

## **TRANSCRIPT: HON. A. THOMAS SMALL**

**Interviewee:** Hon. A. Thomas Small, U.S. Bankruptcy Court for the Eastern District of North Carolina

**Interviewers:** Hon. Randy D. Doub, Chief Judge, U.S. Bankruptcy Court for the Eastern District of North Carolina; Hon. Stephanie J. Edmondson, Clerk, U.S. Bankruptcy Court for the Eastern District of North Carolina

**Interview Date:** 2009

**Location:** Chambers of Judge Small, Century Station Courthouse, Raleigh, North Carolina

**Length:** 58 minutes, 19 seconds

### START OF INTERVIEW

**Randy D. Doub:** Good morning everyone. We're here today to begin a series of conversations with the Honorable A. Thomas Small, United States Bankruptcy Judge for the Eastern District of North Carolina, who has served in our district since 1982, and we're happy to be here. My name is Randy Doub. I presently serve as the chief judge for the United States Bankruptcy Court for the Eastern District of North Carolina, and joining us is our clerk, Stephanie Edmondson, and Judge Tom Small.

We're doing this in order to help us preserve the history of the bankruptcy court. We were encouraged to begin this program by the National Conference of Bankruptcy Judges. Judge Small has announced his retirement as of September 1,

2009, so we thought it would be appropriate today to sit down and have a conversation with him about his career, his life, and the important things he recalls about the history of our court and the development of the bankruptcy laws and bankruptcy system across the nation. These conversations will be available in our Eastern District Court Archives. They will also be placed with the National Bankruptcy Archives which is located at the Biddle School of Law at the University of Pennsylvania and also at whatever institution Judge Small selects to be the repository of his judicial papers. So Judge Small, thank you for allowing us to be here with you today and to give us the opportunity to talk about your career and the history of our court.

**A. Thomas Small:** Well thank you for this opportunity. I look forward to it.

Okay.

**RDD:** Well let's start with an easy question. How did it all begin? What interested you in becoming a United States bankruptcy judge?

**ATS:** Well that's a good question. I really had, when I got out of law school I had no interest in bankruptcy. I went to work for First Union Bank as a banker rather than as a lawyer, but they had some problem loans and they had some big, then they were called Chapter 10 cases. They knew I was a lawyer and they asked me if I could go to court and maybe look after their interests and they got a much better result than they thought they would have and I enjoyed it so much that I got

more involved in bankruptcy matters and along the way got to meet Judge Rufus Reynolds. I was located in Greensboro, and Judge Reynolds, as he did with a lot of lawyers, sort of took me under his wing and taught me the bankruptcy ropes. So that's how I got an interest in bankruptcy. After that, I got involved on behalf of the American Bankers Association, sort of trying to get the law changed to tighten it up a little bit for the bankers and testified to Congress a number of times trying to do that, and I prepared a few handbooks for the American Bankers Association and started teaching bankruptcy law at Campbell Law School. This was about the time that the new law was going into effect, so teaching it was a great way to learn it, so I was getting a real interest in bankruptcy law.

**RDD:** That would have been back in, around 1979?

**ATS:** '79, '80, back then. And then in 1982 the workload of the eastern district had increased and Congress had added a new bankruptcy judge position. Judge Moore told me about it and I applied, and my wife Judy Jo always thought I would be a good judge, so she encouraged me to apply.

**RDD:** Right. Let's go back in history a little more. You grew up in New York?

**ATS:** I did.

**RDD:** Tell us a little bit about your early years.

**ATS:** I grew up on Long Island, went to Garden City High School. And as a lot of people from Garden City High School did, went to Duke University. That was my first connection with North Carolina; met Judy Jo, who is a Southerner, and I liked the South, so ended up at Wake Forest Law School and have been here ever since.

**RDD:** So you graduated from Wake Forest Law School?

**ATS:** In 1969.

**RDD:** 1969.

**ATS:** I had a year off between undergraduate and law school when I worked for Chemical Bank in New York City as a, in their credit department, as a national division trainee.

**RDD:** So how long were you with First Union?

**ATS:** I was with First Union for a total of 13 years. The first three years were in Greensboro, then we took a year off and moved to Alaska; moved back, was in Charlotte briefly, and then the real estate recession or depression hit in the early seventies and I moved to Raleigh to work on First Union's — the problem loans of their subsidiary, Cameron-Brown Company that made commercial real estate loans all over the South — and that further increased my interest in bankruptcy because a lot of those loans went into bankruptcy and I was, it seemed like I spent my life on an airplane going to bankruptcy courts all over the South.

**Stephanie J. Edmondson:** Judge Small you mentioned about being appointed in 1982, the judgeship came open. Can you talk with us a little bit about what the process was like then to be appointed as bankruptcy judge?

**ATS:** Certainly. It was different than it is now. Then, the bankruptcy judges were appointed by the district court and in the eastern district there were two district court judges. Judge Dupree was the chief judge and Judge Britt was the other judge. And I interviewed with both judges separately. And after the interview, I thought it was interesting, I went on vacation and when I came back there was a huge package in the mail that had to be filled out and it wasn't really clear to me that I had the nomination but it looked like I had but it wasn't really clear to me. But anyway, it was the nomination. After that you went through a merit screening committee. It's unlike, it's kind of the reverse of the way it is today, the merit screening committee comes first. But there were, I was interviewed by three members of the merit screening panel and then there was the FBI background, and then I took the bench.

**RDD:** And the district judges were Judge Dupree, that you interviewed with, and Judge Britt?

**ATS:** Judge Britt.

**RDD:** What — of course Judge Dupree's no longer with us — Judge Britt is a senior judge now. What do you recall about Judge Dupree and Judge Britt or about the interview process, or how do you, what impressed them to select you?

**ATS:** Well, I don't know what it was; I had had very, while I'd been to bankruptcy court a lot I didn't of course have a whole lot of litigation experience. But I did have a pretty strong bankruptcy background, having taught at Campbell, and had studied the bankruptcy law pretty intensively and that may have been an important factor.

**RDD:** You mentioned the appointment, and then going through the merit selection; how was the appointment finally come to fruition? Was it a presidential appointment back then? How did that work?

**ATS:** No the appointment came from the district court but it was very strange the way it . . . All bankruptcy judges at that time after the Bankruptcy Reform Act went into effect on October 1, 1979, all bankruptcy judges had their terms to expire on March 31, 1984. Since I was appointed — I took the bench in December 1982 — I really only had about 16 months on my term. And at that point all bankruptcy judges in the country would have to stand for a presidential appointment for a 14-year term and I did not know whether I was going to get the presidential appointment or not. I had not talked to the state's two senators who I assume would have had some input into that selection process, so I didn't know

whether I would get the presidential appointment or whether I'd be back at First Union in 16 months.

**RDD:** Well, what happened at the end of those 16 months?

**ATS:** Well, Congress changed the law and they extended all bankruptcy judges for another four years, then, so I was on the bench for four years under that appointment, then got a 14-year appointment in 1986, appointed by the Fourth Circuit Court of Appeals, and then after that 14 years got another 14-year appointment.

**SJE:** Can you tell us a little bit about how the *Marathon* decision affected bankruptcy judges?

**ATS:** Well it affected me, because the *Marathon* decision of course was the Supreme Court case that said the Bankruptcy Reform Act of 1978 had given bankruptcy judges too much authority. And Congress announced that decision, I mean the Supreme Court announced that decision in the summer of 1982 but they said it was not to be effective until October of that year to give Congress an opportunity to change the law, saying in effect that the bankruptcy judges could continue to have this unconstitutional power until that case went into effect. Well, Congress didn't act and the Supreme Court extended the effective date of the opinion until December 24, 1982. Well, along the way my appointment was in process and Congress was still in session and I was afraid that they would change

the law as to how bankruptcy judges were to be appointed and my appointment would not be finalized. So the minute that the FBI report was done, I got sworn in, on December 14, 1982, and remember that was ten days before the *Marathon* decision was to go into effect, so I had the full Article III powers for a period of ten days but when that Supreme Court decision went into effect on Christmas Eve 1982, then I no longer had those powers.

**RDD:** Well, were you able to exercise any of those Article III powers during that ten days?

**ATS:** Randy, I can't really tell that much difference (laughter). Well of course I was so new I wasn't doing much. I was signing a few orders back then, but I don't think I held court during that period.

**RDD:** Right. Well tell us a little bit about your impressions of the bankruptcy court, the clerk's operation, the number of cases that were ongoing when you took the bench in 1982.

**ATS:** It was so much smaller than it is now. We didn't have a Raleigh office. The clerk's staff was much smaller than it is now. We didn't have electronic filing. We had loads of paperwork and in fact every time we went to court we would be carrying these huge briefcases just full of files. We had discharge hearings back then, which we don't have now. So every debtor that came through the court had to have a discharge hearing if they were going to get a discharge,



which meant that both Judge Moore and I were traveling around the state holding discharge hearings. And actually I think they were a good thing because so many debtors come through our court and they never see a bankruptcy judge. By seeing, by going to the discharge hearing, they saw that this is an important thing that they did. They could recognize the seriousness of it and they knew that they had the protection of the federal court behind them to in effect fortify the discharge that they got in the bankruptcy case.

**RDD:** Right. Yeah, I remember attending a lot of those discharge hearings that Judge Moore would conduct at the New Bern federal courthouse when I represented the debtors when I was in private practice.

**ATS:** Well, we went to New Bern, and Elizabeth City, and Wilmington. My duty station was actually in Wilson, although my chambers were in Raleigh, for several years. Finally my duty station was changed to Raleigh, but I spent a lot of time in Wilson and I had an office down there. They held court in an old courthouse in downtown Wilson that really was not well maintained, and in fact during the winter there would sometimes be ice on the walls; you had to watch out for falling ceiling tiles, and it really was an unsatisfactory courtroom.

**SJE:** Do you recall about how many cases were filed each year when you were first appointed?

**ATS:** Well there were, actually the cases went down after I was appointed that year, but there were just a couple thousand cases, unlike what we have now – maybe 10,000 cases or more that we probably have each year.

**RDD:** What about your staff, and how you organized your first chambers?

**ATS:** Well, my secretary from First Union came with me, Marie Carter. And she did more than just be a secretary, she also was my courtroom deputy for a while and would actually go with me to court and open court and conduct court as the courtroom deputy does now. I had one law clerk and I would appoint those law clerks for two-year terms. I've gotten away from that now; I've got one-and-a-half career law clerks now.

**RDD:** When you were appointed you joined the Honorable Thomas M. Moore, who was the first bankruptcy judge to serve in the eastern district. Of course he was a bankruptcy referee before the law in 1978 was passed. Tell us about Judge Moore.

**ATS:** Judge Moore was a wonderful person. He was a great judge. He had a wealth of practical, good, common sense. He was a very wise judge and he taught me a lot. I worked with him for about ten years on the bench. We talked almost daily; he just really sort of taught me how to become a judge. He, Mickey smoked. And when he held court he would frequently take a smoking break, which meant he would go back into his chambers and the lawyers who were appearing before

him would also go into chambers and inevitably they would resolve the case by the end of the smoking break.

**RDD:** Yeah, I fondly remember exactly what you're talking about. There in the old Wilson courthouse there on Nash Street. Because I was a young attorney back there in the early to mid-eighties and I recall Judge Moore taking recesses and joining him in his chambers would be Mr. Trawick Stubbs, who is now a Chapter 13 trustee and one of our preeminent Chapter 11 practitioners; and Malcolm Howard, who was a Chapter 11 practitioner. And I think they would all go back in those chambers and light up their filter-less cigarettes and you could tell something was going when you could see the smoke coming out from under the door (laughter), so it was kind of like a smoke signal. Do you recall some of the other attorneys that practiced before you during your first years?

**ATS:** Well, you mentioned Mac Howard, who of course is now a district court judge and he regularly appeared before me as a trustee. Buzzy Stubbs of course was a Chapter 13 trustee. Greg Crampton did a lot of Chapter 11 work. Larkin Pahl was a very good Chapter 11 lawyer who unfortunately had some problems with the state bar and was unable to continue. Mark Kirby, who also had similar problems, was a very fine creditors' lawyer; Terri Gardner. There're just so many. We are so fortunate to have so many really fine lawyers in this district.

**RDD:** And many of those you mentioned are still practicing today before our bankruptcy courts.

**ATS:** Oh yes.

**RDD:** Of course in the mid-1980s, farmers in eastern North Carolina were beginning to experience some problems.

**ATS:** They were. You know the North Carolina economy used to be small family farms and we had awful lot of small family farms in North Carolina. And all over the country in the eighties there was a real farm crisis and there were so many farm foreclosures. And I remember watching the evening news, sitting there with my wife Judy Jo, and thinking you know we really need to do something about this. And I was just a city boy, of course, grew up in New York; I really knew nothing about farming. I knew what a tobacco field looked like but I'd never been on one of them. So I thought I really need to learn more about farming. Well, about that time Congress took an interest in the farm crisis and Judge Moore was a friend of Senator East who was in the Senate and he was looking into this problem as well. And Judge Moore had been invited by Senator East to testify. They were having a joint hearing with one of Senator Grassley's subcommittees with Senator East's subcommittee. And Mickey asked me to come along. Well, I hadn't become an expert yet but I did know something about the bankruptcy law and the two of us went up and testified and told 'em what the problems were with Chapter 11 and

why family farmers could not really use Chapter 11 to reorganize their farms. And at the hearing I remember making those comments and Senator Grassley says, well what do you think ought to be done about it? And I had been thinking about that and I said well maybe there ought to be a new emergency chapter of the bankruptcy law like we had during the Depression, the Frazier-Lemke Act, to deal with family farmers. And much to my surprise, Senator Grassley, who I understood would be opposed to such a proposal, said well why don't you draft it, and we'll see what we can do with it.

**RDD:** Do you recall who all was on that subcommittee besides Senator Grassley?

**ATS:** Senator East; well, back then some of these hearings didn't have too many senators; they had senators on the committee but they didn't often attend the committee hearings. But Senator East was there, Senator Grassley; and I don't recall who the other senators were. But anyway, so while I didn't know a whole lot about farming, Judge Moore did, fortunately, and we as a team came up with the new chapter. We discussed what needed to be in it and one Sunday morning I sat down at my desk at home and started drafting and by the end of the evening had finished a draft. I ran it by Mickey; we talked about it some more, sent it up to Senator Grassley's office, he introduced it and it passed the Senate as we drafted it. But the House was working on a different approach to the farm crisis, more like

Chapter 13, and that was very much different than the approach we had taken. So over the next year, we worked with Senator Grassley's staff, primarily Sam Gerdano, who's now head of the American Bankruptcy Institute, and Congressman Mike Synar's staff, and Bankruptcy Judge Keith Lundin, who was in effect helping Congressman Synar, and we worked out the differences between the two bills and came up with another draft that ultimately became Chapter 12.

**RDD:** That's a very interesting story.

**ATS:** It is interesting, and it's probably the one thing that I am proudest of, that Judge Moore and I had that opportunity and were able to save thousands of family farms not only in North Carolina but throughout the country.

**RDD:** Yeah, well there's an old saying that you know, you don't like, you wouldn't like to see how, or laws are made like sausage is made [and] you wouldn't want to see how sausage is made. And so was there a lot of lobbying on the part of various interest groups in regard to the Chapter 12 bill? How did that affect the process?

**ATS:** There was some lobbying; the creditors were opposed to it, but there really wasn't as much lobbying as you would think there would have been. And President Reagan signed the legislation. I do remember one thing about the process; right from the beginning I said I know absolutely nothing about taxes and you need to have a tax expert write the tax provisions of Chapter 12. That didn't

happen. What happened was, I got a call one day, and said we need the tax provision now because the bill's going to the floor of the Senate. And at that moment I spent the afternoon drafting the tax provisions, which is kind of scary.

**SJE:** Judge Small, can you tell us about maybe some other projects that you've worked on at the national level? I know you've been involved in some other, on some other committees and other efforts.

**ATS:** Well, I, let's see for the Judicial Conference, back in the early 1990s – it's amazing that the judiciary had never done any long-range plan. And they decided that they were going to have a long-range planning committee. The Chief Justice was very much interested in that. And he appointed a seven-member blue-ribbon long-range planning committee. And the members of that committee were really some of the top people in the federal judiciary, people that had been involved in governance of the federal judiciary, people like Eddie Becker, Elmo Hunter, Bill Feinberg, and Harlington Wood. And they were going to look at every aspect of the federal judiciary and see how they could make it better. Well after they were operating for almost a year they decided they needed a bankruptcy judge and a magistrate judge to be part of that committee. And I had been the chair of the National Conference of Bankruptcy Judges Long-Range Planning Committee several years before that so I suspect someone had given the AO or the Chief Justice my name, as someone who knew a little bit about long-range planning. I

certainly didn't consider myself to be a long-range planner. But I got a call from the AO Director Mecham, asking me if I wanted to be part of the committee. I really had no idea what it was or how, what an important position it was. And I became part of the committee and for the next three or four years worked on that committee. We met frequently and examined all aspects of the federal judiciary; came up with a report that – we had public hearings and we had focus groups. We met virtually every month and the long-range plan was presented to the Judicial Conference and it was approved in late 1995 and still is the document that they look to for a plan for the judiciary.

**RDD:** What were some of the suggestions that your long-range planning committee put forward and how have those developed over the years?

**ATS:** Well of course I was interested in a lot of the bankruptcy aspects and the Bankruptcy Administration Committee had their own long-range planning project that was coordinated with this and I participated in that. And one of the things I thought was so important was that bankruptcy judges be members of the Judicial Conference, full voting members and also members of the judicial, or the circuit councils, full voting members. That was incorporated in the plan; however those recommendations were defeated when it came to the Judicial Conference. But there were some really extreme I guess you would say recommendations that were considered, like getting rid of juries. We did a lot with senior judges. We did



a lot with the jurisdiction of the court and trying to move some of the criminal jurisdiction over to the state courts involving criminal matters that would typically be state court matters that had been added to federal jurisdiction; you know one of the ideas was moving that over. And those type of things were done.

**RDD:** You indicated you were appointed by the Chief Justice.

**ATS:** I was.

**RDD:** Who at that time was William Rehnquist.

**ATS:** Yes.

**RDD:** And over the years you developed a quite close relationship with him.

**ATS:** I did, and it all resulted from tennis. The Chief Justice of course was the justice that came to the Fourth Circuit each year. And Bill Anderson, a bankruptcy judge from the Western District of Virginia, was a good friend of mine and someone I played tennis with a lot. Well he was president of the National Conference of Bankruptcy Judges about the time that the Chief Justice became Chief Justice. And he, as president of the National Conference of Bankruptcy Judges, went up to meet with Chief Justice Rehnquist and asked him if wanted to play tennis when he came to the Fourth Circuit. So I was included in on the doubles match and we played every year after that and would play when he came to North Carolina. And when I was fortunate enough to be on the Federal Judicial Center Board, would play with him after the board meetings. So it was just a real

honor for me to get to know him and it went a little bit beyond tennis because I had an opportunity to meet with him a number of times in his chambers as president of NCBJ and as a representative of NCBJ. In fact we were there the day they decided the case of *Gore vs. Bush*. And I imagine the Chief Justice would not remember that we were there that day; his mind was very preoccupied.

**SJE:** Can you tell us, maybe some stories about, I know you've had the opportunity to meet several justices. Can you tell us any other stories about some of the justices you have met through the years?

**ATS:** Well I have been fortunate to meet several other justices. I knew Sam Alito because he was chairman of the Bankruptcy Appellate Rules Committee when I was chairman of the Bankruptcy Rules Committee and we would go make our presentations together to the Standing Committee. I've met Clarence Thomas a number of times when we would meet with the Chief Justice. I've met Chief Justice Roberts actually through the rules process also; he was a member of the Appellate Rules Committee and occasionally he would fill in for Sam Alito when he was on the rules committee and I've met him. I remember meeting Justice White one time when I was teaching at the baby judges' school for district court judges; now they always have a reception at the Supreme Court and because I had taught that course I got to there and I'll never forget Justice White gave everyone a tour of the Supreme Court Library after the dinner and what impressed me so much

was the size of his hands. You know he was a professional athlete and his hands were so strong and even at his age he was still, you could tell he was still very athletic. I went one time to the Supreme Court with the Long-Range Planning Committee had a meeting there, and Judge King from the Southern District of Florida asked me before the meeting if I wanted to go with him to speak with Justice Kennedy, and of course I said yes I would like very much to do that. Well Justice Kennedy wasn't there and he said well let's go talk to my friend Justice Blackmun. So, we went to see Justice Blackmun and had the most delightful talk with Justice Blackmun for about a half an hour in his chambers. And I remember him saying to me that he was always a little apprehensive when they got a bankruptcy decision in the Supreme Court because he felt like they didn't know that much about bankruptcy and he was afraid of unintended consequences, and I thought that that was a very interesting comment on his part.

**RDD:** Well as you've been a judge over these 27 years, has your judicial philosophy or the way you approach deciding a case changed since 1982? Has your judicial philosophy evolved in any way? And when we talk about that are there Supreme Court justices that you admire because of the way they approach dealing with a case?

**ATS:** Well, I think when you put the robe on everything changes. It's easy to have opinions. But when you put that robe on and you have to make the decision

you really have to consider every side of the issue and to be as fair as you possibly can be. And one thing I've learned is that you can never really pre-judge a case. When you prepare for a case you read briefs and you may be leaning one way or the other. But you learn pretty quickly that you really can't do that because you're always surprised. And I think the most important thing is just to make sure everybody knows that they're heard – and it's important to explain to them that you have heard them and explain why they didn't prevail or why they did.

I'll have to think about that – who it is, the judges that I admire. You know, not just Supreme Court justices but I was very fortunate to have been able to appear before all of the bankruptcy judges in North Carolina as a bankruptcy lawyer. And I learned so much from each one of them. You know, Judge Reynolds; Judge Reynolds really managed his cases. Judge Moore brought his practical wisdom to the cases and good common sense and would participate in getting the cases voluntarily resolved. Judge Wooten I don't think ever took a case under advisement. I mean he would rule; he was very decisive and was not afraid of making decisions. Judge Wolfe would always encourage people to settle their cases. I think these are all good attributes and there are things that I've learned from each one of those judges.

**RDD:** Let's go back a little bit and talk about the history of our Eastern District Court. When you were appointed, Peggy Deans was the clerk; the clerk's

office was in Wilson and I assume had a rather small staff. Can you reflect some on your relationship with the clerk and the clerk's office and how they operated and how that operation evolved through the years?

**ATS:** Well I think Peggy was probably Mickey's secretary and she was the first clerk of court. Mickey was a great judge of character and he saw something in Peggy, and Peggy was a great leader. And she had a great ability to pick people that could do the job and that would get along in the clerk's office. It was a small office; people had to get along, and they did. It's just amazing how they handled the workload and it's also amazing how Peggy was always looking ahead. And there was a huge change, a huge technological change; she anticipated that. And the court was ready and we moved ahead.

**RDD:** Of course, Ms. Deans, Peggy, just recently retired. She served as our clerk for 33 years. Tell us about the history of how you came to be located at Century Station and how this, how the bankruptcy court kind of made a second home for itself here in Raleigh.

**ATS:** Before — the chambers here in Century Station had previously been used by a part-time magistrate judge named Logan Howell. They were pretty much — the courtroom and the chambers were somewhat in disrepair. When I came on the bench although this wasn't my duty station it really was my chambers and the clerk's office brought it up to standard, both this and the courtroom.

**RDD:** Right. Well you mentioned earlier your duty station was in Wilson.

**ATS:** It was.

**RDD:** So, did you, and you lived in Raleigh. Did you commute to Wilson? And then, or how long was it before your chambers was established here in Raleigh, from I guess 1982?

**ATS:** I think it was probably about four years; I'm not sure exactly, I'll have to go back and do that on the next tape. But I would hold court here in Raleigh and sometimes while they were getting the courtroom up to standards I would hold court over at the district court and I would frequently hold court in Wilson. It was interesting; back then the way we assigned cases was just every other case, regardless of the geography. And so, I would try cases in all of the divisions.

**RDD:** Where was the court, or where did you hold court back in the 1980s in the Eastern District?

**ATS:** Well, I would hold court over at the district court in Raleigh. Then when they got my courtroom finished I held court here at Century Station; I would hold court in Wilson and held court in Elizabeth City, held court in New Bern, held court in Wilmington.

**RDD:** So you were on the road quite a bit.

**ATS:** We were on the road quite a bit. And I did not take over half of the caseload; I mean I just got new cases as they were filed. But what I did do was go

back and try adversary proceedings. You know it was funny, when I came on the bench I had not had a great deal of litigation experience and I studied the rules of procedure, and I studied and studied and I really knew the rules of civil procedure. It didn't come up very much (laughter). But I knew those rules better then than I do today.

**RDD:** Do you, how many Chapter 11s were filed back when you began? You know it seems that since the Code in '78 passed, prior to that I guess there's kind of been a cultural change too in how our citizens look at bankruptcy. The Code of '78 really kind of generated a new look at bankruptcy laws and making it available to more people and perhaps some of the stigma of filing bankruptcy for people diminished. Do you have any thoughts about that?

**ATS:** The stigma has diminished somewhat, but people are here pretty much as a last resort. If you look at the people that appear before our court, they'd rather be anyplace except in bankruptcy court. Now there's a perception, and you get this when you go to cocktail parties, people say oh you're a bankruptcy judge; people are always abusing the bankruptcy system. Well sure, we have an abuser every once in a while. We try to keep them out but for the most part, people don't want to file bankruptcy. It's a last resort. They don't want to be here.

**RDD:** You previously mentioned in your work on the Chapter 12 legislation that you had some contact with Senator John East, who I may point out was one of

my professors when I was in undergraduate school at East Carolina. Were y'all involved in any other legislative efforts during the eighties?

**ATS:** Well, Judge Moore was. There was an effort to have a United States trustee system throughout the United States. Before that there was a pilot project where some districts around the country had a U.S. trustee system. One of those districts was in the state of Alabama, where they had a very unpleasant experience and the bankruptcy judges conveyed that to Senator Howell Heflin and Senator Heflin was very much opposed to the U.S. trustee system based on the experience in the pilot district in the state of Alabama. Judge Moore was also against the U.S. trustee system, not because we were part of the pilot project, but he just thought that conceptually it was not a good idea. It was expanding the bureaucracy, it created a conflict of interest for the U.S. trustee, which would be housed in the Justice Department while the Justice Department had representation responsibility for governmental agencies. And Judge Moore was invited by Senator East to testify at a Senate hearing about the U.S. trustee system and he told him it was not a good idea. Well unfortunately Senator East died before the legislation came before the Senate but Senator Heflin, knowing of Senator East's opposition to the U.S. trustee system, excluded both Alabama and North Carolina from the U.S. trustee system and today we're the only two states that don't have the U.S. trustee system; we have the bankruptcy administrator system.



**RDD:** Has that been a good decision?

**ATS:** I think so. Of course we have nothing to compare it to, we've never had the U.S. trustee system but from what I gather from talking to other bankruptcy judges, they would rather have the bankruptcy administrator system than the U.S. trustee system. And of course we can go to the U.S. trustee system at any time by a vote of the sitting bankruptcy judges. I've never heard any bankruptcy administrator district interested in doing it.

**RDD:** Do you have any memories of how the bankruptcy administrator office began here in the Eastern District, and how that office was staffed?

**ATS:** Before we had the bankruptcy administrator we had a case administrator that looked after Chapter 11 cases, and the estate administrator, the case administrator, became the bankruptcy administrator, a woman named June Farmer. And then June served and I can't remember how many years, and then Margie Lynch took over as the bankruptcy administrator.

**RDD:** Right. And Ms. Lynch continues in that position today.

**ATS:** Yes. I believe those are five-year terms and she's been appointed a number of times – reappointed.

**SJE:** You mentioned that was the Chapter 11 case administrator; can you tell us a little bit about what you've seen as far as changes with Chapter 11s, since then?

**ATS:** Well, one change that we implemented was the Chapter 11 fast track for small businesses. And it's really kind of interesting how it all came about. I was asked to give a speech at the American Bankruptcy Institute annual meeting about small business Chapter 11s, and it got me thinking about it and I went back surveyed our Chapter 11 cases and found out that it was taking 18 months to resolve our Chapter 11 cases. It didn't make any difference if it was a big case or a small case. And this was right after Chapter 12 family farmer was passed and it was all fast track. And I thought, well some of our Chapter 11 cases are less complicated than the Chapter 12 cases; why can't we do those faster? And if you do them faster, you're going to be able to cut out a lot of the expenses, a lot of the litigation; there won't be motions for relief from stay because the creditors know they're going to get an early determination and confirmation. So I thought about how we could move the cases faster and came up with the fast-track procedure and the conditional approval of the disclosure statement, the early filing of the plans, oral modifications at the confirmation hearing, and the idea — I mean I included that in the speech I gave at the ABI and although there weren't that many, I don't know, there may have been 100 people there or something, but there were reporters there that picked up on this idea and all of a sudden the idea spread and now the fast-track provisions are part of the law. That was one major change in Chapter 11s. We seem to have a higher success rate than they do in other parts of the

country. And I think it's attributable to the fact that we move the cases along faster. We have more confirmed Chapter 11 cases than they do in other parts of the country. Now, having said that, of course there's no follow-up after confirmation and whether these cases are successful or not, I'd like to think they are but we really have no follow-up way to check on that.

**RDD:** Are there any particular Chapter 11 cases in which you were the presiding judge over the past 27 years that stick out in your mind?

**ATS:** Oh absolutely. We had some large cases; of course most of our cases were small business Chapter 11s. But we had Rose's Stores which was a huge undertaking. We had Midway Airlines which was another large one. We had SpectraSite, which was all the cell phone towers around the country and it didn't take very long because it was a pre-packaged Chapter 11 but it involved billions of dollars so it was numbers-wise probably the biggest case we had. One of the Chapter 7 cases that we had that was huge was International Heritage case which was a very large Ponzi scheme and we're still years later feeling the effects of that as we see all these claimants that didn't get their money the first time around filing their claims.

**RDD:** Anything that you did as a judge as far as handling the larger cases that might generate a lot of public interest or press interest; was there anything

special you did with regard to how to handle a large, say national case like the Roses Store or the Midway Airlines; cases that could have national implications?

**ATS:** Well I don't know that I handled them any differently but certainly those cases did get a lot of press and of course it's kind of amazing to me that today we have so many very interesting cases that the public would be interested in, but the newspapers have cut their staffs back so much that you hardly ever see reporters coming to court and I think they're really missing some very important news.

**RDD:** You've talked a lot about Judge Moore. Of course in 1991 Judge Moore unfortunately passed away and a vacancy was created with his . . .

**ATS:** He did. I might say too, I mean that was a very difficult period of time, not, I mean losing Mickey was hard. But the caseload had increased and I don't know that I could have handled that caseload without some help from other judges from other districts; Judge Krumm from the Western District of Virginia came and helped out. Judge Wolfe came over and helped out. Judge Friend from West Virginia, Northern District of West Virginia, came. They were tremendously helpful. This was about the time also that I got appointed to the long-range planning committee, and which I said before met frequently and I mean that, it was a lot of work, and keeping up with the caseload was, it was a difficult period. And I was glad when Mickey's replacement came on, who of course was Judge Leonard,

Rich Leonard, who had been clerk of the district court. And Rich had experience as a judge; he'd been a part-time magistrate judge in addition to being clerk of the court but had no bankruptcy experience whatsoever. Fortunately, Judge Leonard's a man of incredible intelligence and was a very fast learner and got up to speed very quickly with respect to the bankruptcy law. He also, of course having been clerk of court and having won awards for his leadership at the district court had a great administrative capacity and skill that was just very helpful. We've — of course I've worked with Judge Leonard longer than I worked with Judge Moore. And I've enjoyed it; I mean every minute of it we talk about important cases; we hardly ever disagree on either administrative decisions or the judicial decisions that we've made.

**RDD:** Of course Judge Moore was the chief judge of the court until he passed away and then you became chief judge and served a seven-year term I guess from 1992 to 1999.

**ATS:** Yes, and then at the end of my seven years, and the seven-year term is really patterned after what the district court does although it really, if you look at the statute there's no term; that's just the practice that the Eastern District has adopted and I think it's a good practice. And then after Judge Leonard's term expired of course that was when you came on the bench, Randy, and it was probably not fair to put you in that situation of being chief judge but so I came

back as chief judge for about a year and of course now you're the chief judge and I'm thankful for that because you have an enthusiasm for it and an ability for it and I mean we're all pleased that you're our chief.

**RDD:** And I thank you for serving that year. I often share the story that after I was appointed our clerk Peggy Deans came in one day and said did you realize that Judge Leonard's chief judgeship expired Friday night at midnight? And she said you may become the new chief judge. And my response was well gee, I haven't even learned how to answer the telephone, much less be the chief judge just two weeks after my appointment, but it has been an honor to serve in that position. But let's go back to your service as chief judge. What do you recall – anything specific about your service as chief judge, how you dealt with administrative matters, or any advice on how, the role a chief judge should play in the direction of the court?

**ATS:** Well, I guess administration is not my strong suit, unlike Judge Leonard or yourself and fortunately I had a very competent clerk and I delegated as much authority as I possibly could to Peggy Deans and tried to stay pretty much out of her way and she didn't let me down and she did a fine job for the court.

**RDD:** Well Judge Small, we thank very much for the time you spent with us the last hour. We've covered some very interesting topics regarding your appointment as a bankruptcy judge and some of the history of our court and some

of the many fascinating people that you've met along the way. So we thank you for this session and we'll look forward to our next session.

**ATS:** Well thank you, Randy. I appreciate the opportunity. I just feel so fortunate to have been here for the last 27 years and be part of this, just wonderful court and have had the opportunity to work with you, with Judge Moore, and Judge Leonard, Peggy Deans, and just recently with you, Stephanie.

**RDD:** Well it has been a great experience and on behalf of our court and everyone involved and indeed our nation thank you for the service that you've rendered.

**ATS:** Thank you.

END OF INTERVIEW

Transcriber: Catherine G. O'Brien, Archivist, Fourth Circuit Library

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