

NEW MEXICO BAR ASSOCIATION

INTERVIEW – JUDGE PHILIP ASHBY

AUGUST, 2008

INTERVIEWER: Kathy Brandt

KB – Kathy Brandt
JPA – Judge Philip Ashby

Judge Philip Ashby Interview – August, 2008

KB: Good morning, Judge Ashby.

JPA: Thank you.

KB: First I want to thank you for participating in our oral history project. Well, let's get started, as they say, where it began. Where were you born?

JPA: Madison, Wisconsin. June 23, 1930.

KB: And did you grow up there?

JPA: Yes.

KB: Did you have any siblings?

JPA: I have one sister, who now lives in Denver, and she is almost 82.

KB: What did your parents do?

JPA: My father was a barber. My mother had taught school until my sister and I came along, and she was just a housewife at the time.

KB: How long did you stay in Wisconsin?

JPA: I left when I graduated my undergrad work at the University of Wisconsin, and I finished in 1952. I left to go in the service and in the meantime my folks moved to Colorado Springs, so I was there from 30 to 52, 22 years.

KB: Do you remember growing up whether your parents knew any lawyers?

JPA: No. You gotta understand that was during the Depression, and my folks were never on relief, but as they later put it, because I'm too young to remember the worst of it, but as they later put it, they were hanging on by their fingernails. It was tough, but, you know? Everybody on the block was in the same place. Nobody had any money.

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: Well, looking back on it now, from those early days, do you think there's anything from that time that influenced your direction towards law?

JPA: Well, I don't know the direction towards law, but my folks made it very clear from a very early age that I was going to university, and I was going to be educated, and I was going to amount to something. My dad, you know, who worked with his hands said, don't work with your hands, work with your head, and they were very insistent upon that, and of course my sister graduated from Wisconsin too.

KB: And your mom was a teacher.

JPA: She had been a teacher. You want to hear a little bit about her history?

KB: Yes.

JPA: She graduated from high school in rural Wisconsin when she was 16 years old, went to a summer normal school, which were teachers colleges then, and when she was still 16 started teaching in a one-room schoolhouse in central Wisconsin. She said two of her students were older than she was. Them were the days!

KB: Yeah, remarkable woman.

JPA: Well, that's the way it was back then.

KB: Now, you said you went to college in Wisconsin.

JPA: University of Wisconsin, Madison.

KB: And what was your major?

JPA: Economics and Political Science.

KB: Did you go straight through?

JPA: Yeah, I did four years straight through. Worked 20 hours a week and was on the varsity track team.

KB: What was your event?

KB – Kathy Brandt
JPA – Judge Philip Ashby

JPA: The 400 meters. I wasn't any hotshot, I can assure you, but I did make the mile relay team and got a letter one year.

KB: Congratulations, and that's timely now with the Olympics going on.

JPA: Oh, yeah, well, they're so much better now than we were it's ridiculous, and one of the reasons is of course their training methods and their equipment and everything is far superior than anything we had.

KB: You said you worked. Where did you work?

JPA: Well, I worked as a soda jerk in a drug store fountain. I worked on the dishwashing machine at the student union, and one year I worked on personnel files at the university personnel office.

KB: Kept yourself busy.

JPA: Well, my folks couldn't afford to send me. I mean, I stayed at home, room and board was free, but other than that I earned every penny of it. This was not unusual; this was very common.

KB: When you were studying Economics and Political Science, where did you think you were going?

JPA: My sister's first husband was studying law at Wisconsin, and through his influence, I decided to go to law school. Now it's interesting how it worked then. If you did all your degree requirements out of the way in three years, you could go to law school for your senior year and use the law school credits as electives, which I did.

KB: Oh, that was terrific.

JPA: Can't do that any more, I guess. You have to have a degree, but...

KB: Well, then, when you graduated you already had essentially...

JPA: I had a year of law school.

KB: Under your belt, okay.

KB – Kathy Brandt
JPA – Judge Philip Ashby

JPA: Yes, and then I went in the service.

KB: So you didn't go to finish law school, yet.

JPA: I finished law school at the University of Colorado after two years in the military, because my folks were in Colorado at that time, and I could get resident tuition, and I got the Korean War GI Bill, plus working 20 hours a week there. I worked for the University of Colorado Library, and I'm the guy that wrote all those Dewey decimal numbers on the back of books four hours a day.

KB: You said you were in the military. Which branch?

JPA: Army.

KB: And you said two years?

JPA: Yeah, uh-hmm. See, I'd been in ROTC at the University of Wisconsin, so I had a two-year active-duty commitment.

KB: What did you do in the Army?

JPA: Sort of a civilian in uniform. I was in an interesting outfit though. The first year or so I was stationed at Ft. Eustace, Virginia. That's the transportation center, and I was in an organization called the Transportation Arctic Group that went to the air base in Thule, Greenland. I was there five months. We were doing logistical support for Stanford Research Institute, which had a DOD contract to study over-snow transportation out on the Greenland ice cap.

KB: What did you think of that experience?

JPA: Great! You understand, the sun never went down, and I suppose I shouldn't say this, but they asked what Lt. Ashby was doing out on the edge of the ice cap, and he said he's the one guy opening beer cans eight hours a day, but we won't get into that.

KB: Okay. Do you remember any of your military buddies?

JPA: Oh, yes, yes.

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: Do you keep in touch with any of them?

JPA: I keep in touch with one of them, who, by the way, I went through high school and college with. He lives in New York State. He's a very fine artist and sculptor.

KB: Was he in ROTC with you?

JPA: Oh yeah.

KB: What do you think now, looking back on that military experience? What do you think of it?

JPA: Well, it wasn't for me. I could never have been a career military person, but it's a good experience. It didn't hurt any.

KB: Why couldn't you be a career military person?

JPA: I'm too much of a maverick I think. You've got to be an organizational man, and that's just not me. I could never have worked for a large law firm, either; same idea.

KB: Well, when did you come to New Mexico?

JPA: Okay, when I got out of law school in 1956, the law firms in Denver were extremely generous in their compensation of juniors, 250 bucks a month. I kid you not. Lawyers were fodder back then. I can tell you my friends at the University of Colorado who are engineers were going out at five and six hundred dollars a month, and they only had one degree. It's a crazy world out there. And so I had a chance to go work for the United States Department of Interior as a lawyer, making \$400 a month. Well, I was broke so, guess what? And I worked at the Federal Center in Denver for a year and they transferred me down here to work for a branch office in Albuquerque for the Interior Department, and I stayed; let's see 56 to 59... I had a chance to go with the State Attorney General's office. I stayed there a year, in Santa Fe, came back to Albuquerque and went into private practice with a firm.

KB: Well, let me back up for a minute. I just want to be sure I get this right. You graduated from law school in 1956.

JPA: That's correct.

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: That's from the University of Colorado.

JPA: That's correct.

KB: And so your first job out of law school was with the Department of Interior.

JPA: That's correct.

KB: While you were in law school, what did you plan? What were your thoughts in terms of where you were gonna go with law?

JPA: I was interested in natural resources law, believe it or not, although I never did much of it once I [*inaudible*].

KB: What was natural resources law to you?

JPA: Oil and gas, mineral rights, water rights – that kind of thing.

KB: So it seems like there was some connection with the Department of the Interior then.

JPA: Yes there was.

KB: Had you ever been to New Mexico before you came with the Department of the Interior?

JPA: On a train. No, I had a cousin who lived in Long Beach, and I went out to see him and went from Colorado Springs to Long Beach to Los Angeles on to Santa Fe.

KB: Do you remember what you thought of Albuquerque back then?

JPA: Nothing. I woke up in the morning and we were at the old Alvarado Hotel.

KB: What kind of law did your brother-in-law practice?

JPA: Have you ever heard of Shepard's Citations?

KB: Yes.

JPA: Well he worked for Shepard's Citations in Colorado Springs. As a matter of fact, when my sister and he were out there with their children, that's when my folks moved out there, but anyhow, and then he went in private practice, and he later went to work as an

attorney for Superior Oil Company and...well from then on it's a pretty sad story. He became a total alcoholic and my sister finally had had it and left him. He died here just a year ago.

KB: Well you mentioned that he was influential in getting you interested in the law.

JPA: Sure.

KB: Did he try to direct you in any direction in the law?

JPA: No, but he'd talk about it, you know, when he was in school and everything and discuss it and it interested me.

KB: What about professors? Did you have any significant professors that you recall?

JPA: I had two or three really great professors in undergraduate work. One guy was teaching ancient and medieval history, and I just fell in love with that stuff, and as you probably know, to this day, I love history, and then I had a Political Science professor who was terrific too, and there were some others. My almost downfall in undergraduate work was Math. I'm a horrible mathematician, but somehow I made it.

KB: Well, I've heard attorneys say to clients sometimes when they ask for something involving numbers, they'll ask the client to come up with the number and then they add, if I could have done Math I would have been a doctor.

JPA: Well, I don't know. No, I never had any interest in medicine, although I have two daughters in medicine.

KB: Ah-ha! Did you ever get to do natural resources law?

JPA: Some with the Interior Department, yes. Well, and then of course I was involved in water rights on a big case. I guess it still isn't settled. The famous Indian water rights case in the Pojoaque Valley. I represented the Pueblo of San Ildefonso for years.

KB: As you were going through moving to New Mexico, Department of the Interior, and with the Attorney General, did you have an idea that there was a goal in terms of legal practice?

JPA: Well, I decided that I didn't want to be part of any government bureaucracy, although...

KB: That organization thing again?

JPA: Yeah, well, and of course the Attorney General's office in those days was highly political. I never would make an opinion or anything based on politics. They could fire me if they wanted to, but I wasn't going to do that, and I could see, you know, that that wasn't the way things were. I think it's much different now, by the way.

KB: What do you mean?

JPA: Well as an example. I got on the job and they came around and said to me, we need 2% of your pay check. What in the devil is that all about? Well we have a slush fund in the office for parties and that's 1%. I said, oh, I think that's great. He said, the other 1% goes to the State Democratic Central Committee, and you either paid it or you didn't have a job. Now that was New Mexico in those days. That didn't suit me. I stayed a year, and I had a good experience, worked very hard.

KB: Who was governor then?

JPA: John Burrows. The Attorney General was a fellow by the name of Hilton Dixon, who was really a neat guy. He was from Silver City, and he later went to practice in Silver City and became very prominent down there, and he unfortunately died quite young of cancer.

KB: What did you do in the State Attorney General's office, point of law?

JPA: Well we wrote a lot of opinions, requests from state agencies for opinions, and I also argued probably two cases a month in front of the State Supreme Court, representing the state on appeals.

KB: Do you remember who was on the Supreme Court then?

JPA: The Chief Justice was J. C. Compton, the judgiest looking judge I ever saw. I mean he was central casting as a judge, a nice guy. He was from Clovis, and then they...who else? Dave Carmody was on it. Dave Carmody a tough cookie and smart, in Santa Fe, and then there was Irwin Moise, a very famous lawyer from Albuquerque, who I think is the best justice they've ever had up there, maybe before Montgomery and those guys, and I forget who the other two were.

KB: Okay. Did you get involved in politics during that time?

JPA: Not during that time. I tried to stay out of it. When I came back to Albuquerque and got in private practice, I was in Democratic politics up in the Northeast Heights. I was precinct chairman at one time, believe it or not which, by the way, helped me later on.

KB – Kathy Brandt
JPA – Judge Philip Ashby

By the way, they were 70% Republican up there, so we were not very successful, be that as it may.

KB: When you went into private practice, was that sole practice?

JPA: No, no, I was with a firm. Nick and Sam Dazzo and Bill Brophy.

KB: And what was the name of the firm?

JPA: Dazzo, Dazzo and Brophy.

KB: And the Dazzos, tell me about them.

JPA: Well, Nick and Sam were brothers, and they came from very poor circumstances. Their father was a coal miner up in Dawson, New Mexico, which is a town which no longer exists. It was a mining camp; it was a company town, and they later moved to Trinidad, Colorado and they both went to the University of Colorado and both became lawyers. Nick stayed in Trinidad and Sam came to Albuquerque and went with what was known as the Simms Firm; then it was Modrall. It was very small at the time, and Sam was *extremely* astute at money. He became very, very wealthy. Nick wasn't going to the poor house any, but he was never as wealthy as Sam. In fact, when I got...I started with them in 1960, and Sam really never practiced law after that. He played around with his own money. Nick was the head of the firm. Brophy was an interesting guy.

KB: What was his first name?

JPA: Bill. Bill Brophy had been prominent in Democratic politics and was prominent nationally in Indian affairs, and he became the Commissioner of Indian Affairs under Harry Truman, but he also was a TB person, and he couldn't last out east, and he came back to Albuquerque and they set him up in the job as the head Interior Department lawyer in Albuquerque, and he was a very avid Democrat, and when the Eisenhower Administration came along, he and his boss in Denver didn't agree on anything, so he left and went into private practice with Sam and me. Brilliant guy, brilliant guy. One of the smartest people I've ever known, but you know he was a fish out of water in private practice. He could have cared less about the business end of it. Nick took care of the business end. I just, you know, it's...

KB: Did you know any of these people before you got a job with them?

JPA: Oh, yeah, I knew 'em all. Of course I knew Brophy. He was my boss when I came down here [*inaudible*].

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: And did you know either of the Dazzo brothers at the University of Colorado?

JPA: Oh, yeah, I knew them. Oh, no, no, no, no.

KB: Was that just coincidence that you all came from there?

JPA: Yeah, that's all coincidence, yeah.

KB: So how big was the firm? Was it just...?

JPA: Four of us.

KB: Just four.

JPA: Uh-hmm, and then Brophy died a couple years thereafter. I mean, he was... he had TB and, you know, and then he got prostate cancer, and...a very sick man.

KB: Was he pretty young when he died?

JPA: He was, I think, in his late 50s.

KB: That's quite a firm that you were with, because it grew over time.

JPA: Well it's this firm today.

KB: And there's also another judge from this firm besides you.

JPA: Stewart Rose?

KB: Yeah.

JPA: Well, you see what happened is, Nick and Sam and I were there, and then we were associated with some others; Mark Clayburgh and a couple others; Marty Paskind came along. Nick and Sam represented the Acoma Pueblo on its claim against the government under the Indian Claims Act, and in, I think it's '72, it was finally settled for a very substantial sum, and they got a whale of a fee out of it, and then they retired. Well here I was, all by myself with a couple of associates, and I ran into Stu Rose and Bill Sholer who had also been cast adrift by a guy who retired, so we joined forces, and that's where this firm came from.

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: What was the name of the firm then?

JPA: Ashby, Rosen, Sholer.

KB: So it was the three of you.

JPA: Yeah, uh-hmm.

KB: What kind of law did you do? Both when you first started and then when it was the three.

JPA: Well when I first started I did some work for the Indians because of Brophy. You know, he couldn't drive, and he was a very sick guy, so I used to drive him all over the place and represent him, and then I did a lot of real estate work too. Represented a title company in real estate, and just general practice; some personal injury work.

KB: Were these guys your mentors then in learning how to do that...?

JPA: Nick was really my mentor. This guy knew how to practice law and he taught me a great deal, and of course, I know you know Nick died here a few years ago. He was 94 years old. I was very fond of Nick, a great guy.

KB: They were interesting also, weren't they? Wasn't there something with Fat Boy?

JPA: Oh, well Nick of course had been with the Manhattan Project as a counter-intelligence officer at the Second World War, and he is the guy that drove, in a truck, the Hiroshima bomb down to Albuquerque for transportation out to the coast. He knew all about it.

KB: There were some great stories then.

JPA: Oh, he told some marvelous stories.

KB: Do you remember any?

JPA: Not really.

KB: Okay. If you think of 'em, let me know.

JPA: Okay.

KB: When it was just you, Sholer...

JPA: And Stu Rose.

KB: And Stu Rose, did the firm have a focus in terms of practicing law?

JPA: Well I carried on my business and Stu came in with some business, and we represented some bankruptcy work. I mean, Bill Sholer did a lot of bankruptcy work. Unfortunately he had a problem and we had to let him go.

KB: And so was the firm two people then?

JPA: Well, then, Marty Paskind and Mark [Dowell]? and some others came in; Myron Lynch. They were there when I finally went on the bench.

KB: Did you ever do any criminal law?

JPA: Well of course, when we first started and we were sworn in in Federal Court, we were required to do two years of unpaid representation of indigents, and every Friday we had to go over and get assigned cases, and you'd get four or five of them at a crack, and it wasn't like it is today. Discovery was the US Attorney would kindly give you the confession, and that's all the discovery you got. So, you know, I don't know how criminal law is today, but it was then, it was basically making deals. Although I did try a couple of cases and I actually got an acquittal over there, which shocked Judge [Waldo] Rogers.

KB: What was the defendant charged with?

JPA: Rape on an Indian reservation, and of course I tried the victim.

KB: Well, how did you win?

JPA: Well it was out of the Mescalero Reservation, and I went down there and talked to the law enforcement people down there, and they were very cooperative, and they said, well this gal is sort of the local tramp, and I went from there and...so we tried the case and she was on the stand and I just took after her, and I've gotta say that she was honest about it. She practically admitted, yeah, I'm the local tramp, and of course the jury heard that and that was the end of that one. I look back upon that, you know. It's right out of Perry Mason.

KB: And your other partners, did they do this also, do criminal law?

JPA: Well they were beyond that.

KB: What about divorce? Did you ever do divorces?

JPA: Oh, yes, I did divorces. You gotta understand, back then you did a general practice. I don't think you could do it any more. I don't see people doing general practice any more. They specialize. We didn't specialize nearly as much. Oh, I never did a tax matter. I wouldn't get near a tax case or anything like that, but divorces, sure.

KB: And what's the difference? Why do you think people wouldn't do that now?

JPA: I think the profession is much more specialized. Well I think divorces are more difficult. You've got all these retirement issue now, you know, and [cooders?] and all that stuff. We didn't have that back then. It was who got the children and who got the house, and how much alimony and, you know, that kind of thing.

KB: When you we working for the Department of the Interior, do you remember what your salary was? I think you told me, 400 and...?

JPA: I started at 400 and I ended up at about 500, yeah, and then, when I went with the AG's office, I think I got as high as 700 a month which, you know, in 1960, that...wow! That was great. That would be way below the poverty line today.

KB: Yes. Well before we get to your judicial career, let's talk about your lovely wife. Who is your lovely wife?

JPA: Her name is Jane Ashby.

KB: And when did you get married?

JPA: December 29, 1956. So it'll be 52 years this December.

KB: She was with you along, for all of this that you've been talking about.

JPA: I met her at the University of Colorado. She's a farm girl from Iowa.

KB: And what was she studying?

JPA: Teaching. She was a kindergarten teacher for a while.

KB: And you guys have kids?

JPA: We have four.

KB: You say you have two daughters in medicine.

JPA: Well, I had three daughters and a son. The son is deceased. I have...my oldest daughter is a nurse practitioner in Neonatal Intensive Care at the University of Colorado Hospital in Denver. My middle daughter is a medical doctor, running a family clinic in a little town called Fayetteville, West Virginia, and my youngest daughter has a Ph.D. from Stanford in Mechanical Engineering, of all things, and she's a full professor of engineering at the United States Naval Academy. I'm very of them.

KB: You have quite impressive daughters. Clearly, a product of their parents.

JPA: Well let's not get into that. I always told my daughters, look, you're gonna have to have a skill. Not only be educated but you've got to have a sellable skill, because the days when women were just housewives sitting around helping out their husband, that's over, and if you want to do it. Now if you just want to just be a housewife, that's another matter, but if you really want something, for heaven sakes get a sellable skill, and they have them.

KB: Indeed, and they live in interesting places.

JPA: Um-hmm.

KB: What's West Virginia like?

JPA: I call it America's Third World but...she lives in this town; it's famous for one thing. You've probably heard of the New River Bridge? Well, the New River is the big rafting river out east, and there's this huge bridge that goes across it. Pick up the West Virginia Quarter and look at the back; that's the New River Bridge, and they have a day, no kidding, where people jump off this bridge and parasail and bungee jump and all; that's crazy, but Diane, that's her name, the middle daughter, is the maverick of the family. She would not come and live in Albuquerque or in any city. She just loves it out in the small towns. That's great/

KB: And the maverick strain continues.

JPA: Yeah. I guess from me to her.

KB: When did you become a judge?

JPA: 1981, May 1st.

KB: How did that come about?

JPA: Well, this is interesting too. I was in the office about February, working away, and I got a call from Judge [Philip] Biamonte, who by the way was a law school classmate of mine, at Boulder, and he said, can you come down and see me? I want to talk to you about something. What have I done now?" He said, nothing, come on down. So I went down and he closed the door and he says, Judge [Jim] Maloney is gonna retire, and he's under fire. I'm not gonna get into that, I know what it was, and he's gonna retire and we're looking for another judge, and I think you ought to go for it, and Jerry Cole thinks you ought to go for it. I think we can get a lot of support.

KB: Which judgeship are we talking about? District?

JPA: District judge. So I said, well, I gotta talk to my wife about this, and we talked about it, and Jane and I agreed, and I went for it and....they didn't have the formal committee business then, you know. The Bar Association, the State Bar, had a committee, just an ad hoc committee which would interview people who wanted to be judge, and I interviewed in front of them, and they acted very favorably about it. Then I had to go see the governor, of course, Bruce King. Well, I had been precinct chairman many years before, and that didn't hurt, and he appointed me.

KB: Did you ever have to run?

JPA: Yes.

KB: When did you run?

JPA: Well, you see, you get appointed until the next general election. You don't get appointed for your full term, so I had to run in the '82. Hardest work I ever did in my life. I mean, day and night. I don't see how these politicians do it.

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: Yeah, and was it expensive?

JPA: I think we raised \$25,000.

KB: Oh my!

JPA: Today that would be pocket change. I think if there's anything wrong with the American political system, it is that you have to beg for money to run. I think that's awful.

KB: Do you think that may be especially so in judgeships?

JPA: Yeah because, let's face it, who's going to give you money? Lawyers. And you try to make it very clear to them that that's not gonna influence you in making decisions, but you know, I mean, they're human. We threw a big breakfast over at the Marriott over here and 300 people showed up, you know, and all of that. Oh, you shake a lot of hands and kiss a lot of babies and act nice to people you can't stand, but I mean, that's the way it is. I only had to do that once, because the next time I ran, to finish out my term I was unopposed, and then the next time I ran, of course we had the retention system, so...

KB: Well that first time that people run for judge, you had to put together a campaign committee, didn't you?

JPA: Oh, yeah, sure, uh-huh.

KB: Did you know what you were doing?

JPA: I hope so. I won. Well, okay, Mark Dow was my chairman, and he ran it very well and he handled the money and everything. That's one thing you don't want to do. You don't want to handle the money yourself, or you don't want to officially know who's contributing or know [?] who's giving to who, and we were successful. My wife was extremely good at organizing stuff. Well she's a whale of an organizer anyhow.

KB: She's one of your assets.

JPA: Very definitely.

KB: What do you think of the current method of judicial selection?

JPA: Well, it's a hybrid, as we all know. I'm afraid it really hasn't got out of politics like it was supposed to. I think the politicking is done before the committee does its recommendations to the governor. I was all for it, you understand. I can't see where judges should be elected on a partisan basis. Now there's a lot of people who disagree with me, even among the judiciary, but I don't think judges ought to be elected on a partisan basis, but now of course officially they aren't but...well they are the first time because as you well know, you gotta run in a partisan election right after you're appointed, and then after that, supposedly it's nonpartisan. That's just the way I feel about it.

KB: And so you think there's some politicking done just to get your name to come out of that committee?

JPA: Absolutely. I think there is. A good friend of mine one time said you can't take politics out of politics. So there you are. You know, even the federal judiciary, when that's strictly on merit. That's nonsense. We all know that there's all sorts of politics involved in that. That's not necessarily bad, but there it is.

KB: When you became a judge, was the Second Judicial District Court divisionalized?

JPA: Well divisionalized in the sense that you were...I was in Division 7. Okay, now the only split they had then was Juvenile. That was separate.

KB: So does that mean you did civil and criminal?

JPA: And divorce and family and the whole bit. Juvenile was separate, you know. They were out at the juvie center. There was Judge Brown, for whom the building was named, and I forget if there was anybody else out there. The rest of us were down at the old courthouse. There were 15 judges then.

KB: Did you have a preference during your term as judge for civil or criminal cases?

JPA: Well once we split into different divisions. I mean...I shouldn't say...

KB: Well I guess categories.

JPA: Different disciplines. I took civil. I preferred civil. The first split of course was when Family Court was split off from the rest of us. I had, I think, two or three years in Family Court.

KB: What did you think of that?

JPA: Tough.

KB: How so?

JPA: Well it's awfully hard to see families split up. Now don't get me wrong. In my opinion it was absolutely necessary in any number of cases, but it's tough to sit up there and judge people's lives that way, but you gotta do it. I mean, somebody has to make a decision, especially with children. It didn't bother me to give somebody the house, hit somebody with alimony, I mean what you call spousal support and all, but to decide what happens to children and stuff, and of course you know that's a two-way street too. There are children who just love to pit one parent against the other, and then of course there are parents who like to pit the children against each other. Now isn't that awful? But that's the way it is.

KB: Do you see any improvement or have any suggestions for improvement?

JPA: I think the idea that crept into Family Court afterwards of having some mediation is a very good idea. I think, however, and I'm not going to mention names, some judges carried it way too far, because sooner or later, you know, I think a judge has to get on the bench, listen to the evidence and put their foot down and say this is it – bam! I think, this is not only Family Court, but I think clients want decisions. Now they don't want you to be arbitrary, capricious and unreasonable, but they want you to decide something, especially business clients, you know. They're in business; they gotta have answers. They may not like the answer, but they gotta have answers.

KB: So is there something that goes along before hand that delays getting to the decision part?

JPA: I think it depends on the case. Let's face it; most cases aren't hard to decide. It's pretty obvious. I mean in civil law, you know, A owes B a bunch of money. B's entitled to the money; you give him a judgment. Somebody has committed a fraud; you rule against them. But you get these cases that are really tough too, and they could go either way, and the best you can do is to study the law and look at the facts and decide it the best you can.

KB: Do any cases come to mind?

JPA: Oh, I had a case where the paperwork must have been three feet high, and I worked on it and I finally decided, you know, the paperwork's all well and good, and the law is either way on it, and you know I think in all fairness A should win and B should lose, and so I just did it. I got affirmed too, believe it or not.

KB: I was going to ask you if you'd been appealed.

JPA: Well, you know, here's another thing that I feel. If you're going to worry about being reversed, you're not doing your job. Now that doesn't mean you go around deliberately trying to get reversed or anything, but you do the best you can on the facts and on the law and you make a decision, and if the loser doesn't like it, the loser can take it up to the Supreme Court, and they can look at it and decide, and if they disagree with you, okay; lawyers disagree all the time.

KB: So when the loser's attorney says to you, judge, I'm going to appeal, what was your reaction?

JPA: Do you need a map to get to Santa Fe? It's only 60 miles. No, it didn't bother me. There's only one case, and I'm not even going to mention it, where I think the Supreme Court did me in for political reasons, and that's the end of that. I'm not going to discuss it.

KB: Well now you've just intrigued me.

JPA: Well I'm not going to intrigue you any further. It was an important case. I'll tell you later when we're off the record.

KB: Okay, okay. Who was governor then?

JPA: When I was appointed?

KB: During this intriguing case.

JPA: It had nothing to do with the governor, and I forget. I think it was Tony Anaya, but it didn't have anything to do with the Anaya administration. It was local politics, let's put it that way.

KB: Well as a judge you see a spectrum of parties in cases. That's fair, right?

JPA: Uh-hmm.

KB: Do you care to make any comments about parties you've seen in cases that were memorable one way or the other?

KB – Kathy Brandt
JPA – Judge Philip Ashby

JPA: Okay, I'll tell you a great one. I handled criminal, you know, for a number of years until they split criminal and civil off, and then I took civil.

KB: Well actually you were in judgment of one my trials. I did a bench trial in front of you.

JPA: Your husband tells me a great story that I didn't remember.

KB: We don't have to go there Judge Ashby.

JPA: Not you.

KB: Okay.

JPA: He said he had his first case in front of me, and he's arguing, and he produces in front of me a copy of the decision of the Supreme Court. He said, I've gotta win, and I looked at it and I said, no you don't. That's a Tony Scarborough, and I don't believe in it. That's kinda dumb. No, I had a criminal case, capital murder, and what it was, this is the guy, his name was David Leon Cheadle, who had murdered a former Lobo basketball player, Gabe Hava.

KB: That's a famous case.

JPA: Very famous case, and Judge Harry Towers heard it, and it resulted in a conviction and the death penalty, you know, on the bifurcated trial that resulted in the death penalty. The defense team, different lawyers at that time, filed a writ of *habeas corpus* on the ground of ineffective assistance of counsel, and we had a long hearing on that, and I came to the conclusion that the defense lawyer at the trial, who will remain nameless, in the death penalty phase had done a woeful job, really bad. In fact, he did literally nothing, and so I ordered a new penalty phase only. Now this created a real legal problem, because there's nothing in the statutes that provides for this. What do you do? So what I did is I had a new penalty-phase trial in front of a new jury – you couldn't reconvene the old jury – in front of a new jury, and what we did is we put on a mini trial of the merits, because they had to know what was it all about, and that lasted a couple of days and then we went into the penalty phase. Well this guy Cheadle was...he's the worst human being I ever had in front of me. He was awful, but he was street smart. They were bringing him down from the state penitentiary. He greased himself in his cell so that it would be hard to hold on to him, and he got down there, and he had been causing trouble in motions anyhow. This guy was bad news, so he gets there and he starts shouting and screaming before we bring the jury in, and I looked at him and I said, Mr. Cheadle, we are going to have decorum in this court. You know what he told me? Judge, take your decorum and shove it right up your ass. Well, if it hadn't been so deadly serious I would have fallen over laughing. But what was I going to do with this guy? I didn't want to put

the cuffs and, you know, shackles on him in the courtroom. Well my courtroom happened to have a TV booth in the back where, you know, you can watch and see and hear everything, so I put him back there with two guards and then we proceeded with the case, and I told them, the jury, I said he's back there because of the problems we had, and of course I had to recess the case often in order to let his attorneys talk to him. We got a hung jury on that, and so...under our statute it must be unanimous for the death penalty, so he's still up in the pokey in Santa Fe. I understand, having talked to the associate warden years later, that he's pretty much out of it.

KB: Did you get any feedback from the legal community for what you did in this case?

JPA: None. The lawyers who handled the case thought I handled it very well. I mean, it was a very unusual situation. How do you do it?

KB: Do you remember who the lawyers were?

JPA: Yeah, Ben Gonzales from the State Public Defenders Office represented Cheadle, and he did a beautiful job, and Harry Zimmerman was the Assistant Attorney General, and he did an excellent job. It was well done, but we had a couple people on that second jury that just weren't going to impose the death sentence. I said, well, okay, that's their prerogative.

KB: Oftentimes criminal cases give very interesting stories.

JPA: Oh yeah.

KB: Well I asked you about parties.

JPA: Yeah, we'll get back on the subject matter, huh?

KB: Well this leads me to attorneys. You see a spectrum of attorneys that come before you.

JPA: Yeah, well I think the attorneys fit a bell curve, like all the rest of the society. They run from superb to awful, most of them pretty well in between. I've had some superb attorneys appear in front of me.

KB: Care to mention any of them?

JPA: Yeah, on medical malpractices cases, Rand Miller – great – and what's his name? The little guy that was with him, who's now on the plaintiff side, by the way; Greg Chase, wonderful lawyer. John Titman, who's now deceased and was with the Keleher Firm – great lawyer. Dick Winterbottom did some criminal defense – excellent. Oh, and Gary Mitchell was great. Gary Mitchell got a hung jury on a capital murder case when it

seemed to me it was pretty obvious the guy was guilty as hell, but Gary Mitchell did, and you know, the public complained, how can you represent a guy like...? Well you know, that's their job, and he did a beautiful job, and he was very professional about it. That's what I like. I like lawyers who are professional and not theatrical. Let's go to the newspapers about everything, trying cases in the media. I don't like that.

KB: When you were presiding over criminal cases, do you think it was helpful that you had criminal defense experience?

JPA: Oh yes.

KB: And also prosecutorial experience.

JPA: I never had any. Well I had prosecutorial experience at an appellate level, never at the trial level. The hardest part of criminal law, outside of the really tough capital cases and that kind of thing, is sentencing.

KB: What do you mean?

JPA: Well you got people's lives in your hands, and you know, you get pre-sentence reports and other input, which is very good. I talk to probation officers. By and large they do an excellent job, but here you are, you got somebody in front of you, and you got his or her life in your hands and you're trying to do the right thing. Now some of it's easy. You know, there's guys with a rap sheet two feet long. Well you gotta put them away; society demands it. And then you get some dumb person who's stolen three hub caps. Well you don't send them away if they have no record, but there's those in the middle. What do you do? Do you send them to prison where they get a graduate degree in criminality, or do you send them out in the streets and hope they don't get in any more trouble? I mean, you know, or you put them in a program that may work and may not. It's tough, but you gotta do it. I mean that's what you're paid for, so do it, and hope you're right.

KB: Well do you think it was harder being a district judge with the discretion that you had as opposed to federal judges who have to deal with guidelines?

JPA: Well...oh, I think it's harder, but I think it's a much fairer system. John Conway one time told me that a trained dog could sentence in federal court. Now the Supreme Court of the United States has changed that. They give them a lot more discretion, as you know, but in those days, I mean you went by the guidelines, and I'll tell you, the best comment I ever heard on it was now senior justice Judge Parker, Jim Parker, who talked to a Bar Association meeting and said, you know, I suppose there's more uniformity under the guidelines, but you know, criminal defendants aren't fungible, which means they aren't

all the same and you've got to look at the person. Okay, I've pontificated. Let's [unintelligible].

KB: Well that's excellent. We'll get you on other areas too. I've asked you about parties and attorneys. What about your colleagues on the bench? Do you have any that you'd like to comment about?

JPA: Well the late Frank Allen was a great, great judge, and a great lawyer, and the nicest guy in the world. He stayed on the bench too long and then died about five months later or something. That's too bad – great guy. Richard Traub was an excellent judge. Now he and I don't see eye to eye on a lot of things, because I have lunch with him all the time now, but he was an outstanding judge. I'm trying to think of others. Back when I first started I thought Dan McPherson was a wonderful judge. Some of the judges were characters back there. Judge [Paul] Tackett didn't want to hear cases. He'd call you into chambers, close the door and he'd settle everything. It's funny because there was one lawyer who was prominent in town and represented the insurance companies, and for some reason he was always on the other side of a personal injury case with me, and if we drew Tackett I always won, because Tackett just hated this guy and he'd give me a favorable settlement. No, there were other judges over there. Franchini. I liked Gene Franchini. He's a little bit of a wild man at times, but he did what he thought was right. Those are the names that come to my attention, and of course Biamotti [?] was my classmate, pushed very hard to get me to be judge. He finally got tired of it and went in the real estate business and built apartments. Rosier Sanchez was a sweet guy. He's still alive you know, and Rosier...you know, poor Rosier, he was still on the bench. I guess he'd retired when all of the scandal broke about his brother, the ex-archbishop, you know, and that really crushed him. Rosier is a very nice man.

KB: Yeah, I've practiced some criminal cases in front of him also I remember. Some have said that as a judge you end up isolated because of avoiding appearance of impropriety. Did you feel that when you were a judge?

JPA: Somewhat, yeah. You've got to avoid discussing the case with anybody other than the lawyers when they're both present, and you gotta be careful about the media. Now there's one reporter for the Journal. I don't know if you remember her – Burkes?

KB: Suzanne.

JPA: Suzanne Burkes was very, very professional about it. She would come in and ask me about cases, but never about what I was going to do or...she would want to know the procedure, because she wanted to report it in the papers correctly, and I was very glad to tell her that, but I never told her what I was going to do or, you know, anything, and she never asked. Now there's another reporter for the other paper then in town who I never told anything to because it was going to get in the papers all screwed up. You go to

parties and you know people inevitably were going to ask you about a case. You just had to say no. You know, you can't discuss it.

KB: Do you remember how you used to do pre-trial conferences?

JPA: Oh, they were a blast.

KB: Talk about that.

JPA: Well one thing I tried to do was always have the client in there, if you could. Now sometimes you couldn't, but at least a client, or if it's a corporation, a representative, and I wanted to get into the facts. I wasn't terribly interested in the law. I wanted to know the facts, because I think cases are fact oriented anyhow basically, and then we'd sit down and try to work it out in a reasonable fashion, you know, and set a timeline and let's see what discovery we're going to do and, you know, what needs to be done, anybody got any problems. The reason I had the clients in there is I had the standard speech. Look you guys, litigation is always four things. It is always expensive, it is always time consuming, it is always risky and it's always traumatic. Now do you want to go through with this? It worked. You get settlements because I think clients understood that, you know, they were running up a big bill and a lot of time and tearing their hair out when something could be taken care of. It didn't always work of course.

KB: But you also did similar things in criminal pre-trial conferences.

JPA: Yeah, sure.

KB: You got the attorneys and...

JPA: Uh-hmm. They were basically scheduling conferences and scheduling motions, and there was one lawyer, who back in the days when it wasn't as informal as it is now, always showed up in jeans and a cowboy shirt, and I had to tell him, eh-eh. He was from the DA's office, so I talked to Steve Schiff and I said, Steve, you can run any kind of a dress code you want to in your office, but nobody comes over there looking like that.

KB: And what was his response?

JPA: Steve was fine. I've got to tell you a story. Steve, you know, went to Congress, and the poor guy died from a botched-up job of getting rid of the carcinoma. That's another story, but the week that I was leaving the bench I got a call from Steve Schiff personally in Washington, DC thanking me, and he's a Republican. Now that was nice.

KB: What a gentleman.

JPA: He was a gentleman. He was okay.

KB: What cases, if you haven't already said them, do you remember when you were a judge?

JPA: Okay, on the civil side I had three or four really big medical malpractice cases. One of them lasted seven weeks. Well I had a series of medical malpractice cases, and one thing I liked about them was normally the lawyers were excellent lawyers on both sides, and I had one that lasted seven weeks. It was one of those bad-baby cases. The kid came out of the womb with, you know, the tube tied around about three times and everything. The parents...it was, you know, a very tragic situation, because the parents were poor Hispanic working people, you know, nice people, and they had this daughter who at that time I think was six or seven years old, and just a vegetable, really bad, and they...I don't know how they did this, but they'd hired a lawyer from Fort Lauderdale, Florida to come in and represent them. This guy was a very well-known medical malpractice plaintiff's lawyer, and he was good, but he made a couple of tactical errors. First is, their name was Gallegos, and he kept referring to them as Gal-yay-gos, which may be the way the Caribbean Hispanics pronounce it, I don't know, but anyhow, that went over like a lead balloon with the jury. It went on for seven weeks, and Rand Miller was on the other side with Rob Lassiter. Well they sued the doctor, the doctor's partners, Presbyterian Hospital and the anesthesiologist, which was another mistake; they sued too many people, but anyhow, it went on for seven weeks, and we ended up with a defense verdict, and the best final argument I ever heard was in that case. Rich Puglisi, you know, who's over as US Magistrate now, he represented the anesthesiologist who I almost summary judgment out of the case, but you know, if you do that you're going to get reversed and have to do it all over, so he got up and he said, ladies and gentlemen of the jury you've been listening to two days of final argument. The Gettysburg address lasted two minutes. I'm not going to take that long. My client should win. Thank you very much, and he sat down. The jury almost collapsed. They loved it. And I did something interesting when that was over, which believe it or not, I got affirmed on it by the Court of Appeals. The defense came in with a cost bill. Now they'd won, and it was a couple hundred thousand dollars, which by the way wasn't even close to what the cost would have been to try...I think there were 60 depositions in that case. I mean I had a stack of them three feet high in front of me, and the plaintiff's lawyer, the local plaintiff's lawyer, Dan Shapiro, came in and said, I really can't argue about this cost bill. I mean considering what it was, it was reasonable he said. He said we're going to have to take bankruptcy, and I thought about it for a minute and I thought, well, okay Phil. You're going to stick your neck out on this one. I looked at the proponents of the bill and said, I'm going to deny the entire bill, and I'm going to do it on the grounds that I'm not going to put anybody in bankruptcy to pay Physicians Mutual's cost bill, and I wrote findings on that and they took an appeal and I got affirmed. I couldn't believe it. I don't know if it's ever been done before.

KB: Did you ever get any grief from any of the attorneys?

JPA: No.

KB: Privately even?

JPA: No, no. Well privately if they went out the door and called me a son of a bitch. I mean, they can do that, but...

KB: But not to your face.

JPA: No, no. Nobody ever gave me grief on that. I thought it was fair; I thought it was right. I just couldn't see these poor people getting stuck with a judgment for a couple hundred grand. I couldn't do it.

KB: Well you were good at that; always finding the human situation.

JPA: There was one other one where I...well, this black gal who was a sergeant or something out at Kirtland, went into a car dealership here in town, and they talked her into renting a car, leasing a car, okay? And they made her put a couple grand down, gave her possession of the car but said they'd have to take it back if her credit didn't go through. She had the car for something like three weeks. Of course her credit didn't go through and they repossessed it, put it on the lot, sold it and then sued her for several thousand dollars for the deficiency.

KB: And they kept her \$2,000.

JPA: Oh, of course they did. So they moved for a judgment on the pleadings, and this girl just showed up, come out of nowhere. She said, I'm sergeant so and so, and I'm the defendant in this case, and what's this all about? So I said, well what happened? And she told me this very story, and I looked at the dealer who was there and I said, is that true? He said, yeah basically. Well of course by this time my hair was standing on end, and I said, well I'm not going to rule on this judgment now, so you can leave, and then I called her back and I said...no, I called her back and then I called them back in after I thought about it and I said, I want to rule on this case right now on the merits. I said, Mr. Dealer, what is the daily rental rate on this car? Well X dollars, 40 bucks or something. I said, let's say it's \$40. I said, okay, three weeks x \$40 is X. You give her back the \$2,000 less that and I'm voiding your whole deal. Oh, they were unhappy, but I mean they took this gal to the cleaners, and I just wasn't going to put up with it. Let me tell you, judges do this all the time, and I'm tickled to death they do, because once in a while you gotta just do what's right – and hope you're right.

KB: Do you ever talk about things like this with your colleague judges?

JPA: Oh sure, all the time. Dick Traub told me about the time he denied an extradition because it was some black kid from Alabama, no from Albuquerque, who happened to be in Alabama and wrote a check for \$75 and it bounced. He said I wasn't going to send that black kid back to Alabama on a deal like that, for heaven sakes. You know the governor's extraditing, but we're appointed as hearing officers.

KB: Right, right.

JPA: I mean, you just gotta do that once in a while. No, you don't do that all the time; you can't.

KB: Justice has many guises.

JPA: Well you gotta cut some slack once in a while, and if you don't, I don't think you're doing the right job.

KB: When did you retire?

JPA: April 30, 1994.

KB: So how long was your career?

JPA: Thirteen years on the bench.

KB: Looking back on it what'd you think?

JPA: Huh?

KB: What do you think about it?

JPA: I enjoyed it. I told somebody the other day I think I was a better judge than I was an advocate, because an advocate has to go 150% for their client. There were clients I didn't want to go 150% for, but a judge's job is to know the law and to try to do the right thing and be fair, and I enjoyed that more. I'm not going to say I'm God's gift to the fairness, but I thought that was a better place for than zealous advocacy, as they call it.

KB: Do you ever get any communications from parties who'd been before you or attorneys?

JPA: Oh, I run into attorneys all the time, you know. I have lunch with the boys down at the Hyatt, you know, and there's attorneys down there that I know, but you know, if I went to a Bar Association meeting today, I would know nobody. I mean this has been what? Fourteen years since I left.

KB: Well you were in the bar for a long time. What changes did you see?

JPA: Well the bar was small. I think when I first came to Albuquerque there might have been 200 lawyers in town. That's just a guess, but there weren't many, and in six months you knew them all, or who they were, and you know who to trust and who not to trust, and who was on this side and who was on that side, and who was likeable and who wasn't. What are there now? Three thousand lawyers in Albuquerque, 4,000? I don't know. I mean, it's a much different animal, and of course, the bar is much more specialized. You know yourself, Kathy. You don't do all sorts of stuff. You specialize in certain fields, and everybody does. I also think that...okay, how do I put it? Lawyers today are smarter, they're better trained and they're more intelligent, but they don't have the civility that they used to have.

KB: What makes you say that?

JPA: I think there's too many of them and there's too much competition, and I think it's a reflection of society. I don't think our society is as civil as it used to be, and maybe I'm just being nostalgic and, you know, I think people were nicer to each other back then. I don't know what it is. I think there's a lot more competition today and a lot more confrontation and...

KB: Did you see some incivility amongst lawyers?

JPA: When I was on the bench you bet I did. Not a great deal, but enough to make you have to lower the boom on some of these guys, but I think the lawyers are better prepared. Well first of all, your research tools are so much better, and you got CD ROMs and Law on a Disk and all this stuff, you know. You can research law much quicker and much faster and much more accurate than we could.

KB: What about people skills? Do you see any difference or change?

JPA: I just think on the whole that our society, and that includes the bar, more often than not is not as civil as they used to be. That's the only way I can put it. Look at this political campaign. It's nasty as hell.

KB: The national one or the local?

JPA: I'm talking about the national one. Of course, Jefferson and Adams almost killed each other, so I guess nothing has changed much, but I don't think people are as civil to each other as they used to be, and I don't like it, but...well why are people smarter now? Well there's so much more knowledge out there. When my daughter, who's the professor, got her PhD from Stanford in Engineering, she had to write a dissertation. It might have been written in Sanskrit as far as I'm concerned. I hadn't the slightest idea what she was talking, and I have a copy at home, big, thick thing, you know. It's tremendous, but I don't what the hell it's all about.

KB: You mentioned before that special professor you had in medieval history. I'm going to use that as a jumping-off point to talk about your time since retirement. What are your interests now?

JPA: Well okay, I'm a great lover of classical music, always have been. I'm a contributor to the New Mexico Symphony, the Metropolitan Opera, the Santa Fe Opera, the June Music Festival so...I got a collection, between Broadway and classical music, of three hundred and some CDs. That's one thing. I've always loved that.

KB: That's a passion of yours, right?

JPA: That's a passion of mine. I love to travel. Jane and I love to travel.

KB: Well you and Jane could write travel guides, couldn't you?

JPA: Oh god, let me see. We've been to Russia, we've been to Cambodia, we've to Thailand, we've been to Peru, we've been to the Galapagos Islands, we've been to Kenya and Tanzania, we're going to Egypt in November, we've been to Turkey, we've been all over Western Europe, we've been to New Zealand, and on and on.

KB: You guys must be in good health, because all that travel takes energy.

JPA: We are in good health, and I work out at the gym, plus golf is my other passion.

KB: Does Jane golf?

JPA: Golf? Yeah, she's better than I am.

KB: Well she took it up, didn't she?

JPA: Yeah, she took it up. She's better than I am. You know what I like about travel? I don't go to travel just to say, isn't that a pretty building? I like to find out what's going on in those countries. Now that doesn't mean being a tourist you really know it, but I like to find out what's going on and talk to people and at least get some impression, and I've never been a place where they weren't nice to us. Now we're on tours, you understand, you know. For instance, we spent four weeks in China in 1999. By the way, Beijing is so much different now I can't believe it watching this TV, but I would never go alone in a place like China. I mean, I'd be lost.

KB: So when you see Beijing now on the Olympics it's different.

JPA: It's a different city. Still as polluted as it was. Oh my god, that place is polluted. The Chinese cities are awfully polluted. Well that's just one example.

KB: Well in talking with you it sounds like you have also some passions in politics and reading.

JPA: Yeah, I love to read. I try to follow the political scene closely. I have some very strong opinions on it, but I've never voted a straight ticket in my life.

KB: Would you care to share some of your observations or thinking on the political scene?

JPA: Bush is an idiot. Do you want any more? I think campaigning is let's get to the issues for heaven sakes. Quit this business of attack ads, calling the other guy a no-good blankety blank, you know. Come on.

KB: But there's also a lot of talk about getting to know the candidate, which is a separate inquiry than the issues. What do you think of that?

JPA: I think that's important, but let's be fair about it. See, I'll tell you one of my gripes. The good old days of Walter Cronkite and Huntley and Brinkley, these people in the media tried to tell it fairly. The whole thing is so partisan now. You know, you listen to Bill O'Reiley and then you turn around and listen to Keith Oberman, and all they're doing is hating each other's guts. Now am I going to get anything out of that? You know what I'm talking about?

KB: Yeah.

JPA: Jim Lehrer has the only one that I turn...so be it, you know.

KB: Let me ask you before I get to maybe what I might call reflections. After you retired you continued in the law for a while.

JPA: I did some mediation and arbitration, yes.

KB: What'd you think about that?

JPA: I think it's an excellent idea – if the parties come in in good faith.

KB: Talk to me about that.

JPA: Well I had a saying when I left mediation, was that I was sick and tired of greedy plaintiffs and chicken insurance companies, okay? Now that's an overstatement, but I did run into situations where some of the plaintiff bar on personal injury suits were really interested in seeing how much money they could get so they could brag about it and not trying to get a reasonable settlement and getting on with it. The same thing can be said about some insurance companies, one in particular. I didn't think they were in good faith. They just came in to try to browbeat people. On the other hand there was a lot of excellent mediation that I handled. You know, lawyers that really...parties that really wanted to get the doggone thing settled in a fair way and get on with it, which is the idea.

KB: Any cases amongst that group, in the arbitration/mediation area of your practice that are memorable?

JPA: I don't remember the names, but there were a couple of medical malpractice cases which took quite a while to mediate, but we got it done, and I think fairly.

KB: What do you consider a significant contribution, whether personal or legal, that you've made?

JPA: I think I tried to set a high standard for the bench.

KB: You were outstanding judge by the Bar Association, weren't you?

JPA: Well people have told me that. I hope I was. You know something though? This is interesting, and this is just an aside. I'm sure that when I was on the bench the older lawyers said, ah, these guys aren't as good as old McManus and McPherson and Tackett were. They were real judges, okay? I hear the same thing today. You guys were good, but these guys now...I don't buy that.

KB – Kathy Brandt
JPA – Judge Philip Ashby

KB: What do you mean?

JPA: I think the bench is just as good now as they were when I was there, and we were just as good as our predecessors, come on. I may be wrong, but I mean, there's a feeling, you know that, ah, you young guys...I don't buy that.

KB: Couldn't this be just more of your modesty?

JPA: Come on, I'm not modest. I think I did a damn good job as a judge, but I think there's people over there now that are damn good judges. I mean, come on.

KB: Well let me go to a different aspect in terms of your experience in the law, whether law school, practicing attorney and a judge – women in the law.

JPA: Great.

KB: Talk to me.

JPA: I mean, you gals are good. Well there are women lawyers who are scum. I mean, you know, there's...again, there's a bell curve out there, but I think most of the women lawyers I've run into are excellent. When I went to law school there were no women in our class – none. In the class before at Boulder there was one gal who was the daughter of a prominent Denver lawyer – nobody. Now of course, what is it? Roughly 50%.

KB: Yes, I think so.

JPA: Most of you gals I think are great.

KB: You think it took some time for males to get used...?

JPA: Oh, heavens yes; heavens yes, of course. I mean to this day I think there's some of those guys out there that, you know, why don't they stay home and take care of the kids? Well my daughter, you know, who's the professor, has two children; my only two grandchildren, and she and her husband, who is a pilot for United Airlines, manage it very well, but you know it requires him to do things in the house too. In the old days when a guy could sit back with his buddies in the living room and smoke cigars while the women do all the work, that's over with, in my opinion, and should be. I think the women in the professions is a great thing. Now that doesn't mean that there aren't some problems about raising families at times, but I think it's great. I'm all for it.

KB: Do you have any words of wisdom for young lawyers?

JPA: Well, be professional and be honest. When I was presiding judge we had to sit down with the young lawyers coming out of UNM, you know; give them the great words of wisdom, and I think they've expected some great legal jewel. You know what I told them?

KB: What?

JPA: You come over here you be nice to the help and never lie to a judge.

KB: Would that that were so.

JPA: Well I mean, it's very practical. I know some older lawyers – again, names will not be mentioned – who would lie through their teeth to a judge about fact situations, but you know something? Judges catch on, and I'll tell you how I felt. Once a guy did that to me and I found out that he was lying, I never believed him again, so as a practical matter, if you want to win motions, you know, and another thing's where you're reciting facts to a judge, tell the truth. Be perfectly honest about it.

KB: Do judges share this information with each other?

JPA: Oh yes, of course. There's a grapevine out there. Hey, we know who they are.

KB: Do you have any words of wisdom for not-so-young lawyers?

JPA: Don't lord it over the youngsters. I've seen some of that. I don't think it's as much now as it used to be, but I can remember when you were just this, you know, not dry behind the ears young lawyer. Some of the older guys would really try to take advantage of you. They'd try to intimidate you. Of course, I've been out of the game now for a few years, but I think it's better now.

KB: What about words of advice for judges?

JPA: Listen and rule. Do you know what I mean? Listen to the parties, listen what they have to say. Take it seriously, but don't sit on something and take it under advisement until the end of the Christian era, for heaven sakes. Decide it.

KB: If you had it to do all over again, would you change anything?

JPA: I'd like to have been a judge longer. I would never have gone with a big firm. That's just me now. Nothing wrong with this, you know. I mean there's some outstanding lawyers in the big firms, and good friends of mine, but it wasn't me. I'm glad I stayed in a small group where we were on a first-name basis. I would've liked to have been a judge longer. I should have started sooner.

KB: Started sooner?

JPA: See I was 50 years old when I became a judge, almost 51. I would like to have been a judge maybe at 45 or early forties.

KB: So you'd put it on the beginning of your term, not at the end?

JPA: Uh-hmm.

KB: How would you like to be remembered?

JPA: As being a judge who was fair as hell. Whether I was or not, that's for other people to decide, but that was my goal.

KB: And I would think that there would be many who would attest to that.

JPA: Well I hope so.

KB: Are there any other aspects of your life or career that you'd like to share with us?

JPA: One thing I did was to try to take three weeks a year vacation with the family. Now I know lawyers who brag about the fact that they never took a vacation. I think that's insane. You gotta get away from it once in a while, and the family is important, and we've had our problem. You know about my tragedy with my son, but it's important.

KB: Kind of reinvigorate.

JPA: I told Kevin this the other day. For heaven sakes Kevin, get away from this for a while; it'll do you good, and you know, you gotta come back fresh once in a while. I never regret having been a lawyer. Would I have been better at something else? Who knows? You know, come on. I could never have been a law professor. Oh good Lord! Stand up in front of these...

KB: Well let me ask you, did you ever have thoughts of being a different kind of judge, like an appellate judge?

JPA: Not really. I'll tell you. I like the action. I liked being where the action was. I don't know what being an appellate judge is like. I have a feeling it gets a little bit monastic, and maybe not. I'm sure that Gene Franchini was never monastic. On the other hand, I knew guys that were. I think, what's his name? You know, a person you mentioned. The guy from Santa Fe – Montgomery. I think he tended to be monastic. His opinions were very, very erudite, and way too long, but that's another story. I don't think I could have taken that. I mean that isn't me. Nothing wrong with that. It just wasn't me. Oh, by the way, I could never be at Metro. That's a zoo, good heavens! That's not a court, that's a zoo, I think. I shouldn't say that. That's not good. It's important court. I mean a very important court, because that's where most people meet the courts, but I would go nuts listening to DWI cases one right after the other or handling landlord-tenant disputes, good Lord!

KB: So District Court was great for you.

JPA: I loved it, and I liked the civil better than the criminal. Well, you know, as I told you, sentencing was tough. I liked the civil better than the criminal, because by and large, there was more intellectualism in it, and you dealt with some real intellectual cases where, you know, criminal law, except for the, you know, the really big ones, you could do in your sleep. That doesn't mean it isn't important. It's damned important, but you know, okay.

KB: Well Judge Ashby I'd like to thank you very much for sharing with us. We would do well to learn from you.

JPA: Well I hope I've taught something. I don't know. You know there were some awfully funny things happened in court I haven't talked about. I've got to tell you one story.

KB: Great!

JPA: I've got some I've told you before I'm not gonna tell. I had a civil case which was a will contest, and by the way, they're worse than divorces. Estate fights are awful, because you know, daddy dies, everybody dresses in black, they go to the funeral, they cry about poor old daddy, then they read the will and all hell breaks loose. But this one guy, an Italian-heritage guy here in Albuquerque, who everybody who knows him said he was a real character, he drew up a will. Well that wasn't the will in contest, because after his wife died, he had a mistress and he lived with her for twenty-some years, and he died at 90, and the big fight at that time was over the second will where he gave almost everything to his mistress, and the family was mad. Anyhow, the lawyer who drew the first will was on the stand, and somebody asked a question about what the first will was.

The first will said, I give to my daughter, Lina, one wheelbarrow worth \$16.95 – I remember the amount exactly – and all the rest, residue and remainder of my estate wherever situated, blah, blah, blah, I give to my other children. I'm listening to this, and when the lawyer got done I said, don't step down please. I can't help, but I've got to ask you, why that provision in the will? And he looked back at me and he said, Johnny told me, so that was put in so she could carry away all the shit she'd had given to him during his lifetime. I rolled off the bench. It was the funniest thing I'd ever heard. I told this later to some friends of his that I, you know, I knew, and they said, yeah, that was Johnny all right. Okay, I'll stop.

KB: Judge Ashby, it also appears that you had some fun on the bench.

JPA: I enjoyed it, yeah. I had fun. Of course I had times when...oh, one other. I was afflicted for a while with some hypoglycemia, and I went to lunch and ate a great, big carrot cake, came back, and half an hour into this thoroughly dull trial, I fell asleep on the bench, and the next thing I remember the lawyers are standing at the bench saying, would you rule on our objection? And I said, what objection? And the jury is sitting over there cracking up. I had to recess and apologize to the jury.

KB: One would have thought that we would have heard that story. I've never heard that.

JPA: So you know, there are times when you're not doing it right. Okay, is that it?

KB: That's it. Thank you so much.

JPA: Thanks everybody.