

Interview with James Garrity

Interviewed by Mike Hannaher for the Heritage Education Commission

Interviewed on March 14, 1985

James Garrity - JG

Mike Hannaher - MH

MH: This interview is with Judge James E. Garrity, Judge of District Court, Moorhead, Minnesota. Judge Garrity has been a judge with the Clay County District Court since April 1, 1976. This interview is being held at Judge Garrity's office at the Clay County Courthouse in Moorhead, Minnesota, on March 14, 1985. The interviewer is Mike Hannaher, representing the Heritage Education Commission.

Judge, I'd like to get some basics down just for the record. Will you tell me when and where you were born?

JG: Mike, I'm happy that you're here this afternoon and am very glad to have this occasion to talk to you about the profession, as I know it to exist in this community, from the knowledge that I have either firsthand or from what I've heard others say.

Going back to your question, I was born on November 23, 1919 in the city of Ottumwa, Iowa, which was the home site of my mother prior to her marriage. In other words, I was born down at my maternal grandmother's home.

MH: Were you born right in the home?

JG: I'm not sure whether it was the home or the hospital, but at any place that's where I was born, in Ottumwa, Iowa.

MH: And your parents' names were?

JG: James A. Garrity was my father, and my mother was Marguerita Evans Garrity.

MH: How did they meet?

JG: My father was born and raised as a boy in Hudson, Wisconsin and my mother was born and raised as a farm girl in Ottumwa, Iowa. My father graduated from the St. Paul College of Law, which is now known as the William Mitchell College of Law, and he came up to Moorhead in 1913 and started the practice of law with Edgar E. Sharp. He went to work for Mr. Sharp, who was then already a long-time attorney in Moorhead. My mother attended college at Iowa State University in Ames, Iowa and then she went to Columbia University in the city of New York. Her background was teaching what they then called domestic science. I guess today they'd probably call it home ec, but my mother, after

obtaining her degree from Columbia University in New York, came to Moorhead where she was employed by the school district. She was in charge of the Domestic Science department. The two of them used to eat dinner over at the Curran Boarding House. Curran was the father of the late Sheriff Bill Curran, and they had a boarding house in Moorhead. My mother and father ate at the same boarding house, and by reason of that they became acquainted one with the other and were married here.

MH: What was your father's educational background before the St. Paul College of Law? What other college degrees or high school degrees did he obtain?

JG: He was a graduate of Hudson High School there in Hudson, Wisconsin and at that time you did not need any preliminary college degree or college education to enter into law school. My paternal grandfather was an employee of the Omaha Railroad. He was a baggage man, and my father used to say the only thing that his father could give him was a pass on the Omaha Railroad, whereby my father was able to commute from Hudson, Wisconsin over to St. Paul so that he could attend the St. Paul College of Law. At the time my father graduated from St. Paul College of Law, you had to be 21 years of age to be admitted to the bar. My father wasn't then old enough to be admitted to the bar, so after he completed his schooling he remained and worked in the dean's office at the St. Paul College of Law until such time as he reached the age of 21. Because he worked in the dean's office, he had an opportunity to see the correspondence and to process the correspondence from those lawyers who were looking for associates. One of the people who had written to the Law School seeking an associate was Mr. Edgar Sharp of Moorhead, and my father responded to that and came out to Moorhead in 1913 and stayed there ever since.

MH: Do you know how many lawyers were in Moorhead at that time when he came to join Mr. Sharp?

JG: Mike, I don't. I could give you some names that I've heard mentioned, of course. There was William Tillotson, there was Burnham, there was George Hammett, and there was Guy Rustad and Jim Witherow and Edwin Adams. I'm reluctant to mention any more because I don't recall. I'm not saying that there weren't more lawyers but none of them come to mind right now.

MH: Where was your father's office in 1913?

JG: In 1913, of course, he was with Edgar Sharp and he was with Edgar until 1915. He left Edgar Sharp at that time and he and a fellow by the name of Grover McGrath, who was a lawyer, entered into a partnership. Where the physical location of their office was I do not know. Grover McGrath was a native of Barnesville and one time Mr. McGrath just disappeared and nobody ever heard from him since. My father never knew where he went, and so from that time on, which probably would have been 1916 or so, my father continued to practice law alone in Moorhead until I joined him in November of 1947.

MH: Where were the offices in 1947?

JG: In 1947, and my recollection as a child always was that, his office was located in a building that's had various names. It was a building located at the northeast corner of the intersection of Center Avenue and Sixth Street. It was a building which used to house what was then known as the Moorhead National Bank or it was the bank that belonged to the Lamb family of Moorhead. My father's offices were upstairs in that building. There was also the office there of another lawyer I should have mentioned, Charles Marden. Charles Marden had an office in that building along with Mr. William Tillotson, and attorney Henry Stiening later had his offices in there when he came to town. Then, oh, I would guess around 1929, or '28, somewhere in there, the Moorhead National Bank moved across the street and consolidated with the First National Bank. The building in which my father was located was then known as the National Loan and Improvement Building because that was the name of the little holding company that owned the building. The owners of the building--it could be the corporation, I understand--but the principals of it were the early blue blood families of Moorhead--Tillotsons, the Marks family, the Mackall family, and the Kippels family. Those were the names I used to see--representatives of those families coming together in the building once a year for their annual meeting. While it was known as the National Loan and Improvement Building, Mr. Joe Kippels, who would have been the son of the early investor in the building, opened up the department store there called the Waterman Department Store. He was a successor in interest to Mr. Waterman who did have the Waterman Store. So sometimes the building was referred to as the Waterman Building, although I would think that was a technically erroneous reference because I think that they preferred using the name the National Loan Building or the National Loan and Improvement Building. All the time that I have actual knowledge of where my father had his offices, it was in that building, and he was there at the time that I joined him. He was there until he was appointed Probate Judge of Clay County in about 1957. After that, after about 1957, the First National Bank in Moorhead had built a new building and the second floor was vacant. Mr. James Cahill and I were then associated together in the practice of law. We continued our offices in the old Waterman Building or the National Loan Building, but the bank approached both our office and the Stiening, Olson, Thysell law office and asked each of us if we'd give consideration to moving across the street and to occupying the second floor of the bank building if the bank were to finish off the second floor. Each of us, in turn, acknowledged to the bank that we would so move and the bank then finished off the second floor and so I suppose it would have been somewhere around 1960 or '61 or '62, give or take a few years in there, that our office and the Stiening law office left the National Loan Building and went into the new First National Bank Building just across the street.

MH: Before we get into your personal practice and recollections of the legal profession at that time, do you have any specific impressions from your childhood or adolescence of your father's practice and what type of law practice he had at that time?

JG: He was city attorney in Moorhead from 1917 until about 1928 or so. At that time the office of city attorney was an elective position, and he continued to be city attorney until he quit. It was sometime around '27, '28, '29, or '30, somewhere in there, that he thought he didn't care to run anymore, so he quit. Up until that time, until around 1930, his main law practice, of course, was representing the city of Moorhead and other general civil practice.

He had some criminal business as well. Then in 1932 he was appointed county attorney of Clay County by the county board. Henry Stiening was then the county attorney, and in 1932, Henry Stiening resigned as county attorney because he had an opportunity to go down to the attorney general's office in St. Paul. My father was county attorney from 1932 until 1946 when he decided not to run again for county attorney. So then during those years, from 1932 to 1946, of course, a good share of his practice related to the business of Clay County including its civil and criminal aspects. He also engaged in a general civil type of trial, adjustment, probates, and so forth.

MH: Today, in the 1980's, I think many people would point to lawyers being more and more specialized. There wasn't much of that back in the days that your father was practicing, was there?

JG: I never even heard of the word "specialization" among lawyers other than when I came here in 1947. You used to hear reference made to Attorney Van Osdel over in Fargo who, at that time and I guess ever since, has pretty much directed his efforts towards ICC-type work and commercial carriers and their problems and franchises and charters and so forth. But other than Van Osdel, I never heard of any specialization around here, although you used to hear that George Soule, a lawyer over in Fargo, used to deal almost exclusively in commercial collections. In fact, George Soule used to get quite a few wholesale accounts for collection around here and I believe that he made that somewhat of a specialty in a sole type of a practice, but beyond that I've never heard of any specialization on either side of the river. Certainly there was none that you ever heard of within Clay County.

MH: Do you have any recollections of anecdotes that your father might have passed along about himself and his practice or fellow lawyers that come to mind that you think might be particularly interesting?

JG: I remember him telling of a case he once had towards the beginning of his practice. He represented a fellow who was being sued for alienation of affections. He had the fellow come into court dressed as he quite often was, old decrepit clothing and using a cane, and my father used to say the jury took one look at the defendant and they knew that he couldn't steal anybody's affection.

They used to try a lot of paternity cases when he was county attorney before they had the blood test which we now have. I remember a case he told about where Guy Rustad represented the putative father. All during the trial of the case, which is basically a civil type of a case, not a criminal case, the defendant had his twin brother appear all during the trial and the girl pointed out the twin brother as being the putative father. In the last part of Guy's case, he did bring in the real twin brother, the one that I guess was supposed to have genuinely associated with the girl. My father said, "The jury still convicted the fellow even though everybody had misidentified the twin." They figured there was the other twin there. So whatever it was, I used to hear my dad and Henry Stiening and Guy Rustad sit around many times talking about various cases they've had.

Another one is about old N. [Nels] I. Johnson, who was an old lawyer here in town. He used to tell the story about N. I., who used to be quite an excitable fellow when he was trying a case. It was an intersection case and N. I. was on one side and finally N. I. asked what he thought was his clincher question. He asked the other fellow, "Well, how far apart were the cars when they hit?" So you used to hear some of those stories that probably have to be put in the context in which they were related in order for them to have the full humor to which they're entitled. One would almost have to know N. I. Johnson. N. I. was a character. The Great Northern train crosses First Avenue North on the bias, at least it used to over there on First Avenue North near Sixth Street, a block west of the American Legion. I remember them telling the story that N. I., for some reason or another, drove up and hit the train as it was going across the street. The engineer looked out and saw N. I. hit the train and the next thing the engineer saw was N. I. had the car in reverse going down the hill and on into the river. The only thing that stopped N. I. from getting into the river was a tree that he backed into as he was going down the hill. But those are quite interesting stories. My father used to tell stories on the campaign trails. My father ran in a lot of elections, and N. I. Johnson once ran against him for county attorney. I used to hear the stories on that, and I knew N. I. quite well myself and I'd go in and talk with him. He was very interesting to listen to. He talked with a very heavy Norwegian accent, but those fellows used to sit around and talk about their cases and make light of the things that should be made light of without breaching any of the confidences.

MH: You mentioned the heavy Norwegian accent. Do you think in your father's time, or in your time, that there were any particular allegiances that certain segments of the community would hold to regarding certain lawyers or law firms, such as was there a Norwegian law firm or would there be a Lutheran law firm where the Lutherans might go or where Catholics might go? Do you have any impressions about that sort of thing?

JG: I've always felt, which is somewhat disappeared now, but you have to keep in mind that a lot of these immigrants came over here from Norway. We are basically a Norwegian community, predominantly so. They came over from Norway around the late 1800s and early 1900s, and language is quite a factor in lives. I think that people tend to look and to follow establishments or institutions or people that can speak to them in their own language. For example, on Second Avenue and Seventh Street in Moorhead, you have the Norwegian Lutheran Church. On Second Avenue and Sixth Street, you had the Swedish Lutheran Church and Bethesda and Trinity--differences of language-- Norwegian and Swede. They followed their own. Now you don't see that too much today, but it existed. One who was somewhat more privy to the classes of people that had just come over got the benefit of that.

MH: You mentioned your father ran for office quite often. Were there other political offices other than city and county attorney jobs that he ran for?

JG: Yes, he ran once for state senator against Magnus Wefald, and Magnus Wefald beat him. But that's the only other office he ever ran for that I have knowledge of.

MH: What circumstances led to your father taking the county judgeship?

JG: He was then probably 66 or 67 years of age and very active in the practice of law. The actual job of practicing law, in terms of hours, is much more demanding than the hours that are required for a judge. I never really sat down and talked with him about it, but I would hazard a guess that at 66 or 67 he was getting a little tired and didn't want to retire, but wanted more regulated hours and taking that job did give you more regulated hours. I've seen it in my own experience out here. A lawyer has got to do the briefs. The judge just has to read them. It takes more time to write them than to read them.

MH: Did he run for that judgeship or was he appointed?

JG: He was appointed by Governor Orville Freeman upon the retirement of Judge P. F. Fountain, who retired for health reasons.

MH: What was the jurisdiction of the county court at that time, in 1957? What were his duties?

JG: The duties of the probate court then related to the handling of the estates of decedents, civil commitments which would mean hospitalization generally at some type of a state hospital relating to mental illness or inebriety--that type of commitment--and juveniles. I would think that that, for the most part, was the jurisdiction of the probate court. They had the power to marry, but he never married anybody. He always thought they should go to the church and be married.

MH: How long did he serve as judge?

JG: He served from 1956 or 1957, whichever year it was that he was appointed, until his death, which was August 9, 1962. It was either 1962 or 1960, I've forgotten now. It was either 1960 or 1962 that he passed on. I could figure it out. He passed on about two weeks after his seventieth birthday, and he was born in '92. So he died August 9, 1962--that was the date of his death. He was succeeded by Gaylord A. Saetre, who was practicing law downtown and Gaylord Saetre was appointed by Governor Elmer Anderson, who was then a Republican.

MH: Let's go back to your educational background now unless there's something else you feel you'd like to add about your father and his practice and the court. If you have any other comments that you'd like to make about your father and his history or any of the other lawyers who might have preceded you in the practice of law in Moorhead that you might think would be worthwhile, I would encourage you to comment on them.

JG: Garfield Rustad was a very colorful lawyer--had a lot of color to him. He was a very strong Democrat here and the story was that when Judge Nye died and there was a vacancy in the judgeship here--that would be around 1935 or '36--that Governor Olson called up Gar Rustad and asked him if he wanted it. But Gar Rustad said he was making too much money practicing law so he didn't want it. Gar made a lot of money practicing law here in town. He had a good way with a jury.

C. [Christian] G. Dosland--I never knew him as an individual. I could recognize him, but my contacts with him were minimal if anything, although I did go to high school with his daughter.

And Henry Stiening, who was the founder of your office--well, Charlie Marden probably was the founder of it--but overlooking that, Henry Stiening was a very colorful, fine, hard-working lawyer. Henry had a great following, and Henry made money practicing law.

And the other lawyers in town like Jim Witherow--he lived a block or two from us, so I knew the Witherow family, but I never knew Jim Witherow as a practicing attorney, although he did have a few cases when I came to town, but Jim Witherow was then quite an elderly man.

William Tillotson was probably the most scholarly person of anyone around here, a very literate man. When I started in 1947, Mr. Tillotson was then in his upper 80s or lower 90s. There used to be a quiz program on the radio every morning as to who was the author of certain lines of a poem or who wrote this novel or who wrote that. Well, William Tillotson always had the answers. He knew the answers. At his age of 89 or 90, he was just as sharp as a tack. Mr. Tillotson always walked with a limp. He had one leg that he had a problem with, so he walked with a cane and noticeable hobble. My father told me that it was around 1917 or 1918 that Mr. Tillotson was over at the post office and tripped over a little wire that was designed to keep people from walking on the grass. He fell down and broke that leg. Mr. Tillotson sued the city for that. My father represented the city, which is always a difficult thing to do, when you have a very fine fellow like that with that severe injury. I understand that the jury returned the defendant's verdict in the case. But from around 1917 or 1918 he always walked with a very noticeable limp. A finer man, a finer gentleman has never been born or been around here than old William Tillotson. It just shows the difference in times. Something like that today, I'm sure the juries would return the verdict in his favor, but in 1917 or 1918 juries were pretty conservative-type people.

Then also there was another old lawyer here by the name of F. H. Peterson. He used to be a state senator here and he lived within a block of us, in fact, lived on the corner of the block which we were in.

MH: Where was that? Where did you live?

JG: We lived at 515 8th Street South, and old F. H. Peterson would have lived at 501 8th Street South in what was then a stucco house on the corner. F. H. was a state senator and he must have had a bald head because they called him "Baldy." But I never had any personal contact with him. As a boy, I remember going to the Peterson house asking for a job to shovel the sidewalks. Mrs. Peterson said, "Young man, all my hired help comes to the rear door." We'd gone to the front door, so that terminated that job. That was about my only personal contact with the Peterson family, although he had several children, one of whom was killed by being run over by a car. My father happened to represent the car that drove into him. The jury didn't give any money for the death of the Peterson boy. I don't know anything about the facts. I just know that the Peterson boy was killed on the road,

struck by a car. And I never did know old Solomon Comstock, old S. G. I knew his widow but I never knew old Solomon. I knew Solomon's son, George Comstock; of course, he wasn't a lawyer, but still a fine gentleman.

MH: Solomon was a lawyer?

JG: I believe that he was, that was my understanding.

MH: We can get back to those people who preceded you, but let's talk a little bit now about yourself and your family. Were you the oldest child?

JG: I'm the second oldest of five children.

MH: Any other lawyers amongst your siblings?

JG: No. I was the only one that followed the law business.

MH: Do you remember why you decided you wanted to go to law school and be a lawyer?

JG: No, I have no particular recollection of that, other than I guess I never thought of doing anything else. Although, in going over some papers when my mother passed on and I was emptying out the house, I saw some essays that I'd written in the grades where I was going to be a fireman. But other than that, I guess I never thought of anything else.

MH: Do you recall discussions with your father or mother regarding career and career choices?

JG: No, I don't think there was any, or if there were, at least I have no recollection of them today.

MH: You graduated from Moorhead High School?

JG: Yes, graduated from Moorhead High School in 1937. We then probably had about 125 kids, I guess, in our graduating class.

MH: Did you ever live in Iowa, or were you just born there?

JG: No, just born there.

MH: So you're a lifelong Moorhead--

JG: Yes, resident. Other than the accident of birth, why, I've been in Moorhead all my life.

MH: What did you do after you graduated from Moorhead High School?

JG: I went up to Moorhead State Teachers College--it was then Moorhead State Teachers College--it is now Moorhead State University. At that time you needed two years prelaw, but you were given a choice. You could have two years of prelaw and law school was then four years. Or you could go into law school with three years and your first year at the law school, and then you got a bachelors degree, a B.A. I think you could then finish law school in three years. Certainly with a degree before you came into the law school, you could finish law school in three years. But going in with two years prelaw, it was four years. In that regard, there would be myself, Vance Thysell and Hugo Olson from this community. Vance then resided in Hawley. He graduated from Hawley High School. I didn't know Hugo before he came to Moorhead, but I would hazard a guess that probably Hugo went into law school with two years. The reason I say that is that Hugo was a relatively young fellow, that is, he was the age of myself and Vance, were Vance now living, and working it backwards, I would think probably all of us went in with two years of prelaw and four years in the law school.

MH: You went directly from high school to Moorhead State Teachers College for two years and then to--.

JG: University of Minnesota Law School. I was there two years and at that time they were starting to register for the draft all those who were 21. I was not then 21 when they had to register in the fall of '40, so I thought I was pretty secure from the draft. Little did I know that in the spring of '41, they'd have a second registration for those that had become 21. Then in July they had a second calling of the draft, and I had the first number drawn in Moorhead and the fourth in the county. So I joined the Navy. I signed up for the Navy in August of '41, stayed on active duty with the Navy until about February of '45 or '46, one of those two years, and I stayed in the Naval Reserve until about 1951. After I was released from active duty in 1946, I returned to the law school. At that time everybody was very receptive to helping the veterans. The law school had been on an annual basis, that is, when I entered law school, all classes were one year or all courses lasted one year. When I came back, the law school was on a quarter basis and they had summer school so you could go the year round, and so I got my remaining two years in in about a year and a half by going through the two summer sessions. I graduated from the University Law School in August 1947, and then took the bar and the results were known around November of '47, and then I came and joined my father.

MH: Was it difficult to get back into the swing of things going to law school? Were you finding you'd forgotten things from the first two years that you shouldn't have?

JG: Yes, there was some of that although I think that I got home around February of '46, which was about in the middle of a quarter. The next quarter probably started about April 1, so during the months of February and March, I went over all of my class notes relating to the subjects that had been covered prior to my leaving school. Looking back, I would say that I made a pretty good effort to review them and I think that I had a pretty good background to return to school with.

MH: Over the years, the University of Minnesota's had some nationally respected authorities in certain fields of law teaching there. Did you have any particular teachers that stand out in your mind as being exceptional?

JG: Without a doubt, one of the greatest educators that I think I met down at the law school was Dean Everett Fraser [phonetic]. I got to know the dean very well, and he was a great man, recognized nationally, and I thought he was a tremendous dean. He also taught real property.

William Prosser was my professor for torts. He had written innumerable books and articles and went on to become dean of the Law School at Harvard. He was equally a great teacher. Dean Fraser and Dean Prosser were different people, that is, they had a little different method of teaching but they were both excellent teachers.

I had Maynard Persig [phonetic], who was a great teacher. He had, himself, as a student, I believe, studied over in England. Then he had an interim appointment as a Justice of the Minnesota Supreme Court, one of these caretaker-type jobs. He later became dean of the Minnesota Law School and then retired and I guess right today, in his 80s, he's probably teaching over at William Mitchell College of Law. He was a great teacher. In fact, I would be hard pressed to name anyone who I would say, "Well, they could have been different," or "I would have preferred somebody else." I think that Dean Fraser had put together just a tremendous, tremendously great, hard-working faculty.

Professor Stan Kenyon [phonetic] was a very bright man. At that time there used to be a burlesque theater down in Minneapolis and among the students it used to be rumored that Stan Kenyon worked his way through the University of Minnesota Law School before he became a professor by playing the clarinet or a saxophone down at the Gaiety Theater, which was the burlesque theater down there in Minneapolis. Whether that's true or not, I don't know. But at least it was part of his color; at least he got credit for that, rightly or wrongly.

And then old Professor McClintock taught equity, and he had written a Horn book for West Publishing on equity which I think made him pretty well recognized throughout the country as a leading authority on equity.

We also had Steven Riesenfeldt [phonetic] who taught and now if he hasn't retired, he's probably still teaching now out at University of California-Berkeley in the law school out there.

After the war the professors I had--well, you didn't get to know them as well because you were on a quarterly basis instead of an annual basis. The professors I had after the war, I'd have a hard job to try to name any of them. I could give you the names of one or two of them--Wilbur Cherry was the professor in what they call practice, which was the pleading thing where you studied the federal rules. The Minnesota Rules of Civil Procedure were not then in vogue, so we didn't have to learn them, but he taught the course on federal rules and the practice. Well, that was about those fellows that I remember.

MH: Had you planned from the beginning, when you got into law school, to come back to Moorhead and practice with your father?

JG: No, I had no plans as to what I was going to do. In fact, during the war, I was in New York once and went up to Columbia Law School and talked to the dean, and told him I was even thinking of transferring into Columbia to finish up. The dean went over everything at that time, and he said, "You just come out here and we will be more than happy to have you come in." And I thought of it afterwards, Columbia, what's that? Nobody in Moorhead, if I ever went back to Moorhead, probably had ever heard of Columbia, so that didn't mean too much. As I mentioned, when I got out of active duty from the Navy, I was still in the Naval Reserves. Upon graduation from law school, I got a letter from the Navy. It was a form letter--I wasn't the only one that got it, anybody occupying a similar position, I'm sure, got the same letter. They wanted to know if I had any interest in switching over to the regular Navy and going into the Judge Advocate Corps. The Navy never did have a Judge Advocate Corps until after the war. They pointed out how you'd be in on the ground floor and I then held the rank of lieutenant. They pointed out the many benefits of it and really I debated with that a long time and I was leaning that way quite heavily. I called up my father and I said, "This is the letter I got from the Navy. What do you think about it?" His response was, "How do I know what you should do?" That was the only answer I got from him.

After I got through I had some interviews down in the cities [Minneapolis and St. Paul, Minnesota], and I came pretty close to going over to Duluth with one of the bigger offices over there. Then, I don't know, maybe at that time my dad must have asked, "Why don't you come to Moorhead?" Anyway, there was no design. At one time I would have bet money that I would have stayed in the Navy, but I didn't. But the letter that they put out sounded real attractive.

MH: What was the bar exam like in those days?

JG: Essay. Again, I'm not sure whether it was one day or two days, but they would ask a question and then you wrote the answer. You wrote until your fingers almost fell off. I remember they were blue books, that is, the books you wrote in were blue books. They would pick the books up and the next thing after the passage of some time. . . I understand at that time, the State Board of Admissions or Bar Examiners, whatever they called themselves, they, themselves, were the ones that reviewed the tests. I guess now they hire people to read and the board just sets policies and somebody else does the work, but in those days the board itself examined, read, and graded their own tests. So I think it must have been around August or September that we took the test and then one morning in the mail comes a letter, "Please be notified that you shall appear before the Supreme Court on a certain date to be sworn in and admitted to the bar." I went down to St. Paul and my father went down with me and moved my admission, which was pretty much the custom then and I think it is now. The fathers come along to move their sons' admissions.

MH: In 1974 when I took the exam, they were still using the blue books and there were sixteen questions, eight a day, four in the morning and four in the afternoon. Did you

approach the exam with any degree of trepidation? What was the pass/fail rate back then? Do you remember?

JG: Mike, I'm not going to answer that because I just don't know. If I were to hazard a guess, and only a guess, and I shouldn't even make a guess because I've got nothing to go on. At that time there was still a lot of sympathy and feeling for veterans and I think I'd be surprised to see that there was a high rate of failures as far as the returning veteran, but that would be just a guess. I do recall that at the time veterans received what I always felt was considerate treatment.

MH: So in 1947 you started practicing with your father in Moorhead in the Waterman Building or the National Holding Company Building? And it was just the two of you?

JG: Right. Just the two of us.

MH: Starting from that point on, why don't you just tell me the history of your law practice in terms of partners and locations.

JG: As I said, my father and I were located in the National Loan Building. He and I were together there from 1947 until about 1956 or '57, whichever year he came out here to the courthouse. Then he left the office, it would be, in December because on January 1 he was out here and I was alone in the office, either '56 or '57. I was alone until about March, April, or May of that year and then Jim Cahill joined me. Jim Cahill and I practiced together in the Waterman Building until such time as we moved over to the First National Bank Building.

MH: Had Jim been practicing in Moorhead before associating with you?

JG: No, Jim was a native of Minneapolis, and after he finished school he went to work for State Farm Insurance Company. At the time he came up to Moorhead here, he was working with State Farm in their divisional or regional office down there at St. Paul. After we moved over to the First National Bank Building, Gunder Gunhus eventually came and joined the office, and the three of us practiced together there for awhile. Dave Streed, who is from Milan, Minnesota, had been a student at Concordia and a graduate of the William Mitchell College of Law, had been working at the Lutheran Brotherhood Insurance Company in Minneapolis, but had a desire to get back up to this community, and so he came up and joined us. Then Paul Grinnell, who had been practicing up in Crookston, and was a native of Grand Forks and a graduate of the University of North Dakota Law School, had been practicing in Grand Forks with Erickson, Erie, Odman, and so forth, and for reasons, Grinnell preferred coming to Moorhead and leaving Crookston, so he joined us. Then Ed Klinger, who was a law clerk for U.S. Circuit Court Judge Charles Vogel and Judge Myron Bright and was stationed in Fargo as such law clerk, eventually came over and joined us. At about the time I left the office, we had just finished an interview with attorney William Guy and had made arrangements with him to join the office, but he came to the office after I had left, so I never had any occasion or experience to be in any way associated in the practice of the law with Bill Guy.

MH: The years with your father in the practice, how would you describe your law practice in terms of the type of work you did?

JG: Mostly all civil. I was appointed city attorney in 1950 or 1951, somewhere in there plus or minus a year or so, and I was city attorney for the next twenty years. So a large share of the discourse related to municipal government, plus some criminal defense, but not very much for a lot of reasons. At that time there was no public defender as we know him today. At that time if there was an indigent and he asked for assistance and he was charged with a felony, the district judge then generally called the youngest lawyer in town off to the courthouse and said, "I have a fellow here for you to represent." I think the county paid something like \$25 a day to defend the criminal. You had to take your bill in before the district judge and then he'd chisel you on your hours. Not everybody had a public defender then either, but it always went to the youngest kid in town. Soon I was followed by Norm Nelson and Stanley Olson and they got them.

MH: You mentioned some other names there. In '47 when you came, besides your father and yourself, Henry Stiening was there. Was Hugo with him at that time?

JG: No, when I arrived in town, in the National Loan Building, Henry Stiening was up there at the east end of the building. The building was in the shape of an "L" and Henry Stiening had his office over at the east end and my father was more towards the north end of the "L." Also in that building was William Tillotson and N. I. Johnson.

Across the street, over in the old First National Bank Building, was Edgar Sharp, who at that time had just gone into partnership with Gaylord A. Saetre, and so it was Sharp and Saetre. In that regard Judge Myron Bright always told me in a humorous vein that he wished he'd known that Edgar Sharp was looking for a man, because he would like to have gone with Edgar Sharp so that they could have used as the title of the office, Sharp and Bright or Bright and Sharp, either way you want it. He thought that would be a good selling point. So at that time you had Sharp and Saetre in the front end of the old First National and you had Goodwin Dosland, a sole practitioner, occupying the space that his deceased father had left. They all had to leave when the building was torn down. Going further west, you had up above the old Kiefer Building, I think it was, Jim Witherow's office and he was by himself.

At that time all the buildings were called "blocks" and so instead of calling them buildings--it wasn't known as the Wheeler Building in town or the Kiefer Building or the Gletne Building--it was known as the Wheeler Block or the Kiefer Block or the Gletne Block. I don't know why they referred to the building as a block but anyway that was a common description. In the Gletne Building, or the Gletne Block, over I believe it was then Frenchy's Bar, there was attorney Hugo Olson and he was joined several months later by Vance N. Thysell. Hugo was a stranger to the community, having been raised, I believe, at Cambridge, Minnesota and Vance was raised in Hawley. Vance had many relatives in Hawley and, in fact, he had an uncle in Moorhead, Dr. Fred Thysell, who was a well respected and recognized physician and surgeon within the city.

Another lawyer, Edwin Adams, was not practicing, but he was in town and he would show up for the annual meeting of the Clay County Bar. I think Edwin Adams was then probably in his 90s. It wasn't too long after Hugo and Vance came to town that they joined Henry Stiening and they then moved down to the Waterman, actually it was the National Loan Building, but because the Waterman Department Store was there, I think most everybody in common parlance referred to it as the Waterman Building. But that, of course, would not have been a correct designation, although as a practical matter it was.

After Hugo and Vance moved out of the Gletne Building, they were soon followed in there by two attorneys who just graduated from law school. One of them was Stanley C. Olson and the other was Norman H. Nelson. Norm Nelson was a tall person, rather skinny, and Stan Olson was rather short and better fed. Some of the people used to refer to them as the Mutt and Jeff situation in Moorhead because at that time, there was a comic strip in the papers in the Sunday editions known as Mutt and Jeff, and they were a tall combination and a short combination. Stanley used to kid Hugo about the fact that Stanley got a lot of Hugo's clients because the people would come up and ask for Mr. Olson and Stanley would come out and identify himself as being Mr. Olson. Stanley used to make reference to the fact that he would end up with clients for which he was thankful to Hugo. Of course, in those days the law business was a little competitive, so that always kept Hugo on his toes and kept him awake, anyway. While both Stanley and Norm were very able lawyers, there wasn't enough business to keep both of them going. After several years, Stanley went up to Ada, which was his hometown, and established a law office up there which proved to be very lucrative for Stanley, at least judging from the fact that to this day Stanley is still driving Lincoln automobiles. Norm Nelson continued on as a solo practitioner. Norm was the city judge, which at that time they called the police magistrate. He had the jurisdiction of a justice of the peace. Norm was Justice of the Peace here or Police Magistrate of the city of Moorhead until about 1965, I would guess, when Byron R. Wilson, who was the district judge, retired. There was a Democratic governor in at that time, so Norm Nelson was appointed to succeed Byron R. Wilson as judge of the District Court. Norm Nelson continued to serve as judge of the District Court until I would guess about 1968, which would be maybe a short span of three or four years, somewhere in there. The Seventh District extends over to St. Cloud and somewhat beyond. It was during the summer, I think it was 1968, and I don't believe I'm off over a year on that, but Norm Nelson was presiding in court over at Foley, Minnesota. Walter Grantham, who was an old-style reporter who used the Pittman system, was his reporter. They were coming back during the noon hour from Foley, going over to St. Cloud for lunch, with Walter Grantham driving the car and Norm the passenger. About midway between Foley and St. Cloud, there was a head-on collision between the Grantham car and a car as I recall that was driven by one of the county commissioners, I believe, of Benton County. All three people were killed almost instantly in that accident, that is, the driver of the other car and Judge Norman Nelson and Walter Grantham.

Then we had Leonard Eid, who was a real estate developer in town. He was a lawyer but I never did see him practice law, so as far as the lawyers go in town, while Leonard Eid was here, he did not practice law.

I would think that that's about all of the lawyers that were in town. Of course, there was N. B. Hanson down at Barnesville. N. B. was then quite an elderly man, as I knew him to be. Also Magnus Wefald over in Hawley, and that's certainly the extent of the practicing bar in Clay County at that time. Magnus Wefald was a very busy lawyer; Magnus served a lot of people around the Hawley area and N. B. Hanson did a lot of work for the people in and around Barnesville. Later on N. B. Hanson, and I forget now whether N. B. died or retired--I'm somewhat inclined to think that he died.

Barnesville then had a man by the name of Paul Aitkin as its city attorney. Paul was the city attorney and took over pretty much the business that N. B. had. During Paul Aitkin's tour of duty down at Barnesville, the city of Barnesville awarded a contract in connection with the construction of a new municipal power plant. It had to do with some electrical equipment, I believe an electrical generator, and they advertised for bids. It seems to me as though the name of the company that was awarded the bid was something like Consolidated Transformer Company or Consolidated--I'm not sure of that because I had nothing to do with the lawsuit. I believe, if my memory serves me right, it was Fairbanks-Morse that was an unsuccessful bidder and they hired Cyrus Field, a Fergus Falls lawyer, to sue the city of Barnesville to set aside the contract. The case was heard by Judge Byron Wilson, who wrote an opinion and rendered a decision that set aside the awarding of that contract. The opinion was pretty tough for the people in Barnesville to accept, that is, for those on the council because they went into great detail about the trip that the successful bidder offered to the officials of Barnesville to San Francisco. It was shortly after that case that Paul Aitkin, then city attorney, left Barnesville and went to Minneapolis. That pretty much covers the lawyers that were practicing around here.

MH: The next question I'd like to ask you relates you to the actual offices that you and your father had and the layout of them and the type of office furniture and equipment that you might have had, and the staffing that you might have had. First, to lead into it, a general question about what you think the lawyers practicing then, like Mr. Witherow and your father and Mr. Tillotson and Henry Stiening--what they would think if they saw some of these modern furnishings in law offices in Moorhead today.

JG: At that time there were no lawyers that I know of who had ground-floor offices. All of the offices were on the second floor of the various buildings and none of the buildings in Moorhead at that time had elevators, which meant that the lawyers had to climb very long flights of stairs and, of course, all of the stairways had a landing about half-way up where you could pause and gather your breath. Even old W. R. Tillotson, who was in the National Loan Building or the Waterman Building, who used a cane to walk because he did have a deformed leg resulting from an imperfect setting of it, even old Tillotson, in his late 80s or early 90s, had to climb those stairs and he seemed to be able to do it without any effort. No one ever thought of an elevator. Most of the offices had linoleum-type floors. None of them had wall-to-wall carpeting. The typewriters were all manual typewriters. In fact, you couldn't get the old girls, the old secretaries, to even consider trying an electric typewriter. They learned on a manual typewriter and were comfortable with it, and that would be the only typewriter that they would consider using. The clients would generally come in to a reception room and a lawyer would have his own private office leading off of the reception

room. I recall that the secretaries at that time were probably earning, and these would be the best-paid secretaries in Moorhead, probably were then earning somewhere around \$85 or \$90 a month. The offices worked five and a half days a week. They were open Monday through Friday, generally from nine o'clock until five, and on Saturdays from nine until twelve. At that time the banks were also open on Saturdays up until noon. So, there was still a considerable amount of business that was done on Saturdays. Then finally the banks closed on Saturdays and instead extended their hours on Monday night, and some banks on Friday night. Apparently that varied with the bank as to whether they wanted Monday or Friday night openings, so they would be open on either one of those days until nine o'clock. After the banks closed on Saturdays the lawyers started to close on Saturdays and got to the five day week.

The furnishings of the office were generally an oak-type desk with oak side chairs. The desk that I used is one I got when I finished law school in August of '47. At that time the Veterans Administration in Minneapolis was starting to unwind after World War II. They had an auction sale in Minneapolis in a room probably as large or larger than a football field filled with surplus government desks. I purchased my wooden oak desk, which was in pretty fair shape, for \$15 at that auction sale, and also bought several oak side chairs. I brought them to Moorhead and used them for a good number of years. The capital outlay for desks, chairs, items like that, would have been quite minimal and would have no relation whatsoever to the type of furnishings that are in an office today.

The copy machine didn't come into vogue until sometime during the 1960s. If you had anything you wanted to send to a client by way of a copy, it meant that the secretaries would have to type out the copy, which meant that any legal secretary in any law office, then, was probably one of the better typists in town because they certainly did an awful lot of copying just by typing up a duplicate copy. If it was a printed document of some kind that would have taken an exceedingly long time to type, we would probably ask the client to come into the office and read it over with you. The first copy machines that came out around here, I think Eastman Kodak was the big company in the field to begin with, and they put out a machine in the various sizes, but they were all what you might call desk-top models. They would sit on their own stand or you could put them on top of a desk and still have room to work on, and there you would put the document to be copied onto the machine and it was really a photographic process. The Eastman Kodak machine would take a picture of it and then in the bottom of the machine there was a fluid and you would put the exposed copy into this fluid and in several seconds or so the fluid would cause it to reproduce itself. Then 3M came out with a machine which again--we did not have a 3M machine, although some of the offices did--but it seems to me as though theirs was pretty much of a photographic type of a process although they did it more through a heat transfer than a light transfer much as the Eastman did, which meant that you needed a certain type of paper that 3M produced. Their finished product was a kind of a yellowish-brown paper, and after it had been in the file for a year or so, the 3M copy paper became very brittle and would often break if you used it aggressively in any way. That was followed by the Xerox machine which, I believe, just about put Eastman and 3M out of the copy business, at least around here. Since then most all the offices are using the Xerox machine although Xerox now has competitors. While there are other machines on the market made by half a dozen

or more different companies, I think they're now pretty much all a spin-off one way or the other of the Xerox-type copying that we're all familiar with today.

At that time, of course, there were no fluorescent lights. They all used--quite often you had the drop cord from the ceiling with the proverbial green shade around the top so as to cast the light down. There was no air-conditioning of any of the buildings nor were there any window air conditioners around here. In the summertime what you did is just opened up the windows and the doors and there was generally a breeze. Particularly in the Waterman Building there always seemed to be air circulating up and down the staircase and around the halls and everybody seemed to work just as well then as they do now with your air-conditioned offices.

MH: Because of this lack of elevators, I imagine from time to time, you had to make some house calls.

JG: Yes, it was not at all unusual to get a call from a client who, in estate matters you'd generally find they were of ill health or in an aged position, would inquire whether you had any objection to coming out to their house. I'm sure that every lawyer in town who was doing any business at all made frequent calls out to the home of a client in response to a telephone call. Then as to personal injury cases, you'd have somebody calling from the home saying that they had a broken leg or some disability of some kind which would keep them from coming up to the office and wanted to know whether you would be willing to come out and visit them and talk to them about their file. That was pretty standard procedure and all lawyers did it and none of them had any objections whatsoever to it.

MH: Question about the economics of practicing law. I imagine one of the bigger changes you've seen in your practicing law and as a judge is the advertising that lawyers are now able to do. I suppose back when you got started the only advertising or anything that would fit within the definition of advertising would have been the sign on your window.

JG: That was all there was, and also the names on the doorway that served as the entryway to the offices. At that time there was no advertising in the telephone directory. Some of the lawyers did start to have their name listed in the directory with bold type. There were those in town who used to criticize the lawyer for having his name in bold type in the regular part of the directory because there was some thought among a good number of the lawyers that you weren't even permitted to have your name in the telephone directory in bold type. Oh, they did carry a business card in the papers which would be just the name of the lawyer and his telephone number. That was the only advertising you saw.

All the advertising was done by the lawyer going to weddings or funerals. At that time most all the lawyers were the ones who went to the Memorial Day services, and that particular lawyer was the speaker for the day. There was always the old-timers settlers' picnic down at Baker and the people that ran that seemed to alternate the lawyers. One year it would be Henry Stiening, the next year it would be my dad. The next year it would be Gar Rustad and so forth down the line. They seemed to rotate in and out of the lawyers. The lawyers were great to travel around the county appearing at these community affairs. The city of

Dilworth, then the village of Dilworth, on, I believe it's August 15, used to have quite a celebration down there with its origin, I believe, in religious roots. That was always a big day down there and they always had a speaker, and you would see the various lawyers rotating in and out of there on an annual basis or so to be the speaker of the day. So really the way they advertised was just being seen, so to speak.

MH: What changes have you seen in the way lawyers get paid--the fee structures? I know that at one point in time there was a State Bar Association recommended fee schedule.

JG: Yes, the State Bar Association put out a book--it was a loose-leaf book--that set forth the--it was entitled "Minimum Fee Schedule." That was supposed to be the schedule which the lawyers were to follow and the lawyers were not to charge any less than that minimum fee schedule. It was contrary to the ethics to violate that schedule by charging less than. Now from time to time you would hear that some lawyer was charging less than that and it was drawn to his attention that it was heard that he was charging less than the fee schedule. In that, again, it was unethical for a lawyer to solicit business by way of rendering or charging what you might call wholesale rates. Of course, the minimum fee schedule has gone by the board as being a restraint of trade. Today a lawyer can charge, I suppose, whatever the traffic will bear in theory, although it is somewhat subject to judicial review, but in any event, there is no book anymore the lawyer can refer to.

I think more and more of the lawyers are going to an hourly charge for probating, whereas before the minimum fee schedule had something like three per cent on the first \$10,000 or \$20,000 value of the estate. From that number up to \$50,000 is two per cent or maybe up to \$100,000 it was two--I've forgotten now--and then over either \$50,000 or \$100,000, then the minimum fee schedule called for a one per cent, which included not only the probate, but the non-probate assets as well. Quite often the clients objected to paying any fee on the non-probate assets because at that time the client was pretty much aware that the non-probate assets, which are generally the and/or or survivorship-type accounts or insurance proceeds, transferred over automatically and the lawyer had nothing to do with the transfer of the property to the succeeding owner. Inheritance tax clearances had to be obtained on that and that's the way the lawyers justified their fee as it related to the non-probate assets. Today, again, it's pretty much all on a time basis. The personal injury cases are still, I think, pretty much on a contingent-fee basis which they were then. The fee schedule, as I recall, recommended that the contingent fee for personal injury was one-third if suit were started and one-fourth if it was settled before the commencement of suits. That always gave rise to a problem of whether, then, the lawyers would just start the lawsuit so as to jump from the one-fourth to a one-third. I never did hear that the answer to that was ever defined or given, but at least it was something that was quite widely discussed throughout the Bar Association. Deeds were drawn then for \$5, note mortgage, probably \$10 or \$15. The volume of business wasn't as great then as it is now.

At the time I came here most all of the insurance defense business was handled by your Fargo offices, but there are now more automobiles on the road and you've got compulsory insurance law now so more of the law offices are involved in insurance defense today than what they were then.

There's more estate planning today than there was then, that is, lawyers today are able to make a portion of their livelihood by counseling and advising people as to what they should do in order to minimize taxes or to tend to minimize probates. At that time there wasn't too much estate planning done around here. You didn't have to file a federal tax return until the value of the estate hit \$60,000. At that time, you could probably get by with the tax department in putting in even a good quarter of ground for around \$15,000, and so we always used some imagination on how you valued land. I don't think any of the lawyers ran into any great problem over land valuations around here and so there was and it is still true today. One of the advantages, you might say, if it is an advantage, of a probate is that the next of kin, if they sold the land that was transferred, that to determine a capital gain you went back to the probate values to determine what the capital gain, if any, there was upon an ultimate sale by the heirs. At the time I started here, you could buy the best land in Clay County for \$125 an acre and so we filed very, very few federal estate tax returns and in the Minnesota inheritance tax return, the exemptions in favor of the widow were pretty good and the tax rate upon the widow and dependent children was nominal. In fact, whatever inheritance tax was paid to the state of Minnesota never amounted to very much. I used to tell the people that if Minnesota had a sales tax, the inheritance tax would even be less than the sales tax. So today, not looking at right on today's market because it's a depressed market, but take a couple of years ago when this land was selling for \$1500 an acre and even the good land was selling up to \$2000 an acre, your inheritance tax people were much more conscientious in looking at values. It is a greater problem today to get by with valuations than it was when we started. I don't even recall of any audits that questioned values until sometime in the mid-'60s or so when the district director in St. Paul must have increased the size of his estate tax department because they did have some field auditors that would come around. If you could show them a reason why you used a low valuation, they didn't get too excited about it which I understand today is not necessarily true any more.

MH: Can you describe in general terms the type of practice you had when you first started, as far as the kind of work you did, the nature of the law that you practiced?

JG: I guess every young lawyer started off with collections. You always seemed to have more collections than even what you wanted. At that time most every store ran charge accounts and sometimes for one reason or another the customers became slow to pay. There wasn't too much bankruptcy; people didn't have to take bankruptcy then. They didn't have anything. They didn't pay because they didn't have anything and they didn't have to worry about creditors. The number of bankruptcies I would say that any lawyer saw in a year you could count on one hand and you wouldn't need all your fingers then. I think there was more of an effort made by the debtor to pay the account if it was in any way possible to do so. So we had collections.

And then there was boundary lines and problems with town boards maintaining or not maintaining roads. Drainage has always been a problem around here because of the flatness of the land. We had a fair amount of drainage work, road work, forcing town boards to make roads and improve them and keep them clear of snow during the wintertime.

Of course, highways were then all just a single lane highway. Highway number 10, which was one of the main routes to Minneapolis, or Highway 52, which was the other main route to Minneapolis--I think those roads were somewhere between 22 and 24 feet wide, one lane going east, the other lane going west. Automobile accidents were always a good business because with that type of a road, they weren't policed as well for speed. There was always a fair number of serious automobile accidents because there were a good number of head-on collisions on the open highway. The cause of the collision being one thing or another, somebody going to sleep or somebody getting over the center line, or something like that and they'd meet head on or side-swipe each other, and quite often there was quite extensive injuries. We did a fair amount of personal injury accident for the plaintiffs as well as representing the defendants in that type of a situation.

The law business, then, is pretty much as it is today, although today there are more and more actions of malpractice against attorneys. At the time I was in practice, I don't think you ever heard of a malpractice action against a lawyer, at least around here. But on today's market it's not unheard of. I think it's due to the fact that people and the lawyers aren't as well acquainted one with the other as they were then. At that time the county was smaller; when I started in business here in '47, I think the city of Moorhead was then probably 7500 or 8000 people and you knew just about everybody in town or at least you knew their families. That was particularly true with me because my father was a county attorney and had been around here and he was very active in a political sense. I was raised in a family whose livelihood was somewhat dependent upon acquaintanceship with people.

I always thought it was essential and necessary to live in the community in which you make a living, but now today, I haven't made any count or anything, but I suppose half your lawyers in Moorhead are living in Fargo. If you would have asked me if that was possible, I would have said, "That lawyer would starve to death." But they all look like they're living well and driving good cars, so apparently it doesn't even make any difference any more where you practice. Likewise when I started work you had to be a member of the North Dakota Bar and to become a member of the North Dakota Bar you had to be a resident of North Dakota and the same was true for the North Dakota lawyers coming over to Minnesota. So at that time if we ever went over to Fargo to try a case, you had to have a Fargo lawyer sitting in with you and likewise the Fargo lawyers coming over here had to have a Minnesota lawyer sitting in with them. When the lawyers got together, they used to refer it somewhat like the union rules of the railroad--we had to have a third brakeman with us. The railroad used to fight the third brakeman, claiming he was unnecessary. The lawyers in Moorhead going over to Fargo thought it was highly unnecessary to have somebody sitting in with you from North Dakota and the reverse of that was equally true, so the lawyer just sitting in or featherbedding it was somewhat known as the third brakeman. I guess today the lawyers of Moorhead are members of the North Dakota Bar, the lawyers of Fargo are members of the Minnesota Bar, so that has changed considerably now.

MH: Did your personal work change as you matured in the community and matured in the legal profession from those early years? I imagine as you added associates to your firm, somebody else got to do the collections.

JG: Yes, you'll find that with age the clientele will change and probably it's only natural. Two reasons: First of all, when you start off as a young fellow, you're not on a first-name basis with the owner of the business. You just know the employee of the business, and the employee probably isn't big enough to swing the company's work over to you. As you grow older the people, then, that you grew up with eventually become the owner of the business or in a position of management and there is a certain amount of comradeship in the business. If the owner of the business happens to know you, I think you have a better chance of getting his business than you had when you only knew the fellow that swept the floor of that business. So as you grow older in the business, you will find that you get the more mature type of business, that is, probating the estate of the owner of the business or you have a better acquaintanceship with the people in the age group that have a little more substantial business.

There is a certain amount of business which the Supreme Court Justice of Minnesota, in an article in December 1983, in the Minneapolis Tribune, described as scut cases. I never had heard of the word "scut" so I immediately went out to Webster's Dictionary to see what a scut case was and Webster defines "scut" in two ways. Mind you the word "scut" is not my word but it is the word of the Chief Justice of the Minnesota Supreme Court. Webster defined "scut" as being the erect tail of a rabbit or, secondly, it's a Norwegian derivative word which means a contemptible fellow. Since the Chief Justice of the Minnesota Supreme Court, as late as December 1983 on the front page of the Minneapolis Tribune elected to use the word "scut" cases, I suppose if there is such a thing, and I don't agree that there is because I think every person is a human being and his problems, although they may be minimal, are not to be described as "scut" cases. But in any event if there is such a word and if it can be used, the new fellow in the office gets the "scut" cases.

MH: Continuing with the interview, the last series of questions I have, Judge, related to your recollections of the cases you might feel worthy of noting for the record, either because they have some legal significance or historical significance or just because they're interesting and might hold some interest for those in the legal profession or lay people as well. And one particular one I've mentioned to you is one I recall from high school days when some young men from Moorhead were arrested in a state down south that I don't remember and these fellows weren't my compatriots--they were older than I was. I don't know that I could even drive a car at the time it happened--but I do remember the case and I'm wondering if you could tell me about that.

JG: That case arose down in Arkansas and Oklahoma. There's a common boundary of Arkansas and Oklahoma. The last town on the Oklahoma side was Sallisaw, Oklahoma, and the town over in Arkansas was Ft. Smith. There was a carload of students from Moorhead State College that were going south to Florida for the spring break and their course of travel would have taken them through Alabama. They were driving night and day. These students would just change off drivers and keep going. At that time the people down south, particularly around Alabama who were then commonly referred to as Rednecks, were very much white supremacists. There was also a great movement then afloat of people coming south, and I think it was down at Selma, Alabama, that they had a big rally of the young, if you want to refer to them as liberal. I don't use that term in any

derogatory sense, people who were interested in the civil rights movement, of seeing that equal rights were accorded to the black people. College students from all over the country were coming in from all directions into this town over there, I believe it was in Alabama, to have a big rally to emphasize the need for recognizing that all people are created equal irrespective of their color. When the Moorhead students started to get into this Arkansas country, the eastern edge of Oklahoma and the Arkansas country, it was our judgment that this car was mistaken by the Rednecks down in that country as being a car that was headed for this civil rights rally down there in Alabama. They'd already left Sallisaw, Oklahoma, and were probably fifteen, twenty miles from the Arkansas line, when they were shot at with a shotgun. It blew the back window of their car out, blew glass all over the inside of the car, and some of them got struck by the pellets and others got struck by the flying glass. Their next town was Ft. Smith, Arkansas, and so they stopped over at the sheriff's office at Ft. Smith, Arkansas to report the incident and then a person in the sheriff's office says, "Oh, those are the people we're looking for." I believe if I recall right, that they said, "Yes, they're the ones that broke into some place or robbed some place and they're looking for them over in Sallisaw," so the sheriff over at Ft. Smith put them in jail because they reported the fact that they were shot at. They took them from the Ft. Smith jail without any extradition or anything over to the Sallisaw, Oklahoma jail. That was a small town, and when I got down there, all of these young students were in the Sallisaw county jail and the jail was one that appeared to be about ready to fall over. It was an old ramshackle jail but pretty secure. We met with the officials down there and finally we got these boys released. It was quite an experience to meet the people down there, but it shows the extent of this anti-black sentiment that was apparent down there, because here these people ran into it even in the southeast corner of Oklahoma. Of course, when they got over to Arkansas they were worse off than they were in Oklahoma. We made a report to the governor and Senator Bill Dosland was then in the state senate. I sent these people on down to see Senator Dosland and have him take them on in to the governor so the governor of Minnesota could write a letter to the governors of those two states. We thought that the governor down there ought to do something to straighten that mess. In any event, the boys were back here and they have all done quite well in their lives ever since and I'm sure it was an experience that they will never forget regardless of how old they might be.

We had some other interesting cases. A lot of them are just of interest. The founder of the office that you're now in, Henry Stiening, and I had a case down in Barnesville once. Two old fellows who were then very senior people and were good friends. The two of them used to spend many hours together walking through the woods. One day the two of them were walking a lake shore and they found an abandoned wooden boat, so they decided to take possession of the boat. They brought it back to the garage of one of the two men and Henry represented one of the people and I represented the other. But what happened is that the one fellow had it in his garage and they both worked on it and rebuilt the boat. Now, mind you, it's a wooden boat. One of those fellows down there, I'm sure, was probably a millionaire several times over. The other fellow had little or nothing. But they were both old buddies. They apparently did such a great job of reworking the boat, restructuring it, that the one man wanted it back over in his garage and the one who had it in his garage thought it should stay in his garage. I learned more about the replevin action over that boat because the boat was in the garage of the fellow that I represented. Henry Stiening got out

a replevin action in justice court here in Moorhead, which had jurisdiction county wide. He replevined the boat and then we rebonded the boat and then Henry rebonded our rebond and he got it back. Bill Kern was the sheriff, and poor old Bill Kern was kept busy all that fall just carrying that boat back and forth from one garage to the other. If you ask me how it came out, I don't remember, but I remember that Henry wouldn't any more than file a replevin, we'd rebond. Then they'd rebond back and forth and that boat just went back and forth. Henry was then one of the senior attorneys in the county and I was just in town and there's where I got my education on how you run a replevin.

There was another case that had some influence on the city of Moorhead real estate development. Up until probably, oh, the early 1950s, the city of Moorhead installed water mains to all property without any expense whatsoever to the property owner, that is, the city paid it out of the revenues and earnings of the electric and water plants. This case went up to the Supreme Court, the case of Nemzek vs. the city of Moorhead. You'll see there that Vance Thysell appeared as the attorney for the city of Moorhead and that was true because Vance was then the county attorney and the county attorney represents the parties in all tax matters. The background of that case is that as city attorney [Garrity], Mr. Joe Young, who was then the superintendent of the Water Department, came up to my office and wanted to know if the city had to continue putting in water mains at the general expense of the city. I say general expense, of course, limited to the revenues of the electric and the water plants. In the early 1950s Moorhead started to grow and people that had agricultural land along the edges of town and even within the city, but still agriculture land because the city hadn't yet grown up to its boundaries, would come into city hall and the surveyor would lay out a block of lots. Then they'd just write a letter and say, "We ask that, you, the city, put in these water mains," which made a pretty good deal for the developer because he'd have all his improvements in. The only assessment he'd have would be for the sewer line. There wasn't even an assessment for storm sewer because at that time the city had no storm sewers--didn't believe or didn't use them. In fact, they used a combined system, the sanitary system caught all of the rainwater that came through the street gutters. It was a sweet deal for the developer. So I wrote an opinion that I thought all they had to do was tell the developer from here on out there's going to be an assessment for water mains to cover the cost and that it would be spread out. Well, Alex Nemzek was a former mayor of the city. When he was no longer mayor, he went into the real estate business. He represented the owners of an 88-acre tract of land, which is now known as South Acres, and he made a request that the city criss-cross that with water mains all at city expense. The city refused to do it, and he begrudgingly stated that it be assessed but it would be contested. So there was that case that went on up and the Supreme Court said the city had the power and authority to levee, notwithstanding anything that was said in the charter.

Another time, and I was not connected with the city at this time, but this was about in 1950. The city of Moorhead was still a fourth class city and the city could then issue ten intoxicating liquor licenses. The FM Hotel had just been completed in, oh, I suppose, 1949 or '50 or '51, one of those years in there, and the ten liquor licenses were then already out. All of the saloons in Moorhead were then doing a fair job and nobody wanted to give up a license. So here you had this new hotel which the whole town was proud of and probably at that time other than the Fairmont Creamery, the largest business in town. It was essential

to the hotel that it have a license but all ten of them were out. So the question was, "How do you get a license over to the hotel?" One of the fellows in the city--he was not attached to the city, but he was, oh, kind of a king maker in the city, but he'd never had any function with the city in an official manner--got an idea. He broached it to the city council and they went along with it. It was to get the ten license holders in and tell them that the FM Hotel was going to be given a liquor license, which would mean nine licenses left. There were ten of these saloons and that the nine licenses would be put into a hat and they'd be drawn out, but one of them would be on the short end. Then they said, well, one of you folks might want to consider selling out. At that time there was a license holder in Moorhead who ran the Tile Tavern, who said he'd give up his license for \$50,000. So then they went around to all the saloon keepers and said, "If each one of you will put \$5,000 into a kitty we'll have \$50,000 to give this fellow and he'll surrender his license." As I say, I had nothing to do with the city then. That was the year before I became city attorney. There would be several legal problems if it ever came out, but in any event, that's what happened. One of the saloon keepers that I knew and used to have coffee with down at the Bluebird Cafe said, "Well, Jim, I can tell you one saloon keeper that's not going to throw in \$5,000," because, he said, "I have never seen the purpose of spending my own money to set a competitor up in business." So I guess he did not pay, so where they raised the difference for what he didn't put in I don't know. Anyway, this one license holder left town with \$50,000 and the others all had their licenses. That was all done on the street. There wasn't anything official that the city council had to do. The city really wasn't involved, although it was no secret about how it was arrived at. It was pretty much common talk up and down the street.

Then later on, I suppose Joe Young was one of the first conservationists around here. At that time, the early 50s, 100% of the water that was consumed within the city of Moorhead came from the city wells. The wells were about 165 feet deep as I recall, and the water came out at a temperature around 60+ degrees, but it was real cold water. The FM Hotel put up a water cooling tower, or, no, they didn't have a water cooling tower. They used the water straight into--they had some kind of a mechanism in the hotel where they ran this water, they piped it up, and had a fan blow through the water which took the cooling qualities out of the water. That is the way the FM Hotel was air conditioned, by taking a fan and having it blow against this cold water as it came out and that was blown into some kind of a ventilation system which caused the hotel to be ventilated. As soon as it had gone through this exchange process, the water was then emptied directly into the sewer. Joe Young used to rant and rave about what a waste that was of good-quality water to merely take the cooling qualities of the water out and then to just throw that pure water into the sewer system. As city attorney, I drew all these ordinances and stuff, but Joe was instrumental in having the council draft an ordinance that prohibited that use of the city water and requiring them to put in a recirculation system and a cooling tower to use the same water and to cool it just through a cooling tower. Well, the FM Hotel didn't want to do that because the cooling tower, even though it would cool the water to some degree, it wouldn't bring the water back down to the 60 degrees that it entered the system at. So the FM Hotel bucked on it. They just didn't want that at all. The ordinance was passed with a penalty in there. Mr. Lamarr Bittinger was then manager of the hotel and because he wouldn't change his system, the city got out a warrant for his arrest. He wouldn't show on a summons and so he was chased all around and he disappeared almost like Houdini at

times, but finally he did appear. At that time the FM Hotel was represented by Grenier, Carlson, and Law, the Minneapolis Law Office because the company was owned by Don Knutson out of Minneapolis, and finally the FM Hotel agreed to put in a recirculating system.

As an aftermath of that, at that time the city's sewage disposal charge against commercial users was based upon a reading of the water meter on the theory that every gallon of water that went into a place ended up into the sewer, and therefore, a reading on your water meter would give you the gallons of water intake. You would use that same amount of gallonage to compute your sewage charge. After a couple of years of paying that sewage charge, which would go up very high in the summertime when the hotel was using a lot of water both for cooling and for its own personnel taking baths, I suppose, and then down during the wintertime. But one of the hotel's large items of expense was paying this sewage disposal charge. One day, the story that I got is that Lamarr Bittinger was over in Frenchy's Bar, Rudy's Bar, just across the street, and there he was talking to Jay Murray, who told him, "You don't have to pay a sewage charge on water that you've been using for cooling," because he said, "that water doesn't run into the sewer system. It runs directly into the river." Nobody believed that. First of all, Lamarr Bittinger appeared before the council, and he wanted a reduced rate for this water that was going into the sewage system. Joe Young appeared before the city council and said he shouldn't have any concession for that, but Bittinger said, "I should because this is all clean, clear water and it acts to flush your sewage system and the plant doesn't have to work as hard to digest clean water as it does sewage water." To that Joe Young said, "That plant isn't that smart that it can differentiate between clean and dirty water and so you have to pay the same rate as everybody else." After that, Bittinger ran into Jay Murray and Jay told my suite that waste water runs into the river. So then Bittinger came up to the council and said it was all paid under a mistake and he should get all that sewage charge back because all that water went straight into the river. Then we examined the hotel and ran a dye marker through the air conditioner and, sure enough, it all came out in the Red River, never got into the sewage plant. The FM Hotel sued the city for the refunds back over these years that they had paid. They tried it to the jury and I think the jury was so confused that they gave the hotel just fifty cents right on the dollar. It's my position that they should have either had it all or nothing. I argued that it was a volunteer payment and they were good corporate people who knew what they were doing, got service, and all of that. But I wasn't too far out of school then and I'd learned in law school that if you get a quotient verdict, you get a new trial. The books in law school said you can figure out a quotient verdict if you figure that the jury just compromised it. This was just an out-and-out compromise because they either should have had it all or nothing, and he got fifty cents right on the dollar. So we went up to the Supreme Court on that. The Supreme Court made short shrift of a quotient verdict argument and as to the matter of voluntary payment, they said the city had a six or eight or ten percent penalty for non-payment so that wasn't voluntary, so they let the verdict stand.

Oh, we had a lot of things like that. Another one the contractor came in, built a sewer line, it started to collapse, so we dug up the sewer line and showed where they were wrong and we collected the money back from the contractor. But none of them are earth shaking, but they were all interesting at the time. So, that's about what the law business was.

MH: Thank you.

[End of Interview]