and then I didn't have any contact with any of the fellows on that ship afterwards.

MO: What were your duties when you were stationed in Palau?

HH: We had what we called picket duty. The ships were inside the reef, and were keeping Japanese swimmers from going from the north islands down to the south islands and committing sabotage. We were there to protect against swimmers doing that. Our weapon against the swimmers was a hand grenade that was in a cardboard cartridge instead of metal. You would throw one of those over the side and that makes you feel awfully bad

if you are swimming—the concussion of the bomb going off in the water.

MO: Was this the need to control the swimmers due to the fact that they would be carrying armaments? Suicide swimmers, maybe?

HH: Right. Then committing sabotage on air bases that the Americans established on those two most southern islands.

MO: You encountered some of these in the water?

HH: No, I didn't see one. But one time, before I got there, a Japanese swimmer swam out and attached a bomb to the screws of one of these ships, and when they started up their engines it blew the rear end of the ship off. After that they used the rest of the ship as a command ship. They kept it at anchor all the time.

MO: So, it was used.

HH: I learned something about star gazing because when we were on that picket duty it was always four hours on and eight hours off. I always chose the noon to four o'clock in the afternoon and midnight to four in the morning. I would be in bed when they were serving breakfast because I couldn't stand the powdered eggs. [*chuckles*] I'd find something else to eat.

Anyway, every night looking at

the stars you get so that, well, we might as well see if we can learn them. So I, and another fellow could pick out all the constellations that you could see. More than you could see from here, because we were only six degrees above the equator. We could see the southern sky as well as the northern sky. We got so that we could see all of the constellations that you can see with the naked eye by name. Some of them you had to use binoculars to see. Just because there was nothing else to do.

MO: I guess it was probably pretty hot most of the time, too?

HH: Yes, pretty warm, but you got used to it. I don't remember suffering from the heat, except when we were at anchor there in the lagoon, the steel on the decks would get awfully hot. You couldn't use a regulation navy shoe with a leather sole. We'd get a Marine combat boot, which had a fiber sole, or rubber heel, and we would just cut it down and make sandals out of them. That is so that you could walk across those hot steel decks. We built some lounge chairs, and then, about once a month, they would come in with a cardboard box full of paperback books. There wasn't much work to do so we did a lot of reading.

MO: You were there at war's end when the atomic bombings of Hiroshima and Nagasaki took place?

HH: Yes, we learned it like everybody else, on the radio.

MO: Yes. Were you a bit surprised by that development?

HH: Oh yes. I didn't know anything about it. We knew the war was over. After that happened then we started moving troops from small islands to Guam or some larger place where they would get on a big ship to go back to the States. So we did a lot of traveling there. I am trying to think of the one where the flag was hoisted. The famous flag scene.

MO: Iwo Jima?

HH: Iwo Jima, yes. That is one of the places we went. There, we went up on the beach, and we were supposed to drop an anchor as we go in and pay out cable, and then when it is time to go we'd winch ourselves back off the beach by pulling in at the anchor. But it was too sandy, the anchor just came back to us. So I had to go shore and find a Sea Bee who that could get a caterpillar down there that could push us off the beach. [*chuckles*]

MO: So then, you were discharged in 1946?

HH: Yes.

MO: What did you do then?

Law School

HH: It was in May of '46. I went to the University of Oregon to talk about going to law school. I must have made my mind up before then. Anyway, I went down there with my dad, and we talked to Charles Howard, one of the professors, and looked at the library, and I signed up for a couple of courses. I only went for about two or three weeks, and then I got a terrible attack of asthma. I was in the hospital breathing oxygen, as I listened to the commencement of my classmates in law school while I was in the hospital, laying on my back and wondering how many more breaths I would take before I died. So I didn't get any courses during that summer, but I went into law school that fall.

MO: I guess by that time, Wayne Morse was no longer there?

HH: No, he was in Congress; he left before I got there.

MO: Yes, that is right. '43, maybe. Anyone else that you met at law school that you were good friends with at that time?

HH: Oh, lots and lots of fellow classmates that I was friends of, and many of them who practice in Oregon. There are not quite as many of them now as there used to be. Our law school class used to

meet every five years. They should have had one in, let's see—'49 to '59—should have been one in '99, and the next would have been '04. We didn't have one in '99. But I think the ram rods, there are usually two or three people that are interested in that and will ram rod that, but they died and so we never got together again.

MO: Once you got over your asthma and were able to engage with your studies a bit more, what did you think about your decision to go to law school? What parts of the law appealed to you?

HH: Oh, I enjoyed law school very much.

MO: Did you have any idea of any particular area of law at that point that you might—?

HH: No, but I could tell you a story about that. We started out with 100 or 110 students. By the end of the first year we were down to fifty. When I graduated after the third year we had, I think, thirty-six. All of us passed the bar examinations with the exception of only one person.

There were people who came from other prestigious law schools, like Harvard and Yale that flunked. One of the reasons, I think, was that at the University of Oregon we weren't given any choice about what we were going to study in law school except on one or two occasions we were given the choice

between two courses. I remember one time I could choose between Labor Law or Administrative Law. I chose Labor Law. But I think there was only one other occasion. All the rest of it was laid out for us. That put us well-grounded in all the fundamentals of the law, where kids from the big schools were permitted to specialize before they got out of law school. So they, maybe, wouldn't know a darn thing about Contracts because they had some other thing they went after.

MO: Any professors there that you particularly remember?

HH: One of the famous ones, Orlando Hollis, the dean of the school. A lot of the students didn't like him. He was alright with me, but he was hard. He made you think. You had to get your mind going before you opened your mouth. [chuckles]

He was free to criticize—or, let us criticize ourselves, really. I think a lot of kids were scared of him, but I thought he was alright. I remember one fellow, my first year, that came to teach Personal Property. He came from some place in Idaho. Almost all of my classmates had been in the service for at least three years; they weren't like kids just out of high school or college. So they would tend to ask questions, where kids wouldn't do that without some experience. The second day this guy came in and his hands were shaking.

The students had given him such a bad time that first session because they were not a bit afraid to say, "Why? Explain that. Why?" [*chuckles*]

MO: The professor wasn't necessarily ready to answer the questions? Any of your classmates that went on to have public careers like your own?

HH: Oh yes. There were two or three of them that became state judges. I am not sure that I can think of their names now. I would say there were at least four or five state circuit judges out of my class.

Marriage

MO: It was also when you were in law school that you met Betty?

HH: Yes. That was near the end of the first year, I met her. We dated and were married on October 15 of the year that I graduated, which would have been '49.

MO: How did you meet her?

HH: I had a lady cousin who wanted to come and go on a ski trip. It turned out that Betty and she were very good friends, so she came along. I met her on that ski trip. She tells the story that I helped her put on her skies and then she didn't see me again until we were ready to go home. [*chuckles*]

MO: Where did you ski?

HH: Willamette Pass or someplace out of Eugene.

I remember, the first time I went skiing when I was in law school I think it was Willamette Pass, and when we got there and it was raining and I thought, "Oh, heck, there goes the skiing. Everybody filed out just like it was nothing unusual at all to ski in the rain.

MO: [*chuckles*] You too?

HH: Oh, I went ahead and skied, but I was used to skiing on powder snow out in Eastern Oregon, like at Anthony Lakes, where when you go down a hill there is a big cloud of snow behind you.

MO: A little bit easier snow to deal with.

HH: Right, right. Easier to turn.

MO: Exactly. You met Betty and dated her for about a year? Then you married?

HH: Yes.

MO: What was her background?

HH: She came from a little town. She lived in several different places. During the Depression, it was pretty tough on her. Some time during that her mother and father divorced, and she had to really make it on her own. She did work as a live-in maid, that sort of thing. I haven't gone in to all of that with her. We are too busy with living now.

MO: So had you met either of her parents?

HH: Not until we started going together. When we were dating I met them. I liked them, both, very much, her mother and her father.

MO: Where did you marry?

HH: We were married here in Portland.

MO: You were out of law school by that time?

HH: Yes. Just had graduated in May or June of that year and then married in October of that same year. Then immediately moved to Pendleton. I already had plans to go to Pendleton to practice law at the time we were married.

MO: You already mentioned you passed the bar exam without difficulty?

HH: Yes. My dad said, "Here son, you had better take some sleeping pills because you may have trouble going to sleep the night before the exam."

I said, "Oh, no, I have never done that in my life."

"You take them anyway."

So I got down there and got in bed the night before, and you know what, I wasn't going to go to sleep. So I said, "I had better take one of those pills he gave me." [chuckles]

Some of the guys, I guess were taking too much because they seemed to be in a dream world during the tests.

MO: That is not good, necessarily.

HH: No.

MO: You decided to start a practice in Pendleton?

HH: My partner was Gene Conklin. He graduated two years earlier than I had. He worked as Assistant U.S. Attorney under my dad. But he and I both knew each other through skiing and so forth in Eastern Oregon in earlier years. I didn't want to be a part of a big law firm and neither did he, so we decided we'd do a small partnership and open a practice in Pendleton. We choose Pendleton rather than La Grande because I was afraid that if we went to La Grande I'd have too many people come up to me and pat me on top of my head and say, "I can remember when you were only this high." [chuckles] So, better not do that.

MO: You wanted a fresh start?

HH: Yes, right.

MO: Was it a general practice?

HH: Whatever comes, yes. It was tough. We started that practice on November 1 of '49 and December 31 we divided up

the loss. Next full year we found that we had each taken home five hundred dollars. Then another year it was only one thousand dollars for the whole year, each of us. It was very difficult to build a practice. It takes a while to do that. But we didn't want to join an established firm. So when we split up, he stayed alone, and so did I. Neither one of us joined a firm.

MO: I guess Betty was working, at that time, too?

HH: Yes. Now his wife was working too, those first couple of years. Betty's first job was as a census supervisor for most of Umatilla County. She was the boss of the enumerators that did the actual counting and so forth, and she had to travel all over the county. She got stuck in the snow up at Ukiah and stuck in the sand at Hermiston. But she really learned. She had been from down in this part of the country all of her life, so this was new to her, but she really fell in love with that country up there. For me, it was like returning home again to be at Pendleton.

Early Law Career

MO: Do you remember any early cases or issues that you handled as a part of your practice?

HH: I remember one. I did quite a little work in worker's compensation.

There was a lady who had made a friend of a— at that time in Pendleton the East Oregon Hospital treated the mentally ill—and this lady, that worked in the kitchen, and she used to play ball with one of the patients. One day a patient said, "Here, catch!" She turned, and he had thrown this baseball, or this softball, out soaking in the rain, and hit her right in the breast. A bruise developed. She saw the doctor, and the doctor had a biopsy made and found that the breast was cancerous. When she filed a claim with Worker's Compensation, they denied the claim on the grounds that being hit by the baseball wasn't any cause of her trouble. I had to prove either that it was caused by, or was contributed to, by that.

Most of the medical authorities at that time said that trauma was not a cause of, or even an aggravating factor in cancer. I did the best as I could and then tried the case and when the doctor for the Accident Commission was testifying, and I came to cross examine, I asked him if he was familiar with a textbook of pathology.

"Oh yes, that is a very well-recognized book or medical treatise."

So I said, "I have a copy here. It says here on page 156...." he read it, and it was similar to this, and they found that the trauma had caused cancer.

But another lawyer had come in and asked me to help him in the trial of the case, and he said that one of the

doctors said that he was familiar with that textbook. The other lawyer said, "I almost tipped over my chair digging in my briefcase to get that book out."

[laughter]

MO: Figured you had him on the ropes at that point, huh?

HH: There wasn't any problem, we got a verdict for her.

MO: Any other cases that you remember that were notable at that time?

HH: Not right off, I don't. I would have to think a little.

MO: Now, Gene Conklin, you dissolved the partnership after, a couple of years?

HH: Probably about two or three years. He thought that his opportunity would be better if we just split up. That was really it. It was his idea to split up, so we did, and survived.

MO: Both of you survived?

HH: Unfortunately, maybe, ten years later, he died of a heart attack. Unexpected.

MO: Meanwhile, your dad was still in Pendleton?

HH: No, in La Grande.

MO: La Grande, yes. Excuse me.

HH: He was appointed as the U.S. Attorney to Oregon, in, probably—it was before I got out of the service—in '45.

MO: That is what you said. The early days of Truman's presidency. I imagine by this time you were a little more interested in the law. Did you talk much with your father about legal issues?

HH: No, not much. We combined not more than about three or four times in a lawsuit. He visited me in my office, but he didn't talk about law when he would come.

MO: You combined three or four times?

HH: We were together on two or three cases.

I had moved two or three times from where my law office was. There was a lot across the street from the courthouse that another lawyer owned, I told him I would like to buy it. He told me how much he wanted, and I told him that's fine. I bought this lot across the street from the courthouse and built my own building. That was a good location because a person would come in the clerk's office and say, "I want to change my name. Do I have to see a lawyer?"

"Yes, you better see a lawyer."

"Who? Can you recommend one?"

The clerk would turn around a point out the window, "There is a lawyer right across the street." [chuckles]

MO: Good location.

HH: Good location. A client could come in and would require some research of the records. I could say, "Just wait here a minute, I'll go over across the street and look that up for you."

MO: It worked both ways, didn't it?

HH: Mm-hmm.

MO: You said that you were involved in a case with your father on three or four times? Is this when he was U.S. Attorney?

HH: No, after he left. He didn't practice at all while he was U.S. Attorney. There were some U.S. Attorneys that did do that, but he didn't think it was right. Said that U.S. Attorneys ought to be paid enough they didn't have to practice on the side. Particularly if he has assistant attorneys, which my dad did have. I think there were five or six assistants in the office, and it wouldn't make sense if the boss was working on the side. [chuckles]

MO: Yes.

HH: That was changed, I guess, to a part of his effort to get that done.

MO: How did you happen to wind up in cases with your dad? Was it something that needed representation in both Pendleton and La Grande?

HH: I'm not really remembering the cases now. Probably it was from Eastern Oregon and he wanted some help up there when he was in court. When he left the office of the U.S. Attorney he started a practice in Portland, and he shared offices with a brother lawyer in Portland.

Pendleton Social Life

MO: What was your family life like in those years, you and Betty?

HH: Oh, we did everything. We skied. We hunted together. We backpacked in the Wallowa Mountains.

MO: You'd go out for a few days at a time in the Wallowas?

HH: Yes. We had lots of friends. We'd play cards at each other's homes. A lot of socializing in that day. If you were out on a Saturday or Sunday and nothing is going on: "Why don't we go over to see so-and-so." Just drop in on people, and people would drop in on us.

There was much more socializing than there is in a big city. Within just a few months I knew people in Pendleton. If I was introduced to somebody, I paid some attention to it because I might see the person tomorrow. You could hardly walk down the street without meeting a lot of your friends, a lot

of people that you knew. That isn't true in a big city. You might be introduced to somebody and never see them again.

MO: Yes, that's right.

HH: You had a much wider circle of friends in a small community.

MO: You said you played cards? Would this be bridge?

HH: Pinochle, I guess. I wasn't that much interested in cards. Quite often we'd be in the home of another musician, and they would be playing music. I couldn't play cards when listening to music. Music takes place over the cards.

MO: So, would you join in? Would you play with them?

HH: Even just playing a radio or a phonograph record, whatever.

There was a big band, a dance band, formed that I became a member of in Pendleton while I was practicing law. A fifteen-piece band. It had five saxophones, three trumpets, two trombones, piano, bass, drums, and guitar. We played dance music of that Swing Era. We traveled some. We couldn't make a living of it, but it was fun. I thought that was tremendous that I could do that. Have that fun of playing in that big band and getting paid for it. [*chuckles*]

MO: I guess that you and Betty enjoyed dancing at that same time?

HH: Yes. We took a lot of lessons. So did our a lot of our friends, neighbors and so forth.

MO: This would be swing dance?

HH: Mm-hmm. We learned to do the Latin dances along with it. An instructor would come and maybe you would have eight or ten lessons, a week apart at the Elks lodge, or someplace else. Then we'd get together with our friends after the lesson and maybe dance to a small group in the Elks club.

MO: When you were playing you couldn't dance.

HH: No I didn't. I wasn't really much of a dancer until I started taking those lessons. I was always playing the music instead of dancing to it.

Starting a Family

MO: Of course, you started raising a family too. Your sons David and Steven. When did David come along?

HH: David came along in '56, and Steve in '58.

MO: That must have been a change for you.

HH: Oh, sure. Yes.

MO: What sorts of things would you do with your children as a family? Same thing, the hunting, and backpacking?

HH: Skiing. David was mentally handicapped, and I did some catch with him. Steve, an artist. We'd never do any of that. Dave never hunted. He didn't want it. I don't think they have ever gone fishing. No, but they have been having things they liked to do. Not necessarily what I did.

MO: I imagine, you were working. Was Betty still working at that point?

HH: When we left Pendleton she had that job as the census supervisor and then she became the executive director of the Campfire Girls for Umatilla County, or most of Umatilla County. She did that for three or four years, or at least until we decided we would have a child, and then she quit and we had David.

MO: That was essentially my question, whether she became a full-time mom?

HH: Yes.

MO: Did you take many trips as a family? Did you travel at all?

HH: Short ones. No long trips. We both had our parents here in Portland so we came frequently to Portland.

MO: Oh, so you would come into town every now and then to visit the grandparents?

HH: Yes. My dad had a big house, so we stayed there when we would come to Portland, usually.

MO: I guess the next development in your career is when you became a part-time referee for the bankruptcy court.

HH: Yes, right.

MO: So maybe we just leave it here and start with bankruptcy court next time?

HH: Yes. I am surprised I remembered a few things I hadn't thought of for a long time.

MO: If you think of anything else from this early period, any other stories, we can backtrack a little bit. Thank you very much for the interview today.

HH: You bet. Nice to be with you.

[End of Recording One]

Part-time Bankruptcy Referee

MO: Henry, it has been a little while since we left off, but the last time we talked about your law career in Pendleton and a little bit about your life there. We might start today with that you started at a certain point, maybe in 1958, as a part-time referee for the bankruptcy court? Tell me, how did that come about?

HH: I was appointed by the District judges of this District, the District of Oregon. The fellow who had been acting as the part-time referee, Howard Dixon, was living in La Grande, died. I am not sure what got me interested. I had handled a few bankruptcies as an attorney for a debtor, also as a trustee in bankruptcy. I thought I would go after the job. There was just me and one other fellow that seemed interested, and I was appointed.

MO: Was there a process that you went through? Were you interviewed for the job?

HH: No. I had letters of recommendation submitted to the judges on the District Court.

MO: Where did you get your letters of recommendation?

HH: I am going to show you how forgetful I am. Wayne Morse was one,

and some other political leaders. At that time most of the District judges had been Democrats, so that put me on the right side of the fence. [*chuckles*] So it was other lawyers, too.

MO: Did you know Morse?

HH: Yes.

MO: How did you know Wayne Morse?

HH: Oh, we assisted him some in his campaigns. Acted as a chauffeur for him at times to get him from Pendleton to other places around the county.

MO: You would be actively involved in his campaigns for Senate?

HH: Yes.

MO: How long had you known him?

HH: Oh, not terribly long. I can't put these in a time frame. I would say about two, three or four years.

MO: Since he had become a Democrat—crossed the aisle?

HH: Yes.

MO: What did you think of Morse as a person?

HH: I couldn't understand his energy.

He reminded me of reading the story of Jacqueline Cochran, the lady pilot who accomplished a lot of things in aviation. When asked about her success, she said, "Don't overlook energy. I had the energy."

And he did. He could go and go and go without sleep. Just be tip-top, seemed like. He was very energetic. Must have accomplished a lot.

MO: He did accomplish a lot, you could say, although, I guess he also had a reputation for being a bit abrupt, and not the easiest person to get along with.

HH: I don't know that. Could be.

MO: He certainly was his own man.

HH: Oh yes. As we were going into war in Vietnam, I think, he and a senator from Alaska were the only two that voted against it.

MO: The Vietnam War, that's right. The Gulf of Tonkin Resolution. I think it was Ernest Gruening, of Alaska. Did you have opinions on that issue? Not formal opinions, just your personal opinion.

HH: I know what you mean. I certainly wasn't excited about it, but I think I had more things on my mind than that. So I didn't spend a long time worrying about it. I didn't realize what we were getting into either, but I certainly didn't support starting a war. Some of these wars are started without us knowing the facts

and we have been misled, too. We were misled at Gulf of Tonkin. That was a put-up, or fake job, and we didn't know that at the time.

MO: Yes. That's right.

Presidential Powers

HH: But, I forget now, who was the president then?

MO: Lyndon Johnson, I believe, was president at the time of Gulf of Tonkin, but, of course, Kennedy had us already in—

HH: Kennedy had advisors over there in Vietnam, before the Gulf of Tonkin incident.

MO: Yes, that's right.

HH: Even Eisenhower had some of our men in Vietnam. As early as that.

MO: Yes, I think that is true.

HH: Then Kennedy, and I think you are right, it was Johnson then that sent a lot of troops in, started increasing strength.

MO: Yes, and I think it was the Johnson Administration, that was responsible for the Gulf of Tonkin Resolution.

HH: So we've lived that again now,

recently. I mean, kind of fooled about whether we were fighting an enemy or not. [The 2003 invasion of Iraq.]

MO: Yes, that is right.

HH: Or whether it was dangerous to do it.

MO: Maybe even worse this time.

HH: Yes. We sure have changed our great attempts to change our form of government. Now, at this point, those in control think that the president should have all powers. Anything he does is legal because he is the president, and he is not bound by any law. He signs bills saying he's saying this but, "I am not going to follow it."

MO: Yes, it is a strange assertion.

HH: This business with the hostages. They are so-called "enemy combatants," or "enemy terrorists," but my question is, "Who said so? How do we know they are? Just because the president says so?" There is no hearing provided. Some of those people have been there for six years now, and no hearing at all. I even heard on the television where one of the people in charge of the trials that are going on now said that we can't have any acquittals. How would he explain if we held an innocent man here for six years without a hearing?

MO: [*chuckles*] That doesn't sound like quite the right basis on which to decide whether to acquit or convict, does it?

HH: No. I am concerned about our form of government if this went on. McCain, I'm afraid he would be the same way.

MO: Oh yes, I think you are right. We have the Supreme Court now as saying "no" to the [George W.] Bush administration three times on the detainee question.

HH: Yes, We still don't know, because they haven't conducted trials yet.

MO: Right.

HH: Nobody has. They are in the middle of a trial or two, I guess, but I'm not sure there have been any trials actually completed.

MO: I don't think so.

HH: No. So, they meet before the Supreme Court again pretty soon, if they ever reach a decision in one of those cases.

MO: Yes, that's right.

HH: I just find that all your training as a lawyer, like the *writ of habeas corpus* is gone. They can use hearsay evidence. They don't have to tell you all the evidence

that they listened to. The defendant doesn't even have to know what the evidence was that was presented against him so he has a chance to explain it. It just doesn't seem like a trial at all what they are doing right now.

MO: It doesn't seem to match up to what we have considered to be the law of the land.

HH: Those things are going to get worse if you let that go on. Let your government be that way, pretty soon you've lost your liberties too.

This wire tapping without any judicial involvement in it. You have a court they can go to obtain permission [FISA, Foreign Intelligence Surveillance Act], but they've voided that. I don't want my wires being tapped because I am a Democrat.

MO: No, it is a sort of a time of great concern in terms of what we have come to rely upon in this country.

HH: I would like to think we are a country of laws, but now it is a country of men instead of laws; the president and his associates.

MO: Although, the courts are beginning to react, at least, and assert some authority.

HH: Our status in the world, our image in the world, has gone to pot. That

business that we are now known as a country that tortures people.

MO: Yes, that's true.

HH: It will take a long time to live that down. Some of these people who have been held, have died from abuse and torture and so forth.

MO: It is a pretty sad situation.

HH: So how could we complain if some terrorists come after some of our soldiers and torture them? We can hardly complain because we do the same thing.

That is why the military doesn't like it. They speak out, and they don't want those people tortured. They know it could happen to their soldiers if we let that be a common practice.

MO: It's true. Several generals have spoken out.

HH: Yes. But those have gone by the wayside. They just change generals until they get a general who will agree to go along with them. [*chuckles*]

MO: They tried to do the same thing with the Supreme Court.

HH: Yes. Well, that has been always true, though. That is a fable that the judges on the Supreme Court come in from a vacuum. They come in from their

life up to that point and their experiences. They read the newspapers, [chuckles] just like others. We know that if there is a Republican administration reelected, we know that the next Supreme Court member is going to be conservative. They will approve of things that liberal judges would not approve of, and vice-versa.

MO: I have just been reading *The Nine*, the book on the Supreme Court that was recently published, and it makes the point that the liberal wing of the Supreme Court right now is mostly Republican appointees.

HH: That can happen. Men do seem to change.

MO: It seems like former Republican appointees under even President Reagan, and the first President Bush were a little less subjected to a litmus test for conservative principals. But now it is getting to be that, especially the Religious Right, I guess is trying to get the—

HH: I think it was Eisenhower who said the worst thing he ever did was he appointed Earl Warren to the Supreme Court. [chuckles]

MO: That was a case of someone who went the opposite direction fairly quickly. Yes, that's right. On the other hand, the Warren Court, was responsible for a lot of things that we take for granted today.

William O. Douglas

HH: My dad was a good friend of Justice William O. Douglas. [Narrator's note: Both my dad and Justice Douglas were good friends of Roy Schaffer who owned and ran a ranch called Lapover on the Lostine River. He rented houses and guides to the high lakes in the Wallawas. Roy built a log cabin for Justice Douglas at Lapover. I saw Justice Douglas there frequently in the summer.] One time we went early in the spring. My dad and his wife, my stepmother, and some other folks and Douglas were headed up to Minam Lake, I think it was, and he was tired of us being so slow, so he just went on ahead. When we got up to the lake we found that the rubber boat had been pumped up, and I had the pump on my horse. I said, "How did you get that up?"

He said, "I blew it up." [chuckles]
He was a real he-man.

MO: How old would he have been at that point?

HH: Fifty, maybe. Something like that.

MO: But he was a strong man.

HH: Of course, I agreed with almost all of his opinions. One famous opinion that was very important was *Griswold v. Connecticut*. That is the case where he said there is a right of privacy; that people have a right of privacy, from

the government. What goes on in a married couple's bedroom should be of no interest of the government. That case was *Griswold v. Connecticut*. The defendant was a physician, and he had prescribed some birth control contraceptives to a married couple, and that was against the law in Connecticut. So Douglas said, "Nope, it is not expressly stated, but when you look at the Constitution as a whole it shows that there is a right of privacy."

Now, some people would still say, "No, no, no, no."

MO: Probably Justice Scalia would say, "No."

HH: Yes. So, we were good friends, my dad particularly. I drove Douglas around sometimes when he would come in from another place and land in Pendleton where I was practicing. If he needed to go to La Grande, I would take him there. He told us about the first trip he made to Iran. What he said was that he thought that he was the first person in the U.S. Government that had ever gone outside of the embassy and gone out in the countryside and talked with the hill people and so forth. He said they are not interested in what we call democracy, or right to vote, or any of that. He says that a guy would point and say, "That is my wife over there. I would like her to have some health care. My

children over there, I would like to have them have education."

It turned out that the Russians, smarter than we are, that is the first thing that you do when you come in, set up a hospital and schools for the populous. You don't preach to them about what kind of government you'll have.

MO: [*chuckling*] Our government seems to find itself in that position too often.

HH: Mm-hmm. Trying to tell people how to lead their lives.

MO: It seemed a little flimsy justification for the current war in Iraq; that we are trying to bring democracy there since it doesn't seem—

HH: No, it isn't going to work. It can't.

MO: The government that we've installed is not democratic, really.

HH: I saw an ad on the TV that was interesting. A mother was shown holding a son about one or two years of age and what a joy he was to her and so forth. She says, "Mr. McCain, I understand that you think we should be in that war for another hundred years. You may be coming after my son. You can't have him."

MO: How often did you get a chance to be with Justice Douglas would you say?

HH: It was usually during the summer

recesses of the Court. He had a cabin at Lapover, which is on the Lostine River in the Wallowa Mountains.

My dad was a good friend of Roy Shaffer, who ran a dude ranch there. Not the kind where you would dress up in fancy clothes and stuff, but he had horses and would take you out on rides and fishing trips in the mountains there. Douglas was also a good friend of Shaffer. Shaffer built a cabin for Douglas there, and he would spend his summer times there and then we would see him. My dad went there frequently and took my brother and me.

MO: Frequently, in the summer time, you would see him. Probably every year, almost?

HH: Mm-hmm.

Bankruptcy Referee

MO: Back to your appointment as referee to the bankruptcy court, although it was certainly worthwhile to talk about Supreme Court justices. You submitted your letters of recommendation and were selected. Had you had contact with the federal bankruptcy court before that time?

HH: As I say, I was a trustee in a couple of cases where liquidating—a laundering and cleaning thing—and some others where I had to sell assets and so forth.

Also, file bankruptcy cases on behalf of individuals, so I learned something that way. But it was not until I was appointed that I really learned how little I knew. I had to go over to the library and start learning about bankruptcy.

MO: Is that one of the first things that you did?

HH: After I was appointed, yes.

MO: You were still in Pendleton at that point?

HH: Yes.

MO: You would come in to Portland?

HH: No, almost never into Portland. I would travel to La Grande and Baker from Pendleton. But that is about as far away I would get from Pendleton.

MO: What are the duties of a referee?

HH: That could probably be a pretty good description right there, although we call them judges now. The debtor files a petition in Bankruptcy and a set of schedules that spells out what property he has and so forth. Then there is a meeting of creditors held in every case, and a judge presides over that meeting, or did in that day. You are searching for assets that he might have, that he might have forgotten about, or potentially forgotten about. If

there are assets, the judge would appoint a trustee, and the trustee administers the assets, sells them, and so forth.

MO: The judge decides how to dole them out to creditors?

HH: Yes. Once the case is ready to be closed, the creditors [are notified of a time to file objections to] discharge. If objections to the discharge are filed, you try those questions. In bankruptcy there is an automatic stay of execution so that people who have security interests in property, like a mortgage or a contract on an automobile, cannot foreclose without consent of the bankruptcy court. You have to hold a hearing. You are trying to find out whether or not the creditor is protected by not foreclosing.

He shouldn't be in a better position, a creditor, than he was on the day that the bankruptcy case was filed. So if the car was worth ten thousand dollars and his mortgage only had six thousand dollars owing on it, you could say, "No, you are adequately protected by that cushion." You won't have to—I am getting into [Chapter] 13 now where paying is making monthly payments, but anyway, the court has to decide whether it is going to permit the creditor to foreclose, and that was a very frequent thing that happened.

MO: When you were first working in that position, were there any particular cases that stick out in your mind?

HH: Not particularly unusual. Another thing that I had to do was study the law and make myself an expert in it. During the time, from '58 until '73, when I began full time, that was fifteen years, I can only recall about twice that a ruling that I had made was appealed. Pendleton lawyers would say, "Why appeal it? Henry is the only one that knows about bankruptcy. He is probably right. We would just be wasting out time to appeal." [chuckles]

MO: When they appealed, was your opinion affirmed?

HH: Oh, I can't tell you for sure. But there were only two of them.

MO: Did you get to know any of the judges either in the Bankruptcy Court or in the District Court during that period?

HH: Yes, not so much during that period of time. I wasn't close to them. It was only later when the law was revised and the powers of referees really increased and they were called judges. By then I was in Portland.

MO: By that time you were already on the Bankruptcy Court?

HH: Yes. When the law was changed in '78 the appointments then came from the U.S. Court of Appeals instead of the District Court. For the most part, I think, probably most sitting bankruptcy referees were appointed as bankruptcy judges.

That wasn't a big deal for me at that time. It wasn't much of a question about whether I would be appointed as full time. That was for a fourteen-year term, and the earlier had been a six-year term.

MO: That was the major reorganization of the bankruptcy court?

HH: Yes, that was the Bankruptcy Reform Act of 1978. No, wait a minute. I was appointed before that act became effective. From time to time there would be amendments because bankruptcy was always kind of a situation where you have got creditors on one side and the debtor on the other and weight shifts one to the other, over to the debtor for a while then over to the creditor for a while. Congress keeps trying to balance that out. How much power to give the debtor, and how much power to give to the creditor.

MO: Were you following that at all before it became law?

HH: Yes, I was reading about the struggles going on, but didn't have any active hand in drafting it.

MO: What were some of the major issues? I guess one of them would be an expansion of the role of referees.

HH: Not so much in the Chapter 7, the straight bankruptcy consumer case. I don't think there was very much change there. But there were big changes in

Chapter 13. First of all, in the Chapter 7 case, the debtor surrenders all of his assets to the trustee in bankruptcy—all of those assets that are not declared by state law to be exempt from execution. There is a homestead exemption in most states, automobile exemptions on automobiles up to a certain equity, and so forth. Those state-provided exceptions were accepted; they didn't have to surrender those. In a case of a non-exempt asset that was worth more than was owed, it was sold and the excess was held for the unsecured creditor. Sometimes there were battles about whether or not the creditor was actually secured, whether he had actually perfected a security interest.

What we were talking about, they greatly improved the position of debtors in Chapter 13 cases. I can't tell you exactly what it was before then, but after that a debtor could go into Chapter 13 and he would have to submit, among other papers, his budget, which would show what his income was and what his monthly expenses were, and what the surplus would be left over after that. They would have a meeting of creditors again, where creditors could object to the budget and say, "These items should not be there," and whatever. The judge would have to pass on that. Then you would get these, again the automobile dealer and the guy that held the mortgage on the house asking for permission to foreclose, and you would have to try those matters.

But, the debtor submitted his plan that had to commit his net disposable

earnings for a period of at least three years. He could go up to sixty months, and if he made those payments he would be discharged of any amount that was still remaining unpaid to the creditors. He was then granted a discharge, which discharged those balances. In Chapter 7 cases, when he was granted a discharge he could not file another case for Chapter 7 within six years. But in Chapter 13, he could file sooner than that, or he could come out of a Chapter 7 and file a 13 within that six-year period. Those are the principal elements of a Chapter 13 case.

MO: Let me bring you back, to your full-time appointment. That required your moving to Portland?

HH: Yes.

MO: Where was your family at that point in time?

HH: They moved with me to Portland from Pendleton.

MO: Your sons were still in high school at that time?

HH: Yes. Right.

MO: Did you all come to Portland at the same time? Or did you come ahead?

HH: Actually, I flew an airplane at that time, so when I knew I had to come I sent Betty down here to look for a home, and

she called me a couple days later and said, "I think we found a couple places we ought to look at." I hopped in the airplane and flew up this way, and we went out with the real estate dealer and found this home, just what we wanted.

MO: Was this one of the ones that Betty had identified?

HH: Yes. I hopped into the airplane and flew back to Pendleton to wind things up. When we moved, everybody moved at the same time.

MO: Maybe we talked about your being a pilot before, although I don't remember if we did or not.

HH: At that time I was with six other guys that owned an airplane. I found that I did not use it a whole lot. My business would never take me farther than, at most, Baker, which was about one hundred miles from Pendleton.

Just going to La Grande, which was only fifty-five miles, it would actually be faster by car than it would be by airplane because with an airplane you have to go to the airport, inspect the airplane, and file a flight report. Then it only takes me, when I get in the air, maybe twenty minutes. But then when I am landing in an airport that is three or four miles from La Grande, I need to have somebody pick me up to take me into La Grande. So, actually it took longer with an airplane than it would a car. [*chuckles*]

MO: If you had to go to Baker, maybe it would be almost worthwhile.

HH: Right. Then you have to worry about the weather, because you may not get back at all if the weather closes in on you while you are gone. In my case I did not have an instrument license.

MO: How many years did you fly?

HH: Probably five or six only. At that time four of us were rebuilding a glider, and that is the reason I got into flying in the first place was because I wanted to fly a glider.

I found that to get a license, which would allow you to carry somebody else with you on a glider you had to have forty landings, and twenty hours of airtime. But if you already had the license for a powered airplane it was only ten landings and two hours. You can't do what we call touch-and-go in a glider.

MO: Oh yes!

HH: You can't practice landings like you would in an airplane. You can go and take an airplane out for only an hour and practice a dozen landings. But in a glider it would take you an hour to get all the equipment towed up to the elevation and down and then get another tow. So that is why I did that. Then the four of us started rebuilding a glider and bad things happened here and there. It was never done before I moved away in '73.

MO: Oh, so you never—

HH: So I didn't get to fly it. But I learned something about aircraft construction. [chuckles]

MO: Have you flown gliders, though?

HH: Just ridden in one, I think.

MO: You never really got to fly it. But you were part owner of this regular airplane?

HH: Yes.

MO: What was the longest flight you made?

HH: One time I took the family to McCall, Idaho.

MO: You flew out to Portland to locate this house and then went back and packed up and moved.

HH: One incident I'd like to recall here. We moved on July 1 of '73, and as we were moving in I heard music coming from the park adjacent to our property. I wandered out through the back yard to look and see. Heck, there is a guy sitting in the sax section. I used to play dance jobs with him.

MO: Oh really?

HH: Then I see that the conductor was also a guy that I used to play music with

in a dance band. So it turned out to be the Beaverton Community Band, and so I joined it.

MO: Ah ha!

HH: Played in that for three or four years.

MO: You got into the music scene here right away, sounds like.

HH: Yes.

MO: You already knew what you were up to as bankruptcy judge at that point.

HH: Yes.

MO: Because you had been part-time—

HH: Yes, it would just be more cases.

Bankruptcy Court

MO: You had chambers downtown?

HH: Yes, in the old Pioneer Courthouse.

MO: Where the Ninth Circuit is now.

HH: When I would go to the bench I would have to walk through a whole bunch of clerks, and then put on my robe and then walk through the door to get into the courtroom. People were sitting on top

of each other. It was just really crowded at that time, but then we moved into the Orbanco Building later, which had adequate space.

MO: Is that where the court is today?

HH: Yes. It has been called the “black box.” [200 Market Building]

MO: Yes. Was the first courtroom in the Solomon Courthouse?

HH: Yes, that is where it was before I moved to Portland.

I remember going with Folger Johnson, one of the bankruptcy judges when they were working on the Pioneer Courthouse, to fix us up for there. They were just tearing up the floor in order to put the cables in for the telephones. [chuckles]

They had already finished it off and now they were taking it up to put in electrical outlets and telephone boxes in this room that was going to be the clerk’s main office.

MO: Sounds like the contractor forgot something. [chuckles]

HH: Or somebody did.

MO: But you said that even those quarters were a little cramped.

HH: Yes. But they were adequate when we moved into the Orbanco Building

Ninth Circuit Conference

MO: Then the Ninth Circuit moved into the Pioneer Courthouse. At that point you were then in closer touch with your colleagues at the Bankruptcy Court and also the District Court judges?

HH: Oh yes. Right. Also with Circuit Court judges. There was always an annual conference, Ninth Circuit Conference for the Court of Appeals. All of the judges of the Court of Appeals, the district judges, and all of the bankruptcy judges in the Ninth Circuit would get together for a three-day conference. Lawyers were involved with that too, lawyer delegates. I got to go to a whole lot of different places where those things were being held and met a lot of judges.

MO: Were there any judges that you were particularly close to or that became friends early on?

HH: One of them was. At one time, as the chief judge of the Oregon Bankruptcy Court, I was appointed by the Court of Appeals to be the representative of the Ninth Circuit Bankruptcy Judges meeting to the Court of Appeals. The chief judge of the Court of Appeals was then Judge James Browning. He had been a U.S. Attorney at the same time that my dad was a U.S. Attorney, so they knew each other. I thought he was a fabulous judge because, in those meetings anyway, you could come

in with two sides of a heated debate, and when he was through handling it there was an agreement reached. [chuckles] Somehow he could do that.

MO: He would get people together?

HH: Yes.

MO: So he was somebody that you admired at least early on?

HH: Yes. I can tell you one time at one of those conferences I was playing golf with one of the judges of the Court of Appeals, and I knew him from the television because he was on the Watergate hearings. He was one of the leaders supporting—that was Nixon, wasn't it?

MO: Right.

HH: Later was appointed as a Circuit Court judge of the Ninth Circuit. I played golf with him and with some others, and he never once called me by my name.

MO: Really?

HH: He was just really a stuffed shirt. [chuckles]

MO: Always referred to you as Judge Hess, or someone?

HH: Oh, no. Nothing. Just, "Hey, you." Or something like that. [chuckles]

MO: Oh! He was representing the administration in the Watergate cases?

HH: Yes.

MO: Do you remember his name?

HH: No, and I wouldn't tell you if I did.
[chuckles]

Gus Solomon

MO: Oh! Well, you must have known Gus Solomon.

HH: Yes.

MO: What would you say about Judge Solomon?

HH: Oh, I haven't had a lot of close contact with him. He was called a harsh judge, but I think he was a very competent judge.

MO: He has that reputation, I guess, of being very demanding of attorneys and others that appeared before him.

HH: He wanted you to come to his court prepared. If you weren't, he gave you the dickens.

MO: [chuckles] What was your own stance with that with respect to attorneys when they would come into your court?

HH: I didn't like it if they were unprepared, but—

MO: But you weren't as hard on them as Gus Solomon?

HH: I had a gavel laying on the bench there. Never once used it.

MO: Really! [chuckles]

HH: Never had an occasion to use it.

MO: How would you communicate?

HH: They just seemed to respect the office, or me, enough they didn't quibble, or argue with each other, or be disruptive or make silly arguments or whatever.

MO: Occasionally some came not fully prepared, would you say?

HH: Oh yes, but I just put up with it.

MO: [chuckles] What were some of the memorable cases? I know one, anyway, and that you just mentioned a little bit earlier about having to adjudicate disputes between debtors and creditors in terms of what would be an allowable budget. I guess a case that really illustrated that point was the *Ivy* case? Do you want to tell me how that unfolded in your court?

HH: In that case the debtor's budget

called for ten percent of his earnings, I think it was the gross earnings for tithing as a monthly expense, and some creditors objected to that. They didn't think that was a proper thing to be in the budget. I had to decide whether it could be or not. He was contributing all his—let's see, how did that go? In the thirty-six, or a few more that his plan called for, there was some money went to creditors. More money would have gone to creditors had he not deducted that ten percent off the top and let the creditors have that, too. I told him I wouldn't approve, I wouldn't confirm his plan to call for that tithing to be a part of the budget, but if he wanted to extend the time that he could go make his tithing, extend the time that he could be paying in to court to make up for that I would approve of a plan that way. The debtor said he didn't want to do that. But [*static in recording*] he was honest in his tithing. He had his minister come and testify. He had been tithing for years. So it wasn't just a way of escaping from paying debts. For me it didn't seem fair to have him have his creditors, in effect, pay his tithing. He ought to pay them first and then what is left over give it to the church.

MO: You were willing to compromise on letting him extend his period out but then he refused to do so.

HH: Right. He appealed it, and I was

affirmed by the district judge. I don't remember whether it went further than that or not.

MO: Do you remember which district judge was involved in that?

HH: No, gosh darn it, I really can't remember now.

MO: I could see where the creditors wouldn't totally give into the idea that tithing should be a necessary monthly expense.

HH: No.

MO: But on the other hand, a devout person—

HH: Did this guy, when he incurred the debt, explain to the creditor, you have to realize that if we have trouble I have to pay this tithing first before I pay you? [*chuckles*] I don't think that would happen.

MO: One of the things that I guess you were interested in was, I hope I got this right, Chapter 8 Wage Earner?

HH: Oh, that is Chapter 13.

MO: I'm just not reading my Roman numeral correctly.

HH: When it was first printed it was Chapter Roman numeral XIII. Then, in this Bankruptcy Reform Act of 1978, it became Chapter 13 Arabic numeral.

MO: Okay. I'm behind the times, I've got it here as a Roman numeral. What was it that drew you to become a specialist to the extent that you've written some articles on it.

Chapter 13 Reforms

HH: Well, that was back when I was a part-time judge, very shortly after I had been appointed. I found out about Chapter 13. I didn't really know or learn about it, but when I got to looking at it, it seemed like a good thing to do, to let a debtor make payments for a period of three years and do the best he could and then discharge the debts, instead of having him come in and surrender his non-exempt assets, which usually there weren't any. Give him a discharge and not have him obligated for anything out of his future earnings. So that was the big difference between a Chapter 7 and a Chapter 13. Seven you surrender what you have now; Chapter 13 you don't have to surrender that, but you have to make payments for at least three years.

MO: What determines what becomes a Chapter 7 or a 13?

HH: The debtor had a choice.

MO: So they would pick whichever one they felt was the most advantageous.

HH: Right.

MO: Now, Chapter 13 filings, I guess, have become much more frequent.

HH: Oh, I can find that for you in just a moment because I wrote that down.

In the fiscal year ending June 30 of '67, and that was before I was a full-time judge, there were a total of 5,129 voluntary bankruptcy cases filed in Oregon. Only 265, or 5.2 percent of these, were filed as Chapter 13. By the time I retired, approximately one third off all the cases filed in Oregon were filed under Chapter 13. I was hearing about one hundred cases a month. But I think I can take the credit for a lot of that use of Chapter 13 because I wrote articles and talked to creditor groups, talked to lawyer groups, explained what Chapter 13 was, and they might recommend it to their friends or employees or customers when the occasion presented itself. I gave a talk to the bar while I was still a part-time bankruptcy judge and, it was a Continuing Legal Education session. I had written an article, a feature, for the *Oregon Law Review*, on wage earner plans in Oregon that was published in 1968. Now, that was interesting that in that article I cited all of the Chapter 13 decisions in the nation. Thirty-one of them. Since then the bankruptcy reporting systems indicates that I have published seventy-one decisions on

Chapter 13 cases. You don't write an opinion on every case you try. Only ones that you think are especially unique.

MO Wow!

HH: But that was quite a change to go from about five percent of the cases to a third of the cases being filed for Chapter 13. But then I wrote other articles that were widely distributed explaining, and guides for lawyers, how to file Chapter 13 and so forth. So much of that effort, I think, paid off by getting more people to file 13.

MO: Was that a goal of yours?

HH: At that time, sure. I wanted lawyers to know that it isn't all that complicated or hard; that their clients can decide which way they wanted to go. But the lawyer needed to know so that he could properly advise his client. Because the client, otherwise, might not even know there was such a thing as a Chapter 13.

MO: You sensed that there just wasn't expertise out there.

Uniform Rules

HH: When I got to Portland there were three full time bankruptcy judges: one in Portland, one in Eugene, and one in Corvallis.

First of all, bankruptcy has lots of paper involved. It had these schedules filed by the debtor, and you have orders and so forth. Much of that, and the Chapter 13 plans and so forth, can be pretty much uniform, so we used mimeographs for our orders and for certain motions that the debtors or creditors would file. But, all three judges had their own forms. That's silly. We have got to have some uniformity, here. So I talked to the others into agreeing that a mimeograph stencil would be used to print off maybe one hundred copies. Then when they ran out of paper, they would stick that same stencil back in there and cut it again, or print some more. They agreed that we would tell our secretaries that before you can run off a stencil you have got to take it to Judge Hess and have him approve it. That would give me a chance to make any changes that ought to be made in the form. I would make the changes and then submit it to the other two judges for their approval.

But, it made for some uniformity so that the lawyers didn't have to have a whole bunch of stuff on there. I was always a great believer that there should be uniformity wherever possible, there should be rules that are explicit, and should be followed. I reminded them that I have had cases in state court where I have relied upon the fact that the courts have said that a judge is bound by his own rules, [MO chuckles] and that wasn't always followed before. So, at least it got them thinking that we won't enact a rule

unless we are sure that we are going to follow it ourselves.

MO: I think that was one of your early cases as a lawyer. You won a case on that basis, right?

HH: Yes.

MO: Irritated the judges, I heard. [chuckles]

You standardized the forms within the Portland office, with the three judges there?

HH: Yes.

MO: Who were the other two judges?

HH: Judge Lucky was in Eugene. Darn it, I can't remember the name of the judge in Corvallis. But they didn't coordinate with each other *at all, or* with us in Portland.

MO: Your standardized forms did not reach as far as Corvallis?

HH: No. Not until after the Revised Act of 1978. Then, Polly Higdon was appointed to replace Lucky, I guess. Anyway, we wound up with two different judges down there. They both agreed we ought to be one court.

MO: But you couldn't get that agreement before that?

HH: We didn't try, really. But then it came along with that reform act that we really needed to redo our rules completely so that we were in conformance with the federal rules. The five of us would meet and we started from day number one going through the federal forms, federal rules, and adding our own local things to amplify those rules. We would all five meet, either in Portland or Eugene, until we got that job done. We had a committee of lawyers to help us, too; they would submit suggestions, and when we would propose a rule we would submit it to that committee before we would adopt it. All of those things led toward uniformity. The beauty of uniformity is that it reduces the cost of litigation. Same way a judge needs to be consistent if he makes his ruling on whether you are brown-eyed or blue-eyed or whatever, you never know what he is going to do. A client might ask, "Should we file this thing?" The lawyer might say, "He is just kind of a loaded gun. You never know where he is going to go. You might as well."

On the other hand, if he is consistent he might say, "I may have to say, no, he always rules that way. It would be a waste of our time and money to do this." One time one of my law clerks came in after I'd left the bench and said that there were two lawyers in there and overheard one say to the

other, "Yes, and he will rule that same way every time they do that. The only way you are going to change that is appeal it." [chuckles] I thought of that as a compliment. [chuckles]

MO: They were talking about you specifically.

HH: Mm-hmm.

MO: With respect to getting all five judges going through the new regulations and adopting standard ways of interpreting them and putting in the local rules, etcetera, was that an effort that you led?

HH: Yes. I think I could say that. But we had a great deal of help from our clerk. He was a great believer of standardization also.

MO: What was the clerk's name?

HH: Terry Dunn. He is still a clerk at the Bankruptcy court. But the others, for the most part, felt that same way, too, so it was a good thing. I think that we adopted some very good rules. I had to point out some of those rules to judges from other courts. "Look, you are doing this the hard way, and you are not following the law."

MO: So, in other jurisdictions, you've managed to—

HH: You know, we did, one simple thing

that some courts couldn't seem to—the federal rule might be Rule 211. Our local rule was 211.1, [chuckles] but they would use a different numbering system that didn't match at all what the federal rules were.

MO: Oh, I see.

HH: They would have a completely different numbering system. We couldn't figure out why the heck they didn't do that. We thought that was just logical. If you read the federal rules, you didn't find any reference to local rules, there aren't any. But if, on the other hand, if you read a federal rule and there is that point .1 or .2 or .3, whatever, you know there is a local rule. You had better read that too.

MO: Did you have any success in convincing other courts that this was the way?

HH: A few did change, later, yes.

MO: You were talking a little bit earlier about how one of the effects of having a standard procedure or rule consistently is that it saves time.

HH: Yes. For everybody involved. The lawyers and the judge too.

MO: Sure, because the judge might not have the case before him.

HH: Yes, and that lowers the cost of litigation.

Judges as Interested Parties

MO: I noticed in your paper, “Managing Chapter 13s in High Volume Districts,” you mentioned that there were ways that the expense of judicial time and the expense of litigation could be reduced. One of them you mentioned was that the judge not assume the role of an interested party.

HH: Oh yes. That’s bad.

MO: I think that would be a very basic idea, that the judge shouldn’t be an interested party.

HH: No. One experience I had sitting in a courtroom of one of the other Portland judges, was at a confirmation hearing on a Chapter 11 case, and debtors and the creditors had reached an agreement, that the plan should read this way. It didn’t provide for any payment of money up front; it provided for issuance of promissory notes payable in the future. This judge said, “I don’t approve of anything that doesn’t have some cash up front.”

This person, the client’s attorney, “Why did we spend all that time working with the other side, and the judge won’t accept what we have agreed to?” As a matter of fact, that Chapter 11 case was dismissed, and he filed a straight Chapter 7. But that’s an example of sticking your nose in where you shouldn’t.

Don’t interrupt, don’t do a lot of questioning of witnesses, either. The

attorneys know what they want to bring out and they know more about the facts than you do. They have had them before them, and you may be upsetting a good strategy that one of the lawyers had been planning that was really silly for you to get in. Parties may have both known the same thing that you are asking, but they didn’t think it was good to bring it up for the attorneys on both sides. A judge will open a can of worms that should be left alone.

MO: [*chuckles*] Before we leave that point, why do you think judges, if they did have parties before them that had agreed upon a settlement, why would that one judge, for instance, say, “I won’t approve of anything that doesn’t have cash involved”? Is he afraid that it is going to come back to his court?

HH: I really can’t think of a good reason. I wouldn’t know what the reason is, whether it was good or bad, because the law didn’t say anything like that. Maybe the judge thought that the law required that. That’s unfathomable.

MO: Just a personal opinion of the judge?

HH: Here is a good example of the right kind of judge. I was in a divorce case in the state court, and it was out of Pendleton, I forget where it was, but anyway, on the other side was a lawyer much older than I, well experienced. The judge called us in

the chambers before we started and said, "Have you fellows had a chance to discuss settlement?"

"Yes, we have tried but we can't get our parties to agree."

The judge said, "So be it. Let's try the case. That is what I am paid for." [chuckles]

Legislating From the Bench

MO: You talk about judges sometimes refusing to follow a statute because it yields an undesirable result.

HH: Yes. Big, *big* controversy in Chapter 13 about that. Chapter 13 prescribes the number of things that you have to have in your plan before it can be confirmed. Now, it said that you had to pay all of your net income for the period of at least thirty-six months, and some other things, but then it says it has to be filed in good faith. It had all of these things enumerated the plan had to have, and then it says it had to be filed in good faith. They took that as an opening to say to them, "We don't approve any plan that doesn't pay at least twenty-five percent to the creditors, no matter what." You could have two people, one had a little higher income than the other, the one with the higher income would pay a little higher dividend to the creditor. But that judge would not let the low earner have his plan confirmed. So, it was adding another thing that the statute didn't add. There was a big

fight over that. In my travels, I would ask the judge I am visiting with, "What is your minimum on Chapter 13, the dividend to an unsecured creditor?"

One would say, "Ten percent." "Twenty five percent." "Fifteen percent." Where do you get those figures? [chuckles]

That is an example of adding what the law doesn't say, just because you don't like the result. You don't like the creditors to go without pay, or a certain amount of money, no matter how poor the debtor is, or how low his income is. I'd say that, probably, I might have been in the minority, to say that there is no such requirement in the statute. That it is just a matter of the debtor's income, his monthly expenses that are approved by the judge, and what is left over goes to the unsecured creditors. If there is nothing left over the unsecured creditors don't get anything.

MO: I guess some judges feel that it is their duty to get involved in that way just to—

HH: They think that they are smarter than the legislature, I guess. There was a real good quote from a case by Judge O'Scannlain. I think maybe I quoted from that case in that article I wrote about, "Unmasking the Chapter 7 in Disguise," where he said that the legislature has a real problem when they get these contentious issues before them. They have got to decide, should it go this way or that way,

and they argue about it and they argue about it and they amend it and change it. Finally they enact it. Theirs is the hard job. The judge's job is easy. He just follows what they tell him to do, what the statute says. Don't adopt, don't think to yourself that you are smarter than the legislature and you can change the law. Now, that is an activist judge who does that. But a lot of them would say, "I couldn't possibly be bound."

I don't know what they would say. Anyway, it seemed like the conservatives were just as likely to do that as a liberal person.

MO: I once interviewed another judge who apparently had delivered an opinion one of his colleagues sent to him. "How did you arrive at that decision?" His response was, "Because I had to."

HH: Oh, yes! I could tell you an experience like that. I tried a case, we got all through, and I sent a ruling in favor of the creditor. I don't want to do that, but I am bound by a decision in the Ninth Circuit. Then I saw that same lawyer at some social function a couple months later. "You are a terrible judge. You didn't have to say that that you didn't like the opinion, but you were bound to do it anyway." [chuckles]

I was kind of taken aback. Later I thought, well, I should have asked him, "Would you have preferred that I ruled against you?"

MO: Some judges *would* probably in that situation. I guess the activist judges would say, "Sometimes the legislature gets it wrong."

HH: Oh, yes. Bad, bad, bad reasoning. That is not what our Constitution provides. He is acting in violation of his oath of supporting the Constitution when he takes over the legislative function.

MO: Now, I imagine if the legislature *did* get it wrong then if you just stick to the law that they have passed you give them the opportunity later to get it right.

HH: They can change it, they can change it, yes.

Bankruptcy Appellate Panel

MO: Right. Another thing I took a look at before I came over today was this controversy over whether or not Bankruptcy Appellate Panel decisions are binding on other courts. You had some definite opinions there, and were cited—

HH: Yes, I was on the minority, too.

MO: That's right, the minority.

HH: A *strong* minority. Anyway, there was a Bankruptcy Appellate Panel [BAP] created in the Ninth Circuit and litigants on an appeal could elect to go on a

Bankruptcy Appellate Panel instead of the district judge, who would ordinarily be the one to hear an appeal from the bankruptcy judge. By the doctrine of *stare decisis* we are supposed to be bound by opinions of higher courts, we are in the chain of command. That is, if a District Court judge makes a ruling, I should follow the District Court of Oregon, but if the District Court of California, no. I can think it might be persuasive, but it is not binding on me.

In this Bankruptcy Appellate Panel my reasoning was that you have got this election to go either to the judge or to the panel, and so if it goes to the panel it had no more effect than it would if you had gone to the judge because you just act in his stead. But, the Bankruptcy Appellate member thought that their opinion should be binding on the whole Ninth Circuit.

MO: Yes, and some thought, I guess, that Bankruptcy Appellate Panel should bind the whole country. Was that also a position?

HH: I don't know about that. I don't think so. They wanted to have the same effect as a court of appeals. Or was that right? That wasn't necessarily right. But they fought—

MO: There was also the issue of whether, if the BAP decision was contradictory to one made by an Article III judge that, the Article III judge's opinion would hold.

HH: That wouldn't be a total answer

because an Article III judge, you know, one of the Oregon District judges is not necessarily bound by the decision of his compatriot, another judge from the same court. You can have disagreement just like the Court of Appeals does. There will be a majority opinion and a dissenting opinion, maybe. You are not bound to follow the fellow sitting next to you, but you are bound by the person that is above you.

MO: Right. That is the Appeals Court, I guess.

HH: Right, but that was a big fight.

MO: Was it resolved?

HH: Not while I was there. There was a *Law Review* article written by a couple of judges in California that agreed with me. [phone rings] Some would say that takes courage to do that, but I don't think so. You are just following what your mind tells you is logical.

MO: In reading your opinion on that I thought that makes sense.

HH: Good.

MO: Who were the other two judges that you served with in the Portland office?

HH: First with Donal Sullivan. He is retired, but he is serving as a fill-in now and then.

MO: That's right. As a matter of fact, I interviewed him briefly.

HH: Folger Johnson.

MO: You mentioned Polly Higdon.

HH: She was in Eugene. But then, boy, my memory is failing me at age eighty-four. You can't remember things that—anyway—that's terrible when that hits me. I can see this lady's face but I can't think of her name. Liz [Elizabeth] Perris! She served as a clerk for the three of us before we were authorized to have more than that. Then she was my law clerk solely, I think, and very intelligent lady, a really good judge. We handled some tough cases while she was my clerk.

MO: Oh yes?

HH: When we all had to have the same clerk, usually they only served a year. The fourth time I decided it would be, I thought it was gender biased if I didn't appoint a man, because all my clerks had been ladies. [*chuckles*]

I figured I usually fared better with them because in that day lady lawyers didn't have as much of a chance to get a job with a good law firm as men did.

MO: Oh, yes, I know.

HH: That made a larger pool for me to delve in to get a law clerk that's smart. I don't want a law clerk that just "yes's"

me, or "yes sir," or whatever. I needed someone to help me think.

MO: Someone who would challenge you.

HH: So the women, I thought, I'd have a better shot at a smart one. I picked the women instead of the men. [*chuckles*]

MO: There have certainly been examples.

HH: I have had some smart men, too.

Fellow Bankruptcy Judges

MO: So, as the result of your being sure you didn't have gender bias you got some smart men too? What would you say about your other judges, Donal Sullivan and who was the other one that was in Portland?

HH: Folger Johnson.

MO: Yes, yes. What would you say about each of them? Maybe starting with Sullivan?

HH: I don't think that is probably a good thing for me to do. Too close. I could tell you good stories and bad stories. [*MO chuckles*] I'd rather not do that.

Because we did have different philosophies.

MO: Do you want to talk a little bit

about differing philosophies without identifying anybody by name?

HH: No, but on Folger, I could tell you one story. Folger, one time, said, "I'm sorry I have to leave now because I have an appointment. I am going to have my son's horoscope reading." Horoscope. He always checked, he always wanted to know, the birth date of the lady or the person he was considering as a clerk to see if that birthday would fit with his horoscope.

MO: [*chuckles*] You wouldn't make a decision on that basis, probably?

HH: [*chuckles*] One time I was asked by an FBI agent who was questioning me about another judge or another person being an eligibly bad judge on the bankruptcy court. I don't know what the agent asked me—what faith or church or what sexual preference, I said, "I don't, but I wouldn't tell you if I did. That is none of my business, none of your business."

MO: He didn't pressure you?

HH: No.

MO: He accepted that answer.

HH: One time when I was being appointed, my neighbor across the street said, "Henry, there was an FBI agent here talking to my wife about you, but she

gave them all the wrong answers—or, don't worry about it because she gave the right answers." [*chuckles*]

MO: So they checked you out here, and interviewed some of your neighbors?

HH: Yes, yes.

MO: That was the time of your—

HH: I know the way he put it. He said, "She told him the appropriate lies." [*laughter*]

MO: So that is typical even for a bankruptcy judge?

HH: Mm-hmm.

MO: The FBI to do a background check?

HH: Mm-hmm.

Owen Panner

MO: Did you get to know any of the District Court judges in Portland. I already asked you about Judge Solomon. Who were some of the other judges?

HH: I was well acquainted with all of them. Panner? Now, my memory is playing tricks on me. I am trying to recall the names. I can see the face. [*chuckles*]

MO: Yes, there was Judge Panner.

HH: Yes, Panner. I knew him for a long time. I was a close friend of his.

MO: Did you know him before he came to Portland?

HH: Yes.

MO: I imagined you would have because he was a prominent attorney in Bend.

HH: Yes. He and I tried a case against each other in the state court.

MO: What was the case about? Do you remember any of the details?

HH: Oh, land titles. There had been a lawsuit to partition a piece of property, and the case failed to mention one of these persons, so he wasn't given anything in this partition.

MO: That was an oversight of some sort?

HH: I don't know. They didn't serve a subpoena on him. It affected his rights but he wasn't served; that was the problem. That was the fight. But it was whether the court could make a decision that would bind somebody that had not been made party to the case. That was it.

MO: I see.

HH: the Oregon Supreme Court, on appeal said—well, I don't remember what their reasoning was—there wasn't any,

really. They ignored the rule that you cannot bind somebody that has been not made a party to the case. They bound him by the earlier partition.

MO: Your case was prior to that appeal?

HH: No, it was after that case that he had not been represented. He wanted his rights, which had not been provided for in this decree, in the earlier case

MO: Oh, so he brought a case to do that?

HH: The Oregon court said that he was too late, even though he wasn't made a party. Sometimes that happens and you can't figure out how the hell they did that.

MO: That was a case that you were opposite Owen Panner in the courtroom.

HH: Oh, Panner was a very good lawyer.

MO: He represented the Warm Springs tribe for many years. Yes, I thought for a minute, when you started talking the property—

HH: Oh, no. I wasn't involved in any of those cases.

MO: There was a big federal case where he recovered a large amount of acreage land for the Warm Springs Indians based on a surveying error way back when. Of course, you continued to interact with Panner, in your role—

HH: I had one other case that involved an Indian. This Indian had been, at one time, on the Board of Trustees of his Tribe. He sued to get back on the board. The lawyer representing the Tribe associated me with the case. We defended on the ground that the court had no power to decide whether this man was or was not entitled to be on the Board of Trustees. The case law at that time held that an Indian Tribe was a sovereign nation and the courts of the United States had no more power to decide questions of internal affairs of a Tribe than it would to determine who should be the Chancellor of Germany. There was an old case, which so held. The lawyer representing the disgruntled Indian responded that this case was just too old. [*chuckles*]

MO: We have covered some interesting territory here and we'll continue.

[End of Recording Two]

Law Clerk's Award

MO: You hold in your hand the plaque, the award, that the clerks gave you. Is that right?

HH: Yes. It was on March 4, 1994, shortly after I retired.

MO: Was this a one-of-a-kind award?

HH: I don't know if they had done this for other judges.

MO: You were probably the first, I would guess.

HH: I think so, yes. Probably a lot of this would not be applicable to the other judges.

MO: You mean non-bankruptcy judges?

HH: Bankruptcy judges, even. The first part of this says, "Father of the local bankruptcy rules." They wouldn't have had them if it had not been for me, and the local bankruptcy forms. I wanted to see if we couldn't arrange for uniformity among the five judges so that lawyers wouldn't have to worry about who they were before, what judge would be hearing their case. Because the rules would be the same no matter which judge you were before. That was not true earlier. Each judge had his own forms and his own way of doing things, and some lawyers knew about a particular judge, how he handled things, but not how other judges did. So, that made it more difficult for lawyers, and therefore more costly to their clients.

MO: So, this plaque, what does it say?

HH: It says, "The Clerk's Office proudly presents this Chief Judge Excellence Award to Henry L. Hess, Jr. as father of the local

bankruptcy rules, the local bankruptcy forms, and inter-district procedure uniformity. You have allowed us to efficiently and effectively accomplish our tasks and thereby, in conjunction with our other judges, receive annual administrative office and U.S. Trustee recognition as one of the top courts in the nation. Thank you for all of your continuing help and support. March 4, 1994.”

MO: So even with the LBRs, the local bankruptcy rules, would that mean that even with those rules there was still inconsistency?

HH: Some, but a lot less when you have the same rules and same forms. We tried to make forms that would generally meet the usual case and lawyers could modify them some. But it saved a whole bunch of time for the lawyers and also for the judges. I didn’t have to sit and read every word of a form that was handed to me because it was on a form that was printed by our offices.

MO: You knew what the form said.

HH: All you would have to do is look at what they filled in to the blanks.

MO: But you wouldn’t have known that before the uniformity came, necessarily?

HH: No.

MO: Since I didn’t say it when we first started the tape, I’ll say that today is August 5, 2009 and we are continuing the oral history with Henry Hess at his home. [*Recording stops, then resumes*]

We are back on tape after just doing a lighting correction with Henry Hess. We’ll get back to your retirement in a minute, but last interview you were talking about some of the judges you knew in the system. You knew, all of your five colleagues on the bankruptcy court. Now, who were they at the time?

Fellow Bankruptcy Judges

HH: Let’s see. At the time I retired it was—I told you before that my memory is leaving me at age eighty-five. I don’t remember things as well as I used to. Donal Sullivan, Elizabeth Perris,....dog gone, now I can see one’s face but I cannot remember the name.

MO: Was Polly—?

HH: Polly Higdon. There was one—how many have I named? Have I named four?

MO: Four, I think.

HH: I’m the fifth.

MO: Were there any that you were close to?

Uniform Rules

HH: I was closer to Donal Sullivan and Elizabeth Perris because they were in the same office. Polly Higdon and Al Radcliffe were the judges in Eugene, and so we didn't see them as often. We did have these meeting to make out these forms and these rules then they would come up from Eugene, or we would go down to Eugene and meet there. But all five of us would be there when we were discussing these rules.

One thing about that, there were national rules, and ours supplemented those national rules. So we used the same numbering system that they did on the federals. We just added a letter or number after that. We were the only court in the United States that did that, I think. All the rest of them had their own numbering system that didn't have anything to do with the federal rules [*chuckles*], which I thought was very inefficient.

MO: Yes, a logical, efficient system was in place here. Were there any of these other four judges that made greater contributions besides, I mean, you were obviously the leader of this effort, but were there others of the four?

HH: Elizabeth Perris played a big part in it. Still is. She has national recognition.

MO: She helped you?

HH: Yes, for the most part.

MO: Do you remember any other specific issues that you had to deal with in terms of coming to this uniformity?

HH: What kind of notices that the attorney would have to give. First of all, many of the things that were handled there was no controversy at all. But I wanted, and others went along with me, if you were going to bring something, and you knew it was going to be contested, you had to notify the other attorneys to be there. Or you had to notify if you were going to bring a witness because otherwise we would expect no witnesses to be called, just hear the arguments of the attorneys.

A lot of things could be settled that way without any testimony. But we wanted—if this side is going to have a witness to give some testimony, he is obligated to notify the other attorney that he is going to do that. So that attorney could bring a witness if need be.

MO: That wasn't a standard practice?

HH: No. One of the judges, I won't say which one, said, "We don't need a rule like that."

I said, "How will they know?"

"Oh, just trust me." [*chuckles*] "It'll be all right. I'll do the right thing."

MO: They do have similar rules along

those lines in criminal court, I think. That you have to alert the other side?

HH: Yes.

MO: So I would think that it would also make sense to occur in bankruptcy court.

HH: Sure. Some judges feel a little differently about rules. They sometimes think the rule is an impediment to what they want to do. I think that is bad practice for a judge. Because, see, if you are not consistent in rulings, you run up the cost of litigation because a lawyer, when talking to his client, will discuss, "Should we file a motion and see whether we can do something about this?"

The lawyer can say, "He never ruled on that before. You never know what he is going to do. You might as well." On the other hand, with another judge he could say, "No, if we present that problem he is going to rule the same way he always has in the past. Unless we are willing to appeal him let's don't bother with it."

MO: I see.

HH: So, inconsistencies on the part of the judge runs up the cost of litigation.

MO: Since you were concerned about uniformity and had many years of experience, with the rules, what was it, in 1978?

HH: There was the big change in statutes and rules in '78 or '79.

MO: Right. I believe, in fact, I had a note here somewhere that some judges, when the new federal procedures were adopted then, some judges resisted some of it.

HH: One of the big changes was in Chapter 13. That is where the debtor doesn't ask to be discharged of his debts, he wants to pay what he can for a period of years at least three years and up to five years, and then at the end, be discharged of what is left. Many thought that they were too liberal to the debtor, treated the debtor too well. Judges had different views of that.

MO: What was your own thought about that?

HH: I thought that the changes they made were ideal. Good changes. I don't know if everybody would agree, I tried to follow the law as written and not try to add stuff of my own.

MO: If you felt they were good changes, did you think that the law previously favored the creditors too much?

HH: Yes, at least the reform act increased the debtor's benefit.

MO: You thought those were good changes. What, looking back on it with

your experience now, are there any things that may be still not quite right?

HH: They have backtracked from that.

MO: They have?

HH: They give more rights to the creditor now. It used to be that—say the automobile was worth ten thousand dollars, but there is twelve thousand dollars owing on it. We'd break that into two claims. One, a secure claim, equal to the value of the collateral, and an unsecured claim for the difference. We could break that down and tell the secure creditor, "You are going to get paid that ten thousand dollars during the life of this plan, but the other two thousand you are going to share with the other creditors who don't have any security."

They maybe are only going to get ten percent or twenty percent, or maybe nothing. So that twelve thousand dollar debt, the creditor would only get paid ten thousand. They have done away with some of that. They say now if you have to reaffirm the automobile debt you have to reaffirm it for the full amount due, no matter what the value of the car is. That is very favorable to the creditor.

The theory is that when you file bankruptcy, or at least my theory and some others felt that way, that you start a new slate right the day that the petition is filed. Creditors can't be given better treatment after the bankruptcy than

they would have before the bankruptcy. So with the automobile illustration, before bankruptcy, if the creditor had foreclosed and taken the vehicle, all the creditor would have received would have been ten thousand dollars, the value of the vehicle. The other is just unsecured, just like the doctor whose bill is usually unsecured. He didn't have any collateral to fall back on. So, when they said that you were going to reaffirm the debt on the car, they indicate now that you have to pay the whole debt, not what the car is worth. That is a big change for the creditors.

MO: Yes. This is, sort of, outside your own career, but I imagine with your experience in bankruptcy court and taking care of all of these essentially financial issues, that you must have a more informed perspective on the recent economic difficulties here in these last years. I imagine bankruptcy courts are probably full of cases that have to do with—

HH: One of big fights going on right now is whether or not, in reforming health insurance, that we have a public option. The insurance companies are fighting that like the devil. They are spending over a million dollars a day on that.

MO: Oh yes. I am sure they are.

HH: Because they know if they ever set up a government program like

Medicare, the people who opt for that are going to wipe out the private insurance. There won't be any CEOs that receive two million dollars a year. The insurance companies are really in a position adverse to the insureds because the more claims they deny, the more profit they make.

MO: That's right.

HH: They don't have to do that if it is public. I got a kick—I heard that somebody was asking about what somebody thought about this and said some lady said, "I don't want any socialistic government involvement, but don't mess with my Medicare." [chuckles]

But, we are the only developed country that has the kind of system that we have, which is very good treatment, but the cost is outrageous compared to other countries.

MO: The health outcomes aren't as good in some cases.

HH: In some cases. But the insurance companies say, "You wouldn't want a government bureaucrat in between your coverage and what the doctor wants to do." Okay. But right now I have an employee of the insurance company doing that exact thing. [chuckles]

MO: Who would you rather have, someone with a financial stake in it to decide against you, or —?

HH: But that is a big, big problem right now. It will be interesting to see how that comes out.

MO: Yes. I think it is going to be a big fight, like you say.

HH: It is going on now. They are hoping, those that are oppose that kind of change, hoping that if they delay it long enough it will die.

MO: Right.

HH: So that is why they didn't do anything right before they take their August recess.

MO: If they can stall it until the end of October or something. I was thinking also about the other big financial issue that the Obama administration is tackling now with the banks and the bankruptcies of these big investment firms like Lehman Brothers, etcetera. Do you have any thoughts about that?

HH: I am kind of upset as a taxpayer that we would bail out one of these banks and then the first thing that they do when the government gives them a big wad of money is they send bonuses out and raise the compensation of the CEO. I don't favor that.

MO: I mean this was a much smaller financial crisis—but with any of the litigation that was associated with the Savings and Loan crisis back in the late '80s?

HH: No. That happened after I retired, I think.

MO: Oh, that is right because it was late in the '80s, I think. The cases probably didn't work their way through the courts until after—

HH: I don't remember anything of that nature. I retired in '93. I don't know when that savings and loan,—I probably was affected, but I don't recall now in what way.

MO: No major cases that you recall?

HH: No.

MO: The other thing that we started to talk about a year ago when we had our last interview, was you also knew all of the folks on the District Court.

HH: Oh yes.

MO: You told me that you knew Judge Owen Panner fairly well. You knew him before he became a district court judge.

HH: Yes.

MO: So was this a professional acquaintance?

HH: Professional acquaintance. We appeared on the opposite side of at least one case before he was appointed.

MO: What about some of the others? Did you know Judge Redden?

HH: Oh yes.

MO: Mostly in a professional context?

HH: There was a lot of socialization going on between the whole federal system in Oregon, at least. So frequently when the District Court judges were meeting the Bankruptcy judges were with them in the meeting. Whenever there was a function going on by the District Court, the Bankruptcy judges were usually a part of it.

MO: Did you go to any of the picnics that they would have?

HH: Oh yes. They didn't seem to make much distinction in social things.

MO: You would see Judge Redden then, at social gatherings?

HH: Mm-hmm.

MO: Of course, Redden was also a Democrat so there was, perhaps, those same side of the fence. [*chuckles*].

HH: Yes. Right.

MO: What about some of the others? Judge [Helen] Frye?

HH: Yes.

MO: Did you know her before she became a federal judge?

HH: No, I didn't. She practiced in Eugene, and I was practicing in either Pendleton or in Portland at the time she was appointed. I saw her several times and talked with her at social gatherings, but I didn't know her before she was appointed.

MO: You mentioned Judge [Diarmuid] O'Scannlain, that, I believe it was in the context of his making a decision, perhaps, in some case.

HH: Yes. I remember citing one of his cases. I thought his reasoning was very good.

MO: Yes. Did you know him also in a social context?

HH: No. Not really.

MO: Even though he was in the Ninth Circuit, of course, not in the District Court. Then what about some of the old timers? There was Judge James Burns, I guess.

HH: Yes.

MO: Was he somebody that you spent time with?

HH: Yes. One time I showed up for a function, and Burns said, "Henry, I like that tie of yours. I think that kind of tie has come back in fashion now." [chuckles]

MO: What kind of tie was it?

HH: Oh, it was a necktie, but then, it is going to come back in fashion. [Judge Hess's son Steve Hess enters followed by introductions and a brief conversation occurs.]

HH: He is a freelance illustrator.

MO: So did he do a painting of you?

HH: No, no. It was a scenic painting. But mostly he is called for character development. There are some of the commercials that I see on television where he drew the original drawing of what the actors should look like in the commercial.

MO: So Burns thought that your tie was unfashionable?

HH: That is like saying it is out of fashion, when he said that they were coming back into fashion. [chuckles]

MO: Did you have any dealings with Burns on any cases?

HH: No.

MO: How about Judge Otto Skopil?

–

HH: I knew him well. I played golf with him. He was a really great guy.

MO: In what way?

HH: Just a warm personality. Right after he was appointed, I was still practicing law and also acting as a part-time bankruptcy judge in Pendleton. When he first came to Pendleton to hear some cases, I went up to say hello to him, and we are talking away, and by the time I am leaving he has got his arm around my shoulder.

MO: Judge John Kilkenny?

HH: Knew him well. He practiced in Pendleton, where I practiced. We appeared on opposite sides of cases.

MO: Any cases that you can remember in particular?

HH: One of them. It had to do with partition, I think. Anyway, we had to file briefs on a motion. I don't remember exactly what it was. But after we were all through, the judge ruled in my favor. Kilkenny wrote me a letter and said, "Henry, that was an excellent brief you submitted." Now, that was the first time I had the opponent tell me how good I was, my work was, [chuckles] but he was that kind of fellow.

MO: Would you say that he was a formidable opponent?

HH: yes. He was an excellent lawyer.

MO: How about Judge [Ted] Goodwin?

HH: I have known him, but not well. Not as well as Kilkenny and some of the others.

MO: Yes, I guess he came out of Clackamas County originally, maybe.

HH: I think so. But I saw him at these social functions, and we knew each other.

MO: Any other judges, or lawyers too, that you were especially close to?

HH: One judge that was very close to my dad, was Justice William O. Douglas of the [U.S.] Supreme Court. I have gone on horseback trips in the Wallawas with him. One time we were headed for Minam Lake and he got tired of waiting on the rest of us who were too slow for him. So he got to the lake first, and he had the rubber boat blown up. I had the pump on my horse. I asked him, "How did you get that done?"

"I blew it up by my mouth!" [chuckles]

MO: This was probably when Douglas was younger, though.

HH: Yes.

MO: But still! Blowing up one of those rubber rafts, that takes a lot of lung power.

HH: Yes, but he was a hero. I liked his decisions. For the most part, yep.

MO: Now you had said, I think, in your memoir, and we have already talked a little bit about your enjoyment of backpacking, and a lot of that was in the Wallowa Mountains.?

HH: Yes.

MO: But not exclusively.

HH: I have also climbed Mt. Hood and Mt. St. Helens, when St. Helens was fifteen [hundred] feet higher than it is now.

MO: When Spirit Lake was not full of volcanic debris and all the rest of it.

HH: Yes, right.

MO: I saw in a note that you used to backpack fairly frequently with a couple of lawyer friends.

HH: Yes.

MO: Who were they?

HH: John Walker was one. Ed Clark was another.

MO: They were from Eastern Oregon, too?

HH: They practiced law in Pendleton, same as I did. We'd leave our offices at eleven in the morning on a Friday, be at a trailhead by three in the afternoon, and be back at a lake by seven o'clock. Then we'd fix something to eat and then fish all day Saturday. Then fish a little bit on Sunday and then backpack out. We would be back at home at five o'clock.

I have a private pilot's license, and I have flown over the Wallowa Mountains with another friend. It is not the same at all to fly over it because you don't see the heather and the little springs and whatever. It is entirely different walking than it is to fly over it.

MO: Sure. You are much more intimately in touch with what's there on the mountain. So you summited St. Helens and Mt. Hood also?

HH: Yes.

MO: Those must have been interesting experiences too?

HH: The first time I tried—it was Ed Clark and I—St. Helens, we camped up the mountain a ways. We gained one or two thousand feet, but it was a mountain that was very unstable. It was like gravel.

We put our stakes in but it really wouldn't hold. That night the wind came up, and I heard Ed get out of his tent and try and get the stakes back. Then, pretty soon mine, it was a double wall tent, and the outer wall went over, and I just happened to grab it with my hand, or I got up and ran down the mountain a ways and caught it before it disappeared. But then we gave it up, the fog settled in. If we had gone to the top we wouldn't have been able to see anything anyway.

We waited another couple of weeks and came back and tried it again. This time we were successful in climbing it, but we started too early and there were, I remember, we had finally got into the snow. We were hiking in the snow, and when we looked back here's about ten younger people behind us. We were breaking trail, where you have to kick your foot in to make a step and then kick the other foot in and make a step. It was very tiresome. We traded off, the two of us. But if we had any sense at all we would have waited and let those guys get ahead of us, and then they could do the—[*chuckles*] because we both were completely fagged when we finally got to the top.

MO: Yes, let the younger ones break the trail.

HH: Right.

Retirement

MO: Now, I'll bring you back now to 1993, when you retired. That is when you got the plaque from the clerks, and you retired at that time because you'd suffered a heart attack among other things?

HH: Yes, I had. At that time they had a little course that you go through afterwards. One of the things that they talked about, as a cause of a heart attack, is tension. I thought, "Now, I for the most part, enjoy this work that I am doing, but there is sometimes some real tension involved. Maybe I had just better quit. I was past the retirement age four or five years earlier. I decided that I had better quit because of that. I was afraid that I'd have more time on my hands, and I wouldn't know what to do with it, but that turned out not to be the case at all. When I retired I was just fine. There were plenty of things to do.

MO: I noticed that was one of your reasons for retiring at that time, because you recognized that your job put, at least sometimes, a certain amount of stress on you. That made me wonder, if there were any particular cases that were an illustration of that, where there was some tension.

HH: I don't recall any particular case. But some were hard to make a decision in, and

I would have preferred to let somebody else make the decision. [*chuckles*]

MO: So you, would be—

HH: You wouldn't know that in advance, that this case was going to have that kind of tension in it.

MO: But, sometimes at the end, you are faced with a set of facts and circumstances where you aren't quite sure what to do?

HH: Yes.

MO: I imagine there is always large amounts of money and consequences for people that you—

HH: Usually there was money involved. Gosh, I think of one case, Permaneer Corporation, they had manufacturing plants in a half a dozen different states. One of the plants was in Oregon. I think the lawyers representing the creditors, I guess the creditors filed an involuntary petition. I think they chose Oregon because they didn't think Oregon judges knew anything about Chapter 11. [*chuckles*] Or that is what I thought.

MO: They picked the wrong judge!

HH: But one motion we were arguing, or something, we started in the morning and went through the evening. We went through our dinner hour, or we

recessed for dinner and came back and it was about nine or ten before we finally adjourned. That took a while, I had a law clerk that happened to be, at that time, Liz Perris, and she and I went back and talked about what had happened and decided what we should do about it. But they were financed by a consortium of five big banks, and they had lawyers there representing the banks. What was I going to say about that? Some really good lawyers.

MO: Had you and your then law clerk, Liz Perris, figured out what to do about that in the late hours?

HH: Yes. How did that go? I guess the creditors wanted to throw it in into a straight bankruptcy, Chapter 7, and that happened. During that the CEO that had been fighting the banks got some other financing someplace else and bought the whole schmear from the creditor's committee, so he wound up owning it again. But the banks couldn't seem—they are not good at running a business—they can't stomach any red ink. For instance, they wanted to cut the advertising that was being done. You cannot run a business without advertising, that kind of business, they were manufacturing knock-down furniture.

MO: So, they wanted to save some money by not advertising.

HH: Yes. Quit advertising.

MO: Were you ever in a situation where someone was sufficiently unhappy with your ruling that they let you know about it in some way? Or threatened you at all?

HH: Not threats, no, but there were cases that were appealed from positions that I had given.

MO: But no untoward behavior in the courtroom or anything?

HH: No. I had the gavel laying there, but I never used it. Didn't have to.

MO: [*chuckling*] Oh, well, that is good.

HH: I think that is partly my demeanor that made it possible for me to do it without ever wrapping the gavel.

MO: Oh yes. I suspect that's true. I wanted to explore this topic of difficult cases, or tension that might have existed in the courtroom. But let's get back to your heart attack. You had the heart attack in '93, and I guess you had to undergo angioplasty at that time?

HH: Yes, just an angioplasty. No stent at that time.

MO: Did you recover from that at the time fairly quickly and fairly well?

HH: Yes. I didn't have another heart attack for thirteen years.

MO: But recently you have had—

HH: I have had three heart attacks. The last one was in May of this year, 2009.

MO: So it has been something that you have had to live with ever since then, I guess?

HH: I have great confidence in the doctor that is treating me now. I went to see him because of angina pain before I had a heart attack. He put me on several drugs that the other doctor had not been using, not suggesting. He did that before I had this heart attack. Of course, I have continued it afterwards, and I feel better. I feel more confident now I'll get by without any more heart attacks because of his medication, and closely watching what is happening. He is an excellent surgeon as well as a good diagnostician.

MO: It sounds like you are in good hands then.

HH: Right.

Hobbies

MO: You mentioned, that you were not sure what you would do with your time after retirement, but it turned out not to be a problem. What sort of things have you done in these years since you stepped down?

HH: I have played more golf. I did that until about two years ago. I am an amateur carpenter, a woodworker, and so I did improvements around the house. I enjoy taking care of the lawn and the flowers and so forth.

MO: Do any traveling?

HH: Not very much. Betty has a lot of relatives in Oklahoma and the South. I have gone with her a couple of times to visit relatives she had never met before, and I really enjoyed every one of them, enjoyed talking with. That was fun. We haven't traveled much since, there was a lot of travel when I was a judge because they have seminars and judicial conferences in various parts of the United States. So we did that several times in Hawaii and New Orleans, New York, where ever. But I haven't done much of that since.

MO: You had enough travel from those days?

HH: We enjoy our home. We don't feel like we need to do that. But travel is more fun if it is with people that you know. Almost all of this other was with some judge and his wife or a couple of judges and their wives that we chummed around with.

MO: I guess you don't do much hiking anymore.

HH: Not right now, no.

Radio-controlled Planes

MO: One thing that I guess that you are still pretty involved in building and flying your model airplanes?

HH: Yes, radio-controlled airplanes.

MO: Right. That is something that dates all the way back to your grade school days? Is that right?

HH: Yes. Only then the airplane was powered by rubber band, twisted. [*chuckling*]

MO: You would make your own airplanes then when you were in grade school?

HH: Mm-hmm. They have kits where they just have printing on a sheet of balsa wood, what the ribs were and you can cut it out with a razor blade and stuff. That was that day. I build airplanes from scratch just with a set of plans, but more recently we build what we call ARFs, Almost Ready to Fly. A lot of the work has been done for you. You put them together and then install the radio equipment and whatever. I'm putting together one now that I think is going to be a nice airplane.

MO: Oh yes? [*chuckles*] This is in your shop out in the garage?

HH: No, in the basement, which is just fine in this hot weather because the basement is cool.

MO: The reason I was saying that it was in your garage was because you have got your planes in the garage.

HH: There are some planes there. I have an older SUV, a Ford Explorer, that is probably about a '98. But I use it almost like a hanger. I keep the airplanes in that, and when I get ready to go fly I don't have to do anything. Just get in the car and go. The airplanes are kept in there, the ones I am flying at that time. I usually carry three airplanes.

MO: Now, you were saying that the ones, of course, that you flew in grade school were not radio controlled.

HH: No.

MO: But they had engines?

HH: Later. About the time I was a freshman in high school I had my first gas-powered airplane. The engine used gasoline and oil mixed together. It had a coil, and a condenser, and a spark plug. Nowadays all of the engines are with what we call glow plugs. It looks like a spark plug but there is a coil of platinum wire inside. You hook a battery up to the thing, and it makes it glow. That will set off the combustion when the piston comes up to the top dead center. Then that will cause the fuel to fire and go. Then the heat of that combustion will carry on for the next stroke, so once you

have got the engine started you take the current off of the plug.

MO: So it compresses the gas enough so that it just ignites spontaneously?

HH: Right. More like a diesel engine in that respect.

MO: Right, yes. I want to come back to airplanes here in a minute, but, let's see, I think I have some notes here somewhere. What other activities are you involved in?

HH: I have always been interested in politics, and I do watch quite a little about the politics on the TV. I watch Channel 128, which is the only channel that does anything liberal. [chuckles] Corporations control all the rest of them. It is Sean Hannity and Rush Limbaugh, those people; there are lots of those out there. Lots of different stations carry them, but there is only one channel where you receive some [chuckling] liberal propaganda.

MO: Which network is that?

HH: I am not sure what they call that network. Also, they are on the radio. Air America is another one. That is what I listen to when I am traveling.

MO: Politics has been a life-long interest?

HH: Yes. My father had been a state

senator through 1936. He was United States attorney for Oregon in, oh what would that be, '46 through '53. They would always be there because he had lots of political friends that I met.

MO: People like Justice Douglas, I guess?

HH: Yes. I was in the apartment with my dad, and Justice Douglas, and a man from Seattle whose name I can't remember right now, when it was decided that he should not run as a vice presidential candidate with Truman.

MO: Oh yes?

HH: I was there when they placed the telephone call to advise Truman's people that he thought he ought to stay on the Supreme Court.

MO: Okay, well, that is a historic occasion. So he was on the Supreme Court at that time?

HH: Yes. He was one of FDR's first appointments to the Supreme Court.

MO: Yes, that makes sense.

HH: He had been appointed first as Chairman of the Security and Exchange Commission. He wasn't very well liked by the banks and the other corporations.

MO: I'll bet not. [*chuckles*]

HH: Told them they were going to have some rules and they were going to have to obey them. We have got to protect the investor.

MO: Now, of course, we abandoned the regulations of the financial industry.

HH: That has happened in that last eight years, and look what happened.

MO: Right. The rules that were created under FDR.

HH: We have to go back to some regulation.

MO: Yes, that's right.

HH: You can't let it run wild. For instance, one bill is being fought hard now in Congress is a bill that would give stockholders a voice in these salaries of the CEO and other officers. That is being fought like the dickens by the conservatives. They don't want the stockholders to have that right.

MO: Right. [*chuckles*] Even though they are—

HH: They are the owners of the business.

MO: That's right! They are the shareholders, yes.

HH: But the executives have their little

game where they sit on boards and one man will sit maybe on several boards and when his time comes up for a raise then he is supported by these others.

MO: I guess the argument is that in order to have top-notch people you have to compensate them in that way.

HH: I don't know about that.

MO: [*chuckling*] I don't know about that either. But that is their argument, at least.

HH: Yes.

U.S. Supreme Court Politics

MO: Another thing that you must be watching with some interest is the current situation, unfolding now in Congress, but the confirmation of justices to the U.S. Supreme Court.

HH: Oh yes. I think many people don't realize what a big role they play in their lives.

MO: Right.

HH: Right now the majority of the Court are conservatives and this didn't change any by appointing Sonia Sotomayor.

MO: That is because she is replacing—

HH: —a liberal.

MO: Justice David Souter. Yes, but it has been interesting to see how contentious—Sotomayor maybe not so contentious, just because they know that she will inevitably be confirmed—but just how contentious that process has become in recent years.

HH: Oh, yes. Big stakes involved in what happens to the economy, and the rights of individuals and so forth. When I was sitting as a judge, I used to get the advance sheets from the Supreme Courts about their cases. I told my law clerks that I could tell you if it is a case where you have got a corporation on one side and an individual on the other side, Justice Antonin Scalia will vote in favor of the corporation. If it is an individual and a government, he will vote in favor of the government. I said, "Now, you watch it, now." Scalia always votes in favor of the government or the corporation, not for the individual.

MO: [*chuckling*] Never for the individual.

HH: No. That is a lot of hogwash when they say that they follow the law. The heck they do. There is an old saying that the Supreme Court is aware of what goes on in the voter's mind, or they watch the election results, the Supreme Court judges.

MO: It is probably the court that is more political, in terms of their decisions, I imagine.

HH: It has always been, though.

MO: Right.

HH: When Franklin Roosevelt first became our president in '32, a bunch of the legislation that he encouraged and was enacted by Congress was declared unconstitutional by the Supreme Court. Roosevelt didn't know what he could do. He couldn't do anything because the Supreme Court was overruling everything. So he suggested maybe we ought to increase the number of judges. Instead of nine, make it fifteen. That was the handwriting on the wall, and then a couple of those conservative people pulled out. They resigned, and he was able to appoint people like William O. Douglas and Hugo Black.

MO: Right. To give himself the—

HH: Now, Congress could act and the Supreme Court would not overrule it.

MO: Right.

HH: That is hogwash that they always follow what the law says. That is not true, not true. Whether the judge is a liberal or conservative, he does what he thinks is best. He will figure his way to justify it.

MO: Yes, in the lower bankruptcy court, anyway, you figure that is not a good way to do business? Is that right?

HH: I try to follow the law. I don't like to read something into the law that isn't there. Like in Chapter 13, there are about six or eight tests that a plan has to have to become a plan that can be confirmed. Some judges add in things that are not in the statute. They will say, "There has to be at least twenty-five percent dividend go to unsecured creditors." It doesn't say that in the law, but they will add that in. I am against that because I like the statute the way it is written. I guess maybe that is the reason I can say you shouldn't add or subtract from it [*chuckles*] just follow the language.

MO: Right. Any other final thoughts you have about your career or any other summaries?

HH: By and large I have enjoyed work as a bankruptcy judge. I found it interesting and met a lot of good people. I was happy that I had that experience, but I can't think of anything really funny. I don't remember much laughter going on in the courtroom. Everybody was pretty serious about how the money was going to be divvied up. [*both chuckle*]

MO: Yes, I bet they were. Henry, I have got a few more minutes left on this tape. I wondered if you would be willing to give me a tour of your shop?

HH: Yes. I would be glad to.

MO: Why don't we temporarily adjourn here, and I will get my camera ready so we can wander around.

[In Judge Hess's shop]

Woodworking

HH: The workbench and its drawers.

MO: That was something you did with?

HH: With the ShopSmith. That cabinet there holds all of the hand tools. I enjoy that kind of woodworking.

This is an airplane, what we call an ARF, Almost Ready to Fly. I am installing the radio equipment now. This is the transmitter that controls the functions. I'll turn this on. Now, with this stick I can make the elevator go up and down. With this stick I can make the rudder move. This stick, back and forth, changes the speed of the engine. Let's see, this is the ailerons, but I don't have the wings on it yet, but that is what it is for. These number of switches perform various functions.

MO: So this one you will be flying before too much longer.

HH: Yes, probably next week I will be flying it. The computers are really something else now compared to what they used to be. Now they are digital and they read out like a television set. When I turn it on now it first reads out, "Rascal,"

which is the name of the airplane I was last flying. But I can change it so that it reads the name of another one of my planes. It will then, by memory, set the trims, which I have earlier entered for the controls on that particular plane.

MO: Okay, so you can use the same control box, for—

HH: That is right, the transmitter. When you scan down the screen you find one entry that says, "DR," that means dual rates. [Narrator note: For instance this switch on the transmitter is for the elevator. In one position it gives a preset amount of movement of the elevator. In the other position it gives a lesser amount of throw. The stick on the left when moved left and right controls the ailerons. Moving it up and down controls the elevator. The stick on the left controls movement of the rudder left and right and controls the speed of the engine by moving the stick up or down. These are very similar to the controls of a real airplane. I have a pilot's license and have flown real airplanes. It turns out that it is more difficult to fly a model airplane than a real airplane. It is easier to control an airplane when you are sitting in the cockpit than when the airplane is in the air and you are on the ground.]

MO: Really?

HH: Oh yes. It does exactly the same thing. Except it is a little faster and more

maneuverable than a real airplane. You don't usually fly this kind of an airplane inverted, and you don't do rolls and whatever.

But it is entirely different sitting in a cockpit, and looking out the window, and seeing the runway, and guiding the airplane down the runway than it is to stand down on the ground, and there is the airplane coming thirty or forty miles an hour, and you are guiding it, hoping to land it on that runway. Entirely different. When I stand behind it and take off, when I push the aileron on to the right it turns right. When it comes around behind me and comes at me, it is the other way around.

So I have to do just the opposite with the control. A left turn to me is a right turn to the airplane because now it is coming at me.

Now after a while it gets so that you don't have to think about it.

MO: It looks like you have got another plane.

HH: Oh, that was an airplane that I had been flying earlier that I am retiring. I am going to give it to a friend.

MO: Do you crash them now and then?

HH: Definitely. Here is the evidence. There is an airplane that crashed, but I will repair it. I just haven't got to it. Here is an airplane, a small one that is electric,

a battery-operated, but I haven't quite finished it yet. There is the wing.

There are two airplanes here that are what we call scratch-built. That is this one. Figured that out with a set of plans. You build it like a boat, upside down.

MO: So you just built it from raw wood?

HH: Yes. Just laminate the wood, in little strips.

MO: Oh yes.

HH: This is one my brother built. He died at age fifty-nine, and I haven't gotten around to doing anything about it except that I made the wheel pants. But it is just about ready for covering now. I will do that one of these days.

MO: Oh, and are these photographs from trips you have made?

HH: That is a cross-country trip on skis up to Mirror Lake in the spring. The old mountain man, Roy Shaffer, who had a dude ranch down in the canyon said that some other skiers had left some provisions in a cabin up near the lake and we would be welcome to go and use them if we wanted to. We didn't carry any food at all when we went up, and we weren't sure that we were going to find the cabin because the snow was so deep. But we found one corner of the cabin sticking out.

We had to dig down about four feet to get to the top of the door.

MO: Okay, Henry. I want to thank you for taking me on the tour down here. I am just about to run out of tape. So thank you very much for tour and for the interview.

[End of Recording Three,
Interview Ends]