



GUIDE TO TAKING ORAL HISTORY OF BANKRUPTCY JUDGES

Prepared by the NCBJ Archives and History Committee

Based on "Saving Yesterday Today for Tomorrow: A Guide to Oral History
for the Bench and Bar" by Carole Hicke, as distributed by the Ninth
Judicial Circuit Historical Society

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PREFACE

The goal of oral history is to recapture the past and preserve it for the future. This guide makes recommendations for the pursuit of that goal. However, as every oral history is unique, each interviewer or narrator will find it necessary to adjust the procedures to the circumstances so as to recapture the past in the way most valuable to the future.

This guide is a modified version of “Saving Yesterday Today for Tomorrow: A Guide to Oral History for the Bench and Bar” by Carole Hicke. It is used with the permission of the Ninth Judicial Circuit Historical Society, and we are grateful for their generosity. The information in this guide has been gleaned from a wide array of oral history programs. It is based on the knowledge and experience of oral historians at the Federal Judicial Center in Washington, D.C.; the Oregon Historical Society, the Regional Oral History Office at the University of California, Berkeley; and the Ninth Judicial Circuit Historical Society.

The techniques recommended are employed by professionals, but they are not for professionals only. The techniques of oral history interviewing can be easily acquired; the interviewer needs to be a sympathetic, informed, and a curious listener. Careful reading of the guide will not only help the interviewer and program director master the procedures but will do much to ensure a product of historical significance.

For the sake of convenience, the guide will adopt the convention of referring to interviewers as she/her and narrators as he/him.

ORAL HISTORIES: MORE THAN JUST THE FACTS

Oral history is a method of collecting historical information. In today's world of television and cellular telephones, it is a way of documenting events and insights that otherwise might not be recorded. Although personal memoirs were quite common before the twentieth century, fewer people today describe significant milestones and their surrounding circumstances in journals and diaries. In the twentieth century, many historians and scholars are turning to oral histories to provide the source materials they need to study the recent past.

In addition to being valued like any other historical source as a record of the past, oral histories offer particular benefits to users. First, they capture details about events that are sparsely documented elsewhere. For example, when records have been destroyed by fire or accident, or simply by a move to new surroundings, oral histories can fill in the gaps left in the written record. In other cases, such as court administration, in which decisions were taken by spoken agreement, no written accounts exist.

On the other hand, sometimes the bulk of the written record is too great, so that the task of finding and sorting essential information becomes overwhelming. By pointing out crucial developments and watershed decisions, oral histories can aid the historian in further study.

Individual recollections and accounts of behind-the-scene activities can offer hitherto unknown information, reveal insights, indicate why and how things happened, suggest the characteristics of influential leadership, round out descriptions of figures in the public eye. In the legal field, interviewers can delve into the reasons judges handle cases in the way they do, the strategies of trial lawyers, the seemingly insignificant matters that make a case go one way or another.

Although researchers will want to corroborate the oral testimony with related written documents or other oral histories, the narrative itself has a special kind of truth – not necessarily in its reliability as evidence, but in the fact that it is the truth for the narrator.

More than merely reciting the facts, oral histories add a new dimension to our knowledge. They add the human perspective to the historical record.

THE ORAL HISTORY INTERVIEW: PROCEDURES AND TECHNIQUES

Oral history can be practiced by anyone armed with nothing more than a tape recorder, the ability to listen, and a genuine sense of historical curiosity. Spontaneity, depth, and critical inquiry should be the interviewer's goals.

Spontaneity arises in the question-and-answer mode of interview. As the interviewer asks for recollections, the narrator responds; the interviewer continues to probe for more detail and more explanation, thus going beyond the "facts" and eliciting details, anecdotes, and views that add up to a fresh approach to a subject. The end product should add vitality, richness and color to the record.

The second goal – depth – distinguishes oral history from present-oriented journalism. Oral history, unlike media interviews, is intended to be a source for future users. Since we do not know precisely what such users will want to know, the oral history interview ideally casts a wide net to obtain information on a variety of subjects. However, planning an oral history is always dependent upon the time that the narrator can devote to the process. If he is retired, or at least cutting back the number of his professional commitments, the procedures listed below should be developed fully. If he is at the peak of his career, the steps will necessarily be shortened.

Critical inquiry is the interviewer's third goal. Scholars who use oral histories want candid, substantial recollections that reflect historical accuracy as seen by the narrator. The interviewer therefore has a responsibility to ask knowledgeable questions and probe the narrator's memory. For this reason we strongly recommend research before the interview and review of the transcript afterward.

Interviewers and narrators will find that recording twentieth-century history is an enjoyable and rewarding experience. Each oral history interview may reflect only a fragment of life, but taken together, the collected body of oral histories will contribute significantly to the historical knowledge in the United States.

Propose the oral history to the intended narrator, usually by letter: Follow with a telephone call. Set a time and place for the introductory meeting.

Begin research now and continue throughout the interviewing process: Ask the narrator for biographical information; search published documents; talk with the narrator's colleagues and friends. Prepare a preliminary topical outline. Unless the goal is to focus on a specific event, person, or era, an oral history should be

both broad and deep, providing a full review of the narrator's life. (See the attached Oral History Outline).

Introductory meeting: establish rapport; explain fully all steps in the oral history process; request information; sign the release agreement; invite the narrator to join in planning interviews; set up an interview schedule.

Establishing rapport is crucial to the success of the interview. The narrator should feel relaxed, confident in the interviewer's attention, and comfortable in his surroundings.

Give the narrator a complete explanation of the historical importance of the interviews, emphasizing the value of detailed, firsthand experience. Outline the various steps in the procedure, making sure he knows the interviews will be tape-recorded, transcribed, and – after review and correction – made available to the public. Be certain that he understand his rights regarding review of the transcript, as well as his obligations as to time and effort. Assure him that both you and he will find the process stimulating and enjoyable.

Explain the release agreement carefully and then ask the narrator to sign (See the attached Oral History Agreement). If the narrator wishes exceptions to access, be sure he checks the box and writes the exceptions on the bottom of the page or on another page and signs that. Some possible restrictions for access to the transcript might be that the transcript should be closed to all users (or may not be available without the permission of the judge) until after the judge passes away or that the judge reserves the literary property rights to the interview until a certain date after which they vest in some other person or entity. Also advise the interviewer that each depository may wish to negotiate its own set of exclusions as a condition of acceptance of the transcript.” The interviewer will already have signed. If the narrator asks to keep the agreement temporarily, be sure to get it signed at your next meeting. Leave a copy with the narrator and deposit one with the final copy of the transcript. The interviewer keeps a third copy.

Oral histories of bankruptcy judges should be deposited at the National Bankruptcy Archives, Biddle Law Library, University of Pennsylvania, School of Law, 3460 Chestnut St., Philadelphia, PA 19104-3406. There may also be local or regional archives collecting legal histories, and a copy should be deposited with each such location.

Plan the interviews. Ask the narrator to look over your preliminary outline and suggest additional topics. Have him complete the biographical sketch (See the attached Biographical Sketch). Request permission to look at whatever papers, files, photographs, clippings, scrapbooks and memorabilia he may have. Take care

not to get into interview substance at this time.

Schedule the interviews, or at least the first two. A week between the first two is good, if that will leave time for research and preparation for the following interview. Otherwise, a two or three-week interval is better. After more than three weeks, the interviewer will need to review previous sessions to avoid repetition.

Plan for sessions of no more than two hours; that is about the stamina limit for one interview.

Prepare for interviews: finish your research and outline, and obtain equipment.

Complete the basic research and arrange the information chronologically. Use on-line data bases to search for opinions and other information. Familiarize yourself with the political, social, and economics landscape of the relevant era. Check the appropriate court records if available.

Prepare a detailed outline for each interview session (See the attached Topics for Interviewing Judges). A useful outline will be generally chronological, with topics developed within each chronological step. Send the list of topics for the upcoming session to the narrator two or three days beforehand. If, after a session or two, you observe that he ignores the outline, send only a brief paragraph reviewing what you have covered in the previous interview and what you want to talk about next.

The interviewer should review what was covered in the previous session by listening to the tapes or reading the transcript.

Equipment: Technology is changing very rapidly, so careful thought must be given to the type of recording equipment that should be used. Before deciding, speak to the transcriber to make sure that s/he can transcribe from the chosen media and also talk to the archives or depository to ascertain what form(s) of media they will accept.

Whatever recording device you choose, it is best to obtain one with an external microphone, or –better still – a clip-on mike for the narrator and a second one for the interviewer. Crucial words and phrases can be lost because of extraneous noises or a narrator’s voice that drops at the end of a sentence. If you are recording on cassettes, use only 60-minute tapes, as they can best withstand the wear and tear of taping and transcribing. If you are recording on digital media, it is best to limit each track to 90 minutes so that the transcriber’s computer is able to handle each segment. Again, by checking with the transcriber in advance, you will be able to create a usable recording. Be sure to find out which file extensions the transcriber can use, for example .mp3, .wav, etc. If you wish further information

on technology and oral history, visit the website of the Oral History Association (<http://alpha.dickinson.edu/oha/>).

The interview: Some dos and don'ts listed below will help the interviewer conduct a successful interview.

Find a comfortable setting that is quiet and secure from interruption. Have at least one tape labeled and in the recorder.

Begin with a statement of the narrator's name, the interviewer's name, the date, and the place. This is important for identifying the final document.

Ask about birth and early childhood. Historians and other scholars using the transcript will need to know when the narrator lived and something about his background in order to evaluate the information. Unless time is at a premium or the interview is to focus on a single topic, you can start with: "When and where were you born?" This helps the narrator to begin thinking about the past; the interview can then proceed smoothly and logically from his family and childhood to his career.

Ask questions that are brief, one at a time, and open-ended. Rather than asking a question that requires only yes or no for an answer, elicit full descriptions with "Tell me about ... [the next topic on the outline]." Key words to use in addition to "tell me" are "explain," "elaborate," "discuss," "compare," "how did you feel about.."

A good question for introducing a topic has two parts: a sentence describing the topic of discussion, followed by the question. For example, "I know that you entered law school at an unusually early age. Can you tell me how that came about?"

The basic questions to be answered in the oral history are: who?, what?, when?, where?, why?, and how?. The interviewer should be sure to solicit insights, attitudes, feelings, and reactions. As a rule of thumb, proceed from the general to the specific.

An interview is a two-way dialogue, but lopsided. The interviewer should remain neutral and in the background. The whole point is to obtain the narrator's recollections, the interviewer confines herself to questioning and probing.

Listen carefully and ask for follow-up explanations. The narrator is likely to bring up topics not on the outline. If these are important, make sure they are fully developed: "Could you please elaborate on that point?"

Watch for consistency of information and for conflicts with other sources of evidence. If you want to challenge, do it sensitively, possibly from another angle or from the viewpoint of a third (anonymous) party: “People have told me that ...”

Because even narrators who are willing to talk openly about their lives rarely do so with the necessary detail, the interviewer must ensure that the narrator documents the subject fully. Furthermore, questioning and eliciting more details conveys a sense of purpose and reassures the narrator that the interview is worthwhile.

For the interviewer to leave the narrator to tell what he will is to abdicate her responsibility. Memory often needs to be made to work, and one of the major advantages of the two-way exchange is that questions stimulate detailed recall and get beyond the surface generalities.

Ask for examples and anecdotes. Historians know these can be important to illustrate a thesis. Even what appear to be simply amusing stories often illuminate an idea satisfactorily.

Keep a running list of correctly spelled names and places for the transcriber. This will make the transcribing easier and will save time during the review. Include any unusual or foreign words.

Avoid interrupting. When questions arise, jot down a note and wait until the narrator comes to a stopping point to ask them.

Use silence. Remember, the narrator is often going a long way back in his recollections, don't rush to fill up a silence when he is thinking. Waiting a short time may give him the opportunity to make a valuable addition.

Save sensitive questions for later. After you have established a good working relationship, you can bring up difficult topics. You can do this in several ways: quote a newspaper or other sources that disagrees with the narrator, then ask for his opinion. Ask what his colleagues thought about the subject. Or ask the narrator if he would like to put his side of a controversial question on the record.

Elicit the real story whenever possible. Well-known people who have been frequently interviewed by the media sometimes offer a pre-shaped image of themselves, a “pat” story that they project to one and all. They may eventually begin to believe it themselves. Try to get behind this with respectful but firm probing, attempting different approaches, asking for information in different ways.

Again, quoting an outside source can be helpful; background research to establish objectivity is essential.

Balance the goals of the project with the perspectives of the narrator. Maintain sensitivity to diverse social and cultural experiences and to race, gender, class, ethnicity, age, religion and sexual orientation factors.

Make sure all the tapes are labeled after recording. It is also a good idea to punch out the tabs to prevent erasure.

Videotaping. Since researchers are finding more uses for visual records, you may want to consider videotaping part or all of your interview. A short session of 15 to 30 minutes could be taped in order to provide a picture of the narrator and some sense of his physical state, movements, and expressions. This could take place after the oral part of the interview, with the narrator repeating an important segment of the story or demonstrating some process he has talked about. The videotape can also capture some of the speaker's environment and portray charts, graphs, and photographs.

On the other hand, the entire session could be videotaped either by a professional crew or by the interviewer herself. However, if the interviewer does the taping with a camcorder on a tripod, the sound quality will suffer unless external microphones are used. Backup audio taping ensures that problems with the videotaping will not result in a lost interview.

The signed release agreement should cover videotaping in order to ensure availability of the tape.

Transcribing and review: (See the attached Transcribing Procedures). There is a cost involved in transcribing the tapes and a source of funding should be sought. Some suggestions to consider are the Attorney Admissions Fund for the local district court, local bar associations, and local historical societies. It is also possible that local bankruptcy bar groups may ask law firms to transcribe tapes on a voluntary basis. However, a professional transcriber generally will do the highest quality work in this area.

Remember that during the transcribing and review procedures, the interview remains confidential, the release agreement becomes effective only after final processing.

Review of the transcript by both the interviewer and narrator ensures that it reflects the words of the speakers and adds information helpful to researchers. The first mention of any name should be complete. If the last name only is spoken, the

first name and title – if significant – are added in brackets: “[Justice William O.] Douglas.” Abbreviations should be spelled out in brackets: “FBI [Federal Bureau of Investigation].” Dates and case citations should be added or verified whenever possible, and obscure references can be clarified in footnotes.

Rules for punctuation and grammar may be found in *The Chicago Manual of Style*, Fourteenth Edition.

Normally the interviewer reviews the transcript first, then sends it to the narrator. Since this is the point at which many oral histories get bogged down, it is wise to request the return of the transcript in one or two months, with the proviso that if it is not returned, it will be deposited without the narrator’s review.

Deposit tapes, corrected transcript, and release agreement in the public archive(s) or librar(ies) selected and noted on the release agreement.

ATTACHMENTS
CHECK LIST FOR VOLUNTEER INTERVIEWERS

Name of narrator: _____

Address: _____

Name of interviewer: _____

| DATE | TASK |
|-------------|---|
| _____ | Letter of invitation sent to narrator |
| _____ | Response received |
| _____ | Preliminary meeting held |
| _____ | Biographical form completed |
| _____ | Research completed; outline sent to narrator |
| _____ | Interviews scheduled; list dates and tape numbers |
| _____ | Interview 1 |
| _____ | Interview 2 |
| _____ | Interview 3 and others |
| _____ | Release agreement signed (note restrictions) |
| _____ | Transcription completed |
| _____ | Transcript reviewed by interviewer and returned |
| _____ | Transcript reviewed by narrator |
| _____ | Final transcript completed |
| _____ | Tapes, transcript, and agreement deposited. |

ORAL HISTORY OUTLINE
(to be submitted to narrator)

Full name, date, and place of birth

Background

Family

Childhood

Education

Community

Law School

Military Service

Early Work Experience

First job

Responsibilities

Colleagues

Continuing Legal Career

Major cases and matters

Evolution of your practice

Changes in the law

Involvement in local, state, and national politics

Recollections of judges and lawyers

Other colleagues

Technological innovations

Judicial Work

How appointed to the bench

Judicial philosophy/public policy

Major cases

Evolution of and changes in the law

Changes in procedures

Colleagues: judges, lawyers

Judicial administration

Community activities

Professional, economic and social atmosphere of local community

Bar association involvement; other professional associations

Impact of local and national political and economic events

Retirement activities

Overview of your career

ORAL HISTORY AGREEMENT

I, _____ do hereby grant to the [*insert name of the Archives/Libraries*] _____ (hereinafter the depository) legal title and all literary rights including copyright to all material related to my oral history memoir listed below. It is agreed that access to the tape recording(s) and edited manuscript shall be available to qualified researches under the depository's use policy. I authorize the depository to transcribe, edit, publish, and license the use of my oral history memoir in any manner that the depository considers appropriate, and I waive claim to royalties that may be received by the depository as a consequence thereof. If I have any exceptions to this agreement, I have noted them below. A copy of the transcript and tape(s) will be offered to the National Bankruptcy Archives to be maintained under the same exceptions noted below. This gift does not preclude any use that I may want to make of the information in the recordings myself.

This agreement may be revised or amended by mutual consent of the parties undersigned.

Description of material:

Tape recording(s) and transcript resulting from oral history sessions beginning on

Donor: _____

Place _____ Date _____

Interviewer: _____

Date _____

See attached for exceptions.

BIOGRAPHICAL SKETCH

Subject's Full Name: _____

Address: _____

Telephone: Office _____ Home _____

Father's Name _____

Date of Birth _____

Occupation _____

Mother's Name _____

Date of Birth _____

Occupation _____

Subject's Date and Place of Birth _____

Primary and Secondary Education (*Where obtained; dates*) _____

Higher Education (*Where obtained; dates; majors*) _____

Profession (*Jobs; dates began/ended; where worked*) _____

Military/Government Service (*Dates and Places*) _____

Civic and Community Activities and Honors _____

Spouse: (*Name; occupation*) _____

Children: (*Names; dates of birth*) _____

Books and Articles Written by Subject _____

POSSIBLE TOPICS FOR INTERVIEWING BANKRUPTCY JUDGES

Full name: _____
Date and place (city, county, state) of birth: _____

[Be sure to include anecdotes and examples as illustrations]

1. BACKGROUND

A. Family

Grandparents

Parents: names; place and dates of birth; employment; business, political and community activities; and other interests

Siblings

Most influential relatives

B. Childhood

Community; home, friends, recreation, travel, hobbies, reading
Grammar school and high school: influential teachers, classes, special events

Work experiences

C. College

How chosen

Major and Minor

Influential teachers and courses; study habits

Friends

Extracurricular activities; experiences

Work experiences

D. Community

Military or social service

Impact of major social, economic, and political events: wars, depressions, civil disturbances

Religious affiliation, background, influences

E. Law School

How your interest in the law began
How law school chosen
Influential professors and courses
Friends
Extra curricular activities
Assessment of value of law school
Work experiences

2. CAREER AS LAWYER

A. Early experience

Bar examination
Looking for a job
Beginning salary; comparison with other professions
First clients, cases
Daily routine; working hours, lunch, office location
Description of surrounding community

B. Evolving career

Firms you worked in, positions held
Practice specialties: how developed, changes
Professional and political outlook and affiliations
Work habits
Local bar and bench
Strong influences on early career; people, events
Other lawyers, business people, and colleagues with whom you worked
Professional, economic, and social atmosphere of the local community
Involvement in local, state, national politics
Impact of major events
Impact of legislation on your specialty
Changes in office technology

3. CAREER AS JUDGE

A. Transition to the bench

Why did you apply?
Appointment/reappointment process
Political and professional factors in appointment; changes in

selection process over the years
Change in income
How the process works: your evaluation

B. Early experiences as a judge

First day or week on the job
First judicial experiences

C. Your Life as a Bankruptcy Judge

A typical day and how has it changed through your tenure
Your methods of preparation for hearing; trial
Your approach to trying cases, making decisions
Working with colleagues
Associations with lawyers
Significant cases: precedent-making, most interesting, most
challenging, most typical
Discussion of opinions; significant opinions
Changes in demands on your court since appointment; court
response to overloaded dockets
Changes in types of cases
Your relationship with U.S. Trustee's Office
Your relationship with Circuit Executive, Judicial Council, other
circuit administrative elements
Your relationship with District Court
Your BAP service
Court administration
Scope of case management
Calendaring
Impact of reversals
Impact of CM/ECF and other technology
How your district compares with others (case load, innovative
procedures, etc.)

D. Experiences under the various Bankruptcy Laws

Did you practice or preside over cases under the Act
Describe your experiences under the Act
Did you practice or preside over cases under the Code
Describe your experiences under the Code
How did your experience differ between the Act and the Code
What is your opinion on the effectiveness of the Act versus the

Code

Did you practice or preside over cases under BAPCPA

How did your experiences differ between the Code and
BAPCPA

E. Relationships Within Your Court

Colleagues and legal associates

Law clerks: how you have worked with them, necessary qualities,
some who were outstanding

Staff

4. COMMUNITY ACTIVITIES AND CAREER OVERVIEW

Professional and other organizations; involvement in NCBJ

Impact of a judicial career on family life and social activities

Rewards and advantages of your career

Hardship and pitfalls

How your judicial philosophy has evolved over the years

Your major contributions to society and legal history

Role of today's judiciary

IF THERE IS TIME AND THIS IS THE TYPE OF THING THAT YOU AND
THE NARRATOR WOULD ENJOY DISCUSSING, YOU MAY WANT TO
EXPLORE SOME OF THE FOLLOWING:

1. CASE MANAGEMENT

Characteristics of a good trial

Changes in rules, such as discovery; replacing "trial by ambush"
(before Federal Rules) with "trial by avalanche"

2. JUDICIAL ADMINISTRATION

Qualities of a good judge, lawyer, court administrator

How court rules are made and why they differ

Freshman period for new appointees?

Administration techniques for the court: most effective

Development of streamlining procedures

Office of chief judge: advantages and prerogatives; disadvantages
and challenges

Visiting judgeships: usefulness

Qualities of a good administrator; examples

Technological changes and their impact
Alternative dispute resolution: arbitration, mediation, special
masters (should they be allowed in bankruptcy matters)

C. PUBLIC POLICY/JUDICIAL PHILOSOPHY

Political and social philosophy
Federal legislation: its impact and implications on your court
Judicial activism
Major challenges facing your court and the judicial system today
Importance of informal contacts – judicial councils, bar meetings,
social events – for development of federal law
Outstanding lawyers: what are required qualities?
Reflections on the American Bar Association, NCBJ, other
organizations
Role of judiciary toward legislation: applying the statute or
interpreting it?
Resolving a conflict between law and conscience
Effects of new emphasis on ethics in law practice
Regional differences in judiciary and law practice throughout
United States
Significance of legal-aid groups
Settlement of cases: procedures, changes, usefulness of mediation
Changes in society's attitude toward law: more litigation? attitudes
toward lawyers and judiciary
Frivolous case filings
Description of the job: differences between work of bankruptcy
court, district court and appeals court judges
What changes to the Code do you think are warranted
What is your opinion on the manner in which BAPCPA was
adopted
Do you have any comments on the way the BAPCPA should be
interpreted, i.e., strict construction verses intent of
Congress?
Any observations on the way courts are interpreting BAPCPA

TRANSCRIBING PROCEDURES

Double space; provide two copies of transcript and a copy of the word processing file.

Begin with heading that includes names and dates; note that changes in tape sides, speakers' names are at left, with text margins indented under longest name.

EXAMPLE:

Interview with Judge James F. Jameson
Date of Interview: May 1, 1991
Interviewer: Carole Hicke

Begin Tape 1, Side A

Hicke: Let's start with when and where you were born.

Jameson: I was born in[text continues inside margins formed by leaving three spaces after the longest name].....

End Tape 1, Side A

Begin Tape 1, Side B

Jameson: So I knew that I always wanted to be a lawyer, and I took all the courses I could find that would prepare me ...

Paragraph often when one speaker continues for more than five or six lines.

Transcribe everything you hear, with the following exceptions: Omit crutch words such as "you know" and irrelevant phrases such as "oh, really" and "my goodness." Transcribe most contractions, but change "yeah" and "uh-huh" to "yes." Don't attempt to edit sentences for clarity. If you can't understand a word, type [inaudible] in brackets.

Follow the interviewer's notes, especially for spelling of proper names.

Add stage directions *occasionally*, putting them in brackets such as [laughter] or [hands over papers].